

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

JUDGMENT

The State of Rajasthan vs. Rambabu
 (S.B. CRIMINAL APPEAL NO. 281/1993)
 and
 Ramesh Chand vs. State of Rajasthan & Anr.
 (S.B. CRIMINAL REVISION PETITION NO. 164/1993)

DATE OF JUDGMENT ::: November 28, 2008.

P R E S E N T
HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Deendayal Sharma, Public Prosecutor for the State.
 Mr. Ved Prakash Vishnoi, for the respondent.
 Mr. Kamal Paraswal on behalf of Nitin Jain, for the revisionist.

BY THE COURT:

Both the aforesaid criminal appeal and criminal revision arises out of and pertain to judgment dated 13th April, 1993 rendered by Sessions Judge, Tonk whereby, the accused-respondent Rambabu was not found guilty and thus acquitted in the offence under Section 377 of IPC, hence, they are being heard and decided by this common judgment.

2. The prosecution case is woven like this:-

That the accused Rambabu Soni was employed as a teacher in Government Primary School, Kiwada where the victim Mahaveer Prasad was prosecuting his studies. It is alleged that on 3rd May, 1986 the accused Rambabu Soni called Mahaveer Prasad under the pretension to send for cigarettes. It is further alleged that the accused Rambabu first got his legs massaged by Mahaveer Prasad and thereafter, had carnal

intercourse with him against the order of nature. When the complainant came to know about this incident, he complained it to the Headmaster of school. It is also stated that the villagers too, condemned his action and the accused tendered an apology before them but since no action was taken by anybody including police, PW-1 Ramesh Chandra the father of the victim submitted a written report Ex.P/1 before S.P. Tonk, whereupon S.H.O., police station Barauni lodged the FIR and commenced investigation.

3. The Investigating Officer recorded the statements of the witnesses under Section 161 of Cr.P.C., got victim Mahaveer Prasad medically examined and after usual investigation filed the police report under Section 173(2) of Cr.P.C. before the competent court.

4. The accused Rambabu was indicted for the offence under Section 377 of IPC who pleaded not guilty and claimed trial. In order to further its version, the prosecution examined as many as 13 witnesses. In his explanation under Section 313 of Cr.P.C., the accused claimed innocence. The accused also examined two witnesses DW-1 Hukam Chand and DW-2 Ramphool in his defence. On completion of trial, the Chief Judicial Magistrate, Tonk found the accused Rambabu guilty and convicted him in the offence under Section 377 of IPC and sentenced to a period of one year's rigorous imprisonment together with a fine of Rs. 1,000/-; in default of payment of fine to further suffer simple imprisonment for two months. Aggrieved with the judgment of C.J.M., Tonk, the accused-respondent filed an appeal before the Sessions Judge, Tonk

who did find the accused guilty and set aside the judgment of conviction of C.J.M., Tonk and acquitted him in the alleged offence as indicated hereinabove.

5. Heard learned Public Prosecutor appearing for the State, learned counsel for the revisionist as also the learned counsel for the accused-respondent and scanned the relevant material on record.

6. Both the learned Public Prosecutor as also the learned counsel for the revisionist have contended that the learned Sessions Judge, Tonk has not properly appreciated the evidence of the prosecution witnesses and erroneously reversed the finding of conviction arrived at by the trial court. The impugned judgment is based upon surmises and conjectures. There is no reason to disbelieve the testimony of PW-4 Mahaveer Prasad and the complainant PW-1 Ramesh Chand. PW-3 Ram Gopal has also supported the prosecution case but the learned Sessions Judge has not placed any reliance on his statements. It has also been canvassed that the finding of the Sessions Judge, Tonk is perverse and contrary to the law and facts available on record. Hence, the impugned judgment of the Sessions Court, Tonk may be set aside and while maintaining the judgment of the trial court, the accused-respondent may be convicted and adequately punished in the offence under Section 377 of IPC.

7. Per contra, learned counsel Mr. V.P. Bishnoi appearing for the accused-respondent has submitted that the prosecution case solely rests on the testimony of PW-4 Mahaveer Prasad. His statements do not stand corroborated by the medical evidence. He has further canvassed that the First Information Report Ex.P/1 of this case

has been lodged after a delay of one month and two days, of which the prosecution has not furnished any reasonable and satisfactory explanation. This delay, being unexplained, is proved to be fatal to the prosecution. The impugned judgment of the Sessions Judge, Tonk is cogent and well meritted which does not call for any intervention, as such, both the appeal and revision may be dismissed.

8. Having reflected over the submissions made at the bar and cautiously considered the prosecution evidence including the relevant documents, it is noticed that the whole prosecution case rests on the sole testimony of PW-4 Mahaveer Prasad. So far as other prosecution witnesses namely PW-2 Kesar Lal, PW-6 Shokaran, PW-9 Rampal, PW-11 Ramgopal and PW-12 Ram Sahai are concerned, they have not supported the prosecution case and turned hostile. PW-7 is Doctor Ratan Lal, who medically examined the victim Mahaveer Prasad and prepared injury report Ex.P/2 which reveals that no one month old injury was found on or around his anus.

9. It is also noticed that the complainant submitted a written report Ex.P/1 before Superintendent of Police, Tonk on 2nd June 1986 whereupon the case was registered on 5th June, 1986 by S.H.O., police station Barauni. It is stated in the complaint Ex.P/1 that prior to this written report he complained the incident to the headmaster of the school where the accused Rambabu was employed as a teacher and the victim Mahaveer Prasad was student. It is also stated in the complaint that prior to this written report he and villagers sent a complaint of this incident to the Chief Minister, Education Minister, Block Development Officer of

Panchayat Samiti, Niwai and District Magistrate, Tonk and others but a copy whereof has not been filed by him in evidence to explain the delay. The complainant is also found to have submitted the complaint to the Block Development Officer, a copy of which also has not been filed in evidence. Occurrence of this case took place on 3rd May, 1986 and the case was registered with police station Barauni on 5th June, 1986. Thus, the prosecution has failed to give a reasonable and satisfactory explanation of this inordinate delay.

10. In Thulia Kali Vs. State of Tamil Nadu, AIR 1973 SC 501, the Hon'ble Apex Court has held:

“First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be over-estimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

11. In the case of Dhaan Singh vs. State of Raj. (R.C.C. 1978 437) a delay of 22 hours and in the case of Inder Singh @ Than Singh vs.

State of Raj. (Cr.L.R. (Raj.) 1990 pg. 393) a delay of 2 hours in lodging FIR was found to be fatal to the prosecution as no satisfactory explanation was furnished by the prosecution.

12. In the case of Thulia Kali (supra), the occurrence was not reported for more than one month and two days. The delay was found to be fatal to the prosecution and to base conviction upon such evidence was held to be unsafe. But in the instant case, the complaint Ex.P-1 has been filed in the police station after a delay of one month and two days of the occurrence and the prosecution has miserably failed to furnish satisfactory and reasonable explanation of this delay, which to my firm view, is found to be fatal to the prosecution.

13. Now adverting to the statements of the victim PW-4 Mahaveer Prasad aged 10 years, it is noticed that his statements are not free from bias and suspicion. Mahaveer Prasad is found to have been medically examined by PW-7 Dr. Ratan Lal on 7th June, 1986 but no old injury was found on or around his anus. The manner in which the witness has deposed before the court reveals that the accused committed carnal intercourse with him against the order of nature very comfortably and during the carnal intercourse he discharged his semen as a result of which his under-wear got stained and wet. He is found to have reported the incident to his grandfather PW-3 Ram Gopal but he did not take any action for three days. Neither the matter was reported to the police nor to any other higher authority. There is only one complaint Ex.P/1 on record which leads me to hold that the incident for the first time was reported vide Ex.P/1 on 2nd May, 1986. The statements of Mahaveer Prasad do not stand corroborated by the medical evidence also.

The learned Sessions Judge has critically analyzed the prosecution evidence at length and properly appreciated the evidence of PW-1 Ramesh Chandra, PW-3 Ram Gopal and PW-4 Mahaveer Prasad who deposed that the accused Rambabu confessed his guilt before them and tendered apology. Albeit, the testimony of PW-1 Ramesh Chandra and PW-3 Ram Gopal may be termed as extra judicial confession made before them by Mahaveer Prasad but PW-1 Ramesh Chand and PW-3 Ram Gopal, being his father and grand-father respectively, are the interested witnesses and under the circumstances, it is not safe to base conviction on their delayed statements.

14. When the prosecution case is that coitus through anus was complete but the medical officer does not find any mark of injury on the anus of the boy nor any other symptoms of having carnal intercourse committed, the circumstances definitely goes in favour of the accused. To my firm view also, it is not safe to convict the accused unless the complainant's or victim's evidence is corroborated in material particulars implicating the accused. It is true that in law, such corroboration is not required but as a matter of prudence, there ought to be no conviction without such corroboration except in very exceptional cases. The evidence, in support of such a charge of carnal intercourse, has to be very convincing. In the case on hand, there is no other evidence except the uncorroborated statements of PW-4 Mahaveer Prasad and thus it is not found safe to convict the accused on his uncorroborated testimony. The impugned judgment of the learned Sessions Judge, Tonk is cogent and well meritted. It does not suffer from any infirmity. The prosecution has failed to establish the charge of carnal intercourse against the accused. Hence I, being in unison

with the finding of acquittal arrived at by the learned Sessions Judge, do not feel inclined to intervene in the impugned judgment.

15. For these reasons, both the aforesaid State appeal and criminal revision, being bereft of merits, stand dismissed. The accused-respondent is on bail. His bail bonds stand discharged.

(MAHESH BHAGWATI), J.

Mak/-