

Shobha Bind Vs. State of Bihar

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Court : Patna

Decided On : May-23-1995

Judge : N.K. Sinha, J.

Appeal No. : Criminal Appeal No. 228 of 1992

Appellant : Shobha Bind

Respondent : State of Bihar

Advocate for Pet/Ap. : Sri. Kamal Nayan Choubey

Disposition : Appeal Dismissed

Judgement :

N.K. Sinha, J.

1. The appellant has preferred this appeal for setting aside his conviction under Section

376 I.P.C. and sentence of rigorous imprisonment for ten years. The learned Additional Sessions Judge had found the appellant guilty of having raped Parni Kumari on 26th January, 1991 in village Baijnath within Ramgarh police station of Rohtas district, and for which he was convicted and sentenced;

2. Nithohar Bind (PW 7) the father of Parni Kumari aged 7 years lodged an F.I.R. (Ext. 3) that his daughter had been to case herself on 26.1.1991 at about 6 p.m. to the north of the village. She had gone alone. About an hour later she returned home weeping. On enquiry she told her father that the appellant gave her a 'Chawanni' and thereafter took her to his house near the pond. She further added that inside the house he made her lie on the ground and after removing her Pant raped her. Thereafter after making her wear her pant he asked her not to divulge this to any one. The informant found the pant of her daughter soaked with blood and blood oozing from her private part. The informant also produced the blood stained Pant and 'Chawanni' at the police station. After investigation in course of which Parni Kumari (PW 5) was examined by Dr. Kiran Singh (PW 8) on 27.1.1991 whose report is Ext. 2 and after inspection of the P.O. by Sri Narendra Mohan Sinha (PW 10) the Officer-in-Charge who had earlier recorded the F.I.R. the police charge-sheet the appellant under Section 376 I.P.C. The appellant in his examination under Section 313, Cr. P.C. denied the prosecution case and described it as false. The learned Additional Sessions Judge did not accept the defence plea of innocence and after holding the prosecution case as proved convicted and sentenced the appellant in the manner indicated above.

3. Sri Kamal Nayan Choubey learned Counsel appearing for the appellant argued that there was no legal and satisfactory evidence on the record to prove the charge against the appellant and that his conviction cannot be sustained. The contention was controverted by Sri Dashrath Mehta learned Counsel appearing for the State who took the position that there was legal evidence of a satisfactory character to prove the guilt of the appellant and support the conviction and sentence passed against him.

4. Altogether 11 PWs were examined. Shashi Kumar Mishra, (PW 1) a seizure list witness denied any seizure in his presence and was therefore hostile. Ramayan Bind (PW 2), Fulesri Devi (PW 3), Kishore Ram (PW 4), Vikram Bind (PW 6) and Nithohar Bind (PW 7) claimed to have learnt the occurrence from the victim (PW 5) as also to have seen the blood stains on her Pant and person. PW 8 is the Doctor. Bishundayal Dusadh (PW 9) was tendered. PW 10 is the Investigating Officer and Kameshwar Prasad (PW 11) is the police officer who simply filed charge-sheets.

5. It would thus appear that there is no eye-witness to the actual occurrence except the child PW 5. Her father PW 7 as also PWs 2, 3, 4 and 6 learnt about the occurrence from her, PW 7 has supported the prosecution case by stating that his daughter PW 5 had gone to case herself and when she returned he found her Janghia stained with blood and the blood oozing out from her urinary passage. He has supported the statement made by him in the F.I.R. that on enquiry his daughter told him that she had been raped by the appellant after giving her money. The informant has proved his signature marked Ext. 1/2 appearing on the F.I.R. (Ext. 3), While supporting the prosecution case in all its detail on the basis of what he had learnt from his daughter, the informant (PW 7) stated in the cross-examination that both he and his mother (PW 3) had examined the victim after removing her under garments. This was done in view of the fact that the victim on returning to house was found bleeding and her Pant soaked with blood. The informant also claimed to have produced the blood stained Janghia and 4 Anna piece before the police at the time of lodging the F.I.R. it may be recalled that according to the prosecution case the appellant had given a Chawanni (4 anna coin) to the victim at the time of the incident and had asked her to keep quiet about the occurrence. The I.O. (PW 10) has supported this part of the prosecution case by stating that he had seized the blood stained pant and a Chawanni in the presence of Ghamandi Bind and Ramayan Bind (PW 2) vide seizure list prepared in his hand writing and under his signature marked Ext. 5. The Chawanni was also produced and marked material Ext. 1. PW 2 was on his Darwaza when he heard the hulla and went to the place of informant. He found the girl weeping and her private parts bleeding. The witness had actually accompanied the informant and the girl to the police station. PW 3 is the grand mother of the victim, PW 4 and PW 6 both witnesses of the locality who reached the place of occurrence on hearing the alarm like PW 2 have also supported the prosecution case. As already mentioned above all these witnesses namely PWs 2, 3, 4, 6 and 7 learnt about the occurrence from the victim PW 5 and all of them claimed to have seen the victim bleeding from her private parts and her pant soaked with blood None of them is however, an eye-witness of the occurrence.

6. This brings us to a discussion of the evidence of the victim PW 5 the only eye-witness to the occurrence. The witness gave her age as 7 years and that was the

estimate of her age made by the Presiding Officer also. She being a child witness the court before proceeding to record her deposition had satisfied itself that the witness had a sense or understanding necessary for answering questions. Since counsel for the appellant has tried to point out a number of infirmities in the deposition of this witness. It is necessary to take a look on her evidence as a whole. In the examination-in-Chief the child witness after rightly naming the appellant as Shobhu stated that he had not done anything with her. However, the witness went on to add that the appellant had taken her to his Bailghara, had given her 4 annas and had made her to lie down after removing her Pant. After pointing towards her private parts in the witness box, she stated that she had bled from there and that the appellant had asked her not to say anything to any one. In the cross-examination the witness made an admission she had sustained injury on account of her fall and that the appellant not remove his clothings. In the cross-examination the witness claimed that her legs had been pressed by the appellant by his knee in the Balighara and that when she had started weeping he had closed her mouth and had there after let her go saying that she should not disclose that the appellant had done all this. It was pointed out on behalf of the appellant that the victim, the only eye-witness of the alleged rape, had nowhere stated a word that the appellant had raped her. It is true that her father PW 7 claimed that his daughter had told him that the appellant had committed rape on her. If the informant is to be believed the child had told that Shobhu Bind after giving her money had ravished (Beijjat) her. It is true that the victim did not use the word 'rape' or 'ravish' nor did she say that the appellant penetrated her private parts by his male organ. However, the evidence of a child witness must be read as a whole. If the testimony of PW 5 is read in such a way it leaves no room for doubt that the appellant took her to his Bailghara, gave her a 4 annas coin, stripped her naked and when she started bleeding and weeping he advised her not to disclose all this to any one. The testimony of a child witness ought not to be disbelieved on the basis of some stray statements occurring in her examination-in-chief or cross-examination. The victim in my opinion has fully stood the test of cross-examination and there is nothing therein even to suggest that she had deposed in the case on the basis of any tutoring on the part of any one including her father and other relations.

7. The child (PW 5) has herself stated that she had been examined by a Doctor. Her father, PW 7 has also stated that he had taken his daughter to the hospital where she was medically examined. The lady doctor (PW 8) examined the victim. The victim herself claimed to have been examined by a male doctor but not much importance can be attached to such an admission on her part. PW 8 was posted in the Sub-divisional Hospital and she examined the victim on the night intervening 26th and 27th January, 1991 and also proceeded to confirm her findings on the following morning in the presence of the Deputy Superintendent, Sub-divisional Hospital. The injury report (Ext. 2) in her pen and under his signature mentioned injuries found by her. She found dried clotted blood over genital organ and clothes and its neighbouring area. Though she did not find any fresh bleeding she detected hymen laceration and slight perineal tear. On pathological examination no spermatozoa dead or alive was found. The Doctor could not arrive at a conclusion whether rape was committed or not. She however, conceded in the cross examination that such injuries could be caused in the victim fell on a hard and blunt substance.'

8. It was argued on behalf of the appellant that the nature of injuries found by the lady doctor completely ruled out the possibility of commission of rape. In this connection reliance is placed on a decision of the Punjab and Haryana High Court in Suresh Chand v. State of Haryana 1976 Cr LJ 452. While dealing with a case of rape said to have been committed on a girl of 8 years his Lordship referred to Modi's Book on Medical Jurisprudence and Toxicology, 17th Edn (Page 5) wherein the author had expressed the view that in girls under 14 years of age the vaginal orifice is usually so small that it would hardly allow the passage of the little finger. If penetration takes place in the case of girls of such an age then there can be expected to be wide spread damage of the fourchette, hymen, labia majora, labia minora, vulva and the vaginal canal. His Lordship found that the Doctor did not notice any injury on the labia majora and labia minora. It was observed that in the case of penetration these organs could not escape injuries of at least signs of violence, and from the circumstances of the case it could be deduced that penetration had not taken place when an attempt was made by the accused to ravish the girl. His Lordship thus did not uphold the conviction under Section 386, I.P.C. of the appellant and instead converted it to an attempt to commit rape i.e.

under Section 376/511, I.P.C. The learned Additional Sessions Judge did not accept the defence argument that no case of rape had been made out on the basis of the medical evidence and had proceeded to observe that even slight penetration is enough to constitute the offence of rape. In a recent decision of the Apex Court rendered on 12.8.1994 while disposing of the Criminal Appeal No. 648 of 1990 reported in State of U.P. v. Babulal Nath, 1995 Bihar Criminal Case Reporter 14 (SC) the Code had occasion to consider the definition of rape given in Section 375, IPC. While referring to explanation to Section 375, IPC which provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape the court went on to observe that to constitute an offence of rape it is not at all necessary that there should be complete penetration of male organ with emission of semen and rupture of hymen. A slight penetration of the male organ within the labia majora or vulva without any emission of semen or even an attempt at and penetration into the private part would be sufficient to constitute the offence. The informant and the eye-witnesses saw the victim bleeding from her private parts. Her under garment was found soaked with blood. Even the lady Doctor found dried clotted blood over the genital organ and detected laceration of the hymen and perineal tear although slight. It is no body's case that the girl had fallen on a hard and blunt object in such a manner that her private parts got injured which resulted in bleeding. The mere admission by the lady doctor that the injuries could have been caused in the aforesaid manner was not a circumstance to create any doubt about the truth of the prosecution case. All the attending circumstances thus clearly suggested that the injuries to the private part of the victim had been caused by the appellant's attempt to penetrate his male organ into the private part of the child. Since extensive damage had not been found on other parts of the Vagina. It is possible to hold that complete penetration did not take place. However, it was not necessary that complete penetration should have taken place in order to constitute the offence of rape. Since the evidence on the record including the medical evidence clearly prove a partial penetration, the offence made out is nonetheless one of rape and the conviction of the appellant for the offence under Section 376, IPC cannot, therefore, be said to be based on no legal and satisfactory evidence.

9. It was argued that the inspection of the place of occurrence by the I.O. (PW 10) did not support the prosecution case. The I.O. has described the place of occurrence to be a place near the cattle shed of the appellant. The cattle shed is western facing and contiguous south of the Darwaza in a Marai. In course of inspection of the Marai which is said to be the place of occurrence blood stain was found on the wall at a height of 2 1/2 feet. The argument advanced on behalf of the appellant was that the absence of any blood stain on the floor was inconsistent with the prosecution case. It is true that the presence of blood on the wall at a height of 2 1/2 feet is not understandable because even according to the statement of the victim she had been made to lie down by the appellant before the alleged incident took place. However, this is not a circumstance on the basis of which the whole prosecution case can be disbelieved. There is evidence on the record that the Pant worn by the victim was soaked with blood and that is an adequate explanation if blood was not found on or near the ground where the alleged rape took place.

10. The appellant is described as an old man of 65 years of age. He is the village Choukidar for the last 30 years. The defence case is that the appellant in the discharge of his duties as a village Choukidar was instrumental in getting the house of Ramayan Bind (PW 2) searched by the police PW 9 who was tendered admitted the above facts in his cross-examination but denied the PW 2 after the search had threatened the Choukidar to teach him a lesson. It appears that not one word was put to PW 2 in the cross- examination to suggest that his house had been searched by the Police at the instance of the appellant and he had threatened the appellant with dire consequences on that score. Even assuming for the sake of argument that PW 2 had any enmity with the appellant, the facts and circumstances of the case are such that it is highly improbable that the appellant had been falsely implicated at his instance. The trial court was thus right in not accepting any such defence plea.

11. Thus the evidence of the victim and other witnesses who learnt about the occurrence from her or her father and also found her bleeding as also the medical evidence regarding the injuries found on her genital, all go to prove beyond reasonable doubt that the appellant committed rape. The conviction of the

appellant for the offence under Section 376, IPC is thus upheld. The appellant is an old man of 65 years of age. He was employed as a village Choukidar and there is no evidence that he had any criminal antecedent. The evidence brought on the record ruled out the possibility of complete penetration of the male organ in the vagina of the victim as extensive injuries in the genital of the victim had not been noticed by the Doctor and the child even after the incident did not become unconscious and had herself walked from the place of occurrence to her house. In view of all this the sentence of 10 years rigorous imprisonment appears to be on the harsher side and I reduce it to rigorous imprisonment for seven years.

12. Thus, while the conviction of the appellant is sustained, the sentence is reduced to rigorous imprisonment of seven years. Subject to the aforesaid modification the appeal is found to be without merit and is dismissed.

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