

Puttan Vs. State

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Court : Allahabad

Decided On : Apr-22-1971

Reported in : 1972CriLJ270

Judge : R.L. Gulati, J.

Appellant : Puttan

Respondent : State

Judgement :

R.L. Gulati, J.

1. Puttan alias Ram Bahadur Singh has filed this appeal against the judgment and order of the First Civil and Sessions Judge, Fatehpur, convicting him under Section 376. I. P. C. and awarding him a sentence of live years' rigorous imprisonment.

2. The prosecution story is that on September, 25, 1966 Sukhhandai Prasad, the complainant, had gone to Sheorajpur to take bath in river Ganga in the early morning at 6 a. m. During his absence his minor daughter, Km. Meena, who is said to be thirteen or fourteen years of age went to ease herself in a field towards the railway line at about 7 in the morning. When she was returning, she was forcibly dragged by the appellant in a field having Jwar, arhar, till and mung crops belonging to one Chheda Singh. There the appellant committed rape on Meena.

Attracted by the shrieks of the girl, Ram Manohar Singh (P. W. 2). Sheo Baran Singh (P. W. 8) and one Ram Autar Singh appeared on the scene and saw the appellant actually committing sexual intercourse with the girl. On seeing the witnesses the appellant ran away. He was chased by the witnesses till he entered his house. The witnesses then went to the house of the father of the girl and narrated to the mother of the girl the whole story. Then the witnesses saw the appellant going towards the G. T. Road with a Ballani. He was again chased but he escaped and locked himself inside a room of a petrol depot situated at Chaudagarh. The witnesses and other persons; however, surrounded, the place and did not allow him to run away. In the meantime Sheo Baran Singh (P. W. 8) went on cycle towards Shivrajpur to inform Sukhnandan Prasad about the incident. He met him in the way and narrated the occurrence, Sukhnandan Prasad went to the house and after ascertaining the facts from his daughter went to the police station Kalyanpur where he lodged a first information report at about 10.35 a. m. The investigation was taken up by Ram Swarup Singh Second Officer S. T. He accompanied by the Station Officer reached Chaudahgarh and arrested the appellant from the room at the petrol depot. They interrogated certain witnesses and later visited the scene of occurrence. A site plan was prepared with the help of the girl and the other witnesses. The usual investigation was then carried out. The girl was sent for medical examination, to Dr. Sohni Misra. Medical Officer of the Dufferin hospital. The dhoti of the girl was sent to the chemical examiner, Agra, who reported that it was stained with blood, and spermatozoa. The Imperial Serologist, Calcutta reported that the blood was human blood,

3. The prosecution has examined altogether nine witnesses and has also tendered evidence of some formal witnesses of affidavits under Section 510-A Cr. P. C. P. W. 1 Sukhnandan Prasad proved his report which is in his own hand-writing. This report contained a detailed narration of the whole incident. He also stated that the girl was aged thirteen or fourteen years.

4. The next important witness is the girl herself. She has corroborated the prosecution case in all material particulars. Then there are two other eye witnesses. Sheo Baran Singh and Ram Manphar Singh. They saw the appellant having sexual intercourse with the girl and they chased the appellant when he ran

away. The Medical evidence corroborated the prosecution story so far as the factum of sexual intercourse is concerned. The lady doctor had stated that the vagina of the girl was ruptured and there was a clear indication of sexual intercourse committed with her recently.

5. There can be no manner of doubt that the appellant committed the sexual intercourse with Km. Meena at the time and place as alleged by the prosecution.

6. However, the main question which arises to be decided is as to whether the appellant is guilty of an offence punishable under Section 376, I. P. C. In order to determine that question the first issue that arises for decision is about the age of the girl. The father of the girl in his statement has given her age as thirteen or fourteen years. This obviously is a guess and coming as it does from the father of the girl it is entitled to be given great v/eight. but it cannot be conclusive. The father obviously does not know the exact date of. the birth of the girl or he has deliberately withheld the date. On the other hand, there is the evidence of the lady doctor. According to the lady doctor, the age of the girl appears to be 15 1/2 years. But in her cross-examination she admitted that there can be a margin of one year. So the age of the girl may be 16 1/2 years. In the circumstances of the case I am not inclined to give more weight to the statement of the lady doctor, Taking into consideration the margin of one year, the age of the girl can be put as 16 1/2 years.

7. The next question that arises is whether the sexual intercourse was committed with or without her consent. It is in evidence that there was no external injury of any kind whatsoever either on the body of the girl or that of the appellant. It is inconceivable that a grown-up girl of about 16 years, would submit to a forcible intercourse without struggling. Had she struggled, there would have been gone scratches on the face, the hands and the arms of the appellant as well as on her own body. She was subjected to intercourse in a field where the ground must be uneven and rough. The appellant must have kept her down by applying force and that was bound to cause some scratches or bruises on her back through friction. The complete absence of any injury or scratch on the person of the appellant and the victim suggests very clearly that intercourse was not forcible. The girl must

have been a consenting party. This conclusion derives force from the Statement of the appellant, who had stated that he was in love with the girl for the past' one year and had been meeting her off and on. To me it appears more probable that on the day of the occurrence the girl must have (succumbed?) to the advances of the appellant and must have agreed to an intercourse. I, therefore,. find that the sexual intercourse was not forcible but was with the consent of the girl.

8. I have, already observed that so far as the age of the girl is concerned, the same can be put at 16 1/2 years according to the medical evidence. That being the position, the case clearly comes out of the ambit of Section 376. Section 375, I. P. C. defines 'rape'. According to that provision/a man is said to commit rape, who ... has sexual intercourse with a woman under the circumstances falling under any of the five descriptions

i) against her will.

ii) without her consent...

v) with or without her consent when she is under sixteen years of age.

9. The intercourse being with her consent and she being not under sixteen years of age the sexual intercourse does not come within the definition of rape and hence is not punishable under Section 376, I. P. C.

10. In the result, the appeal is allowed. The appellant's conviction under Section 376. I. P. C. and the sentence of five years' R. I. awarded to him by the learned 1st Temporary Sessions Judge, Fatehpur are set aside. He is on bail He need not surrender. His bail bonds are discharged.

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