

Madan Chettri Vs. State of Sikkim

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SooperKanoon Citation : sooperkanoon.com/497072

Court : Sikkim

Decided On : Jun-19-2001

Reported in : 2002CriLJ3149

Judge : Ripusudan Dayal, C.J. and; Anup Deb, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) , 1974 - Sections 391

Appeal No. : Criminal Appeal No. 2 of 2001

Appellant : Madan Chettri

Respondent : State of Sikkim

Advocate for Def. : N.B. Khatiwada, Addl. Public Prosecutor and; Karma Thinlay, Asstt. Govt. Adv.

Advocate for Pet/Ap. : B. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Ripusudan Dayal C.J.

1. The appellant was convicted by the learned Sessions Judge, East and North at Gangtok under Section 376 of the Indian Penal Code for having committed rape

on Sashikala Basnett who was aged less than 16 years in September/October, 1998 and was sentenced to undergo rigorous imprisonment for a period of 7 (seven) years with fine of Rs. 3,000/- (Rupees three thousand) and in default of payment of fine to undergo further rigorous imprisonment for 6 (six) months.

2. The appellant Madan Chettri alias Bora is the resident of 7th Mile, Samdoor and the victim Sashikala Basnett was the resident of a nearby locality of Adampool, Samdoor. The offence was, according to the prosecution, committed in September/October, 1998 and the FIR (Ext. PI) was lodged after about 5 months of the occurrence on 21st February, 1999 by Shree Bahadur Basnett father of the victim. In the FIR, Shree Bahadur Basnett stated that the appellant had committed 'indecent act' on his daughter Sashikala Basnett and he had come to know the incident only one day before. It was further stated that Sashikala was pregnant for about 5 months and that her age was 15 years. It appears that the victim girl did not disclose about the sexual assault on her except when it became absolutely necessary to do so on account of her advanced stage of pregnancy. 21 witnesses were initially produced by the prosecution to prove of its case. The matter came up for hearing before us on 3rd April, 2001. We found that the certified copy of the Birth Certificate issued by the Chief Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim, showing the date of birth of Sashikala Basnett as 22nd June, 1983 had not been proved and exhibited. Taking recourse to the provision of Section 391 Cr.P.C., we directed the learned Sessions Judge (East and North) to summon the official concerned belonging to the Office of Chief Registrar, Births and Deaths, Health and family Welfare Department, Government of Sikkim, along with the relevant records to prove the date of birth of Sashikala Basnett. Thereafter, two more witnesses were examined by the learned Sessions Judge, East and North. Of all the 23 witnesses, two witnesses namely, Ratan Kumar Subba, PW-2 and Man Bahadur Gurung, PW-6 have merely been tendered. A few witnesses have turned hostile and their evidence is not material. Evidence of some other witnesses is also not material.

3. It has been submitted on behalf of the appellant that there is no evidence on record to prove that rape was committed by the appellant as the words 'indecent act' or 'hath path' have been used by the material witnesses which does not,

accordingly to the learned counsel, amount to rape. Dealing with the latter submission the learned trial Court observed :

22. It is an established fact that the victim girl Sashikala was pregnant who delivered a child subsequently, meaning thereby she had been sexually assaulted about 8 to 9 months prior to the date of delivery of the child on March, 1999. Now the question is 'Whether accused has caused her pregnant?' As already stated Ld. defence counsel argued that neither 'Hath Path' nor 'Indecent Act' means the act of sexual intercourse. But it is common knowledge that in the local common parlance 'HathPath' means sexual assault on a woman. If the complainant did not mean sexual assault by the term 'hath Path' he would not have mentioned pregnancy of his daughter caused by the accused in the complaint. Language is a means of expression. People use different words to express. It differs and varies from person to person depending on the educational standard, cultural background and social milieu. Even if the complainant did not use proper and appropriate word, as a whole complaint speaks that accused has sexually assaulted his daughter. Similarly the prosecutrix who is no other than the daughter of the said complainant also comes from the same family background where sex is a social taboo, how could she describe the incident point-blank, using vulgar words. She has narrated the incident using decent words in the following way:--

On the relevant day I was alone in my house. Accused entered into my house and committed indecent act on me and he did the same forcibly and without my consent.

As per P.W. 3, the father, when he enquired from Sashikala, she informed him that she had been raped by the accused and accordingly he lodged the complaint Exb P. 1. In the complaint Exbt P.I, complainant has named the accused as the person who is responsible for pregnancy of Sashikala. Thus in the totality of circumstances it can safely be concluded that by the expression 'indecent act' P.W. 1 the victim Sashikala meant sexual assault on her by the accused. An indecent assault of a victim girl to gratify sexual passion amounts to sexual intercourse. Failure to state by the prosecutrix that the accused 'raped her' is of no consequence when there is evidence indicating that she was sexually assaulted

by the accused that caused her pregnancy and ultimately she delivered a child. An uneducated village girl coming from orthodox family is not expected to utter filthy words describing the sexual acts. In *Gurucharan Singh v. State*, AIR 1972 SC 2661 : 1973 Cri LJ 179 it has been held that even where there is no corroboration of the statement of the prosecutrix, the accused can be convicted on facts and circumstances. In the present case not only the facts and circumstances indicated the guilt of accused but there is enough corroboration of the statement of prosecutrix as indicated earlier. In the *State of Andhra Pradesh v. Gangula Satya Murthy*, 1997 Cri LJ 774 : AIR 1997 SC 1588 it has been observed that while trying accused on charge of rape, Court must show great sensitivity and should examine broader probabilities and not get swayed by minor contradiction and discrepancies in the evidence of witness. Examining the prosecution case through broader probabilities one cannot deny that accused had sexually assaulted the victim girl.

4. Material evidence on record needs be appreciated, having regard to the submissions made by the learned counsel. The first prosecution witness is the victim Sashikala herself. She deposed that she was alone in her house on the date of the incident when the appellant entered her house and 'committed indecent act on me and he did the same forcibly and without my consent.' In the cross-examination, she gave her age as 15 years. The witness was asked as to what she meant by the words 'indecent act'. She did not utter a single word in reply. Shree Bahadur Basnett, PW-3, father of Sashikala Basnett has deposed that he was called to the residence of Panchayat Member, Shri Tek Bahadur Basnet, where a group of people had gathered and there he was informed that his daughter Sashikala was carrying the child of the appellant. Thereupon, he went to his daughter and, on enquiry, she informed him that she had been raped by the appellant, whereupon he reported the matter to O.C., Ranipool vide Ext. PI. Tek Bahadur Basnet is his nephew. In the cross-examination, he admitted that Sashikala had informed him that the appellant had committed 'indecent act' on her. He also volunteered to say that his daughter informed him that the accused did 'hath path' on her. Thus, read as a whole, evidence of this witness means that he used the expression 'indecent act' and 'hath path' as meaning rape. PW-16 is Phulmaya Chettri, the mother of Sashikala, who deposed that she learnt about the

appellant having committed 'indecent act' on her daughter Sashikala from the villagers and also from Sashikala when she was questioned by the Panchayat in her presence. According to her evidence, Sashikala also stated that the appellant forcibly had sexual intercourse with her. In the cross-examination, she admitted that Sashikala refused to tell her as to who had caused her pregnancy or that the appellant forcibly had sexual intercourse with her. She also admitted that Tek Bahadur Basnet is her nephew and that Sashikala used to stay in the house of Tek Bahadur Basnet. One other witness is Meena Rai, PW-18. According to her evidence, she knew both Sashikala and her elder sister Bedu Chettri. Bedu Chettri is now dead. She has deposed that Bedu had asked her to enquire from Sashikala as to who had caused her pregnancy and thereafter, on being asked, Sashikala told her that the appellant was responsible for causing her pregnancy.

5. It is proved from the evidence of Dr. Sheela Pradhan, PW-14 who is Consultant Paediatric at STNM Hospital that a female child was born on 15th March, 1999 and according to her opinion gestational age of the baby was about 34 weeks, which could extend upto 37 weeks. The baby survived only for a week.

6. As regards the age of Sashikala, Exhibit C-2 is a certified copy of the Birth Certificate issued by the Assistant Chief Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim, showing the date of birth of Sashikala Basnett as 22nd June, 1983. The certificate was issued on the basis of the Life Birth Register containing Entry at Serial No. 578 dated 23rd February, 1999. Thus, the entry was made after the dispute about the age of Sashikala had arisen in this case. But there is also on record the certificate issued by the Head Master, Government Primary School, Adampool, East Sikkim dated 26th February, 1996 certifying the date of birth of Sashikala as 22nd June, 1983 as per the School Admission Register. Parsuram Sharma, Head Master of Adampool Primary School, has entered the witness box as PW-17 and he has deposed that the certificate was issued by him on 26th February, 1996 as per the School Admission Register. Thus, the entry in the register was made much before the occurrence took place. There is also the evidence of Dr. K. Giri, PW-20 Consultant Radiologist at STNM Hospital. Sashikala Basnett was referred to him on 22nd February, 1999 for bone age estimation. After carrying out some X-rays, he gave the approximate

bone age as between 15 and 16.5 years. In the cross-examination, he stated that the estimation test was subject to variation of 6 months on either side and thus age could be 6 months more than 16.5 years, i.e., 17 years. Learned counsel for the appellant submitted on the basis of this evidence that the fact that the age, according to the estimation test, could also be 17 years, should lead the Court to conclude that Sashikala was aged more than 16 years at the time of the occurrence. He has also referred to the evidence on Tek Bahadur Basnet, PW-11 who has merely stated that at the time of the incident Sashikala was 'about 16/17 years old'. His evidence shows that he was not sure of the exact age. His evidence about the age is of no value. The evidence of Dr. K. Giri is not inconsistent with the certificates Exhibits C-2 and P-4 referred earlier and there is absolutely no reason to disbelieve this evidence proving that 22nd June, 1983 is the date of birth of Sashikala and thus she was less than 16 years at the time of the occurrence. Learned counsel for the appellant has referred to 'A Comparative and Etymological Dictionary of the Nepali Language by Ralph Lilley Turner' which was first published in the year 1913 and first reprinted in India 1980 and thereafter in 1990 to get the meaning of the word 'hath path'. The word 'hath path', according to this dictionary, means 'Laying hands on.-- garnu to lay hands on, (esp) to violate (a woman).' Learned counsel submits that 'hath path' means only laying hands on. This submission ignores the words 'to violate (a woman)'. It is true that Sashikala in her evidence used the expression 'indecent act'. But note has also been taken of the fact that she used the expressions 'forcibly' and 'without her consent' also. All the words taken together could with the fact that her father used the word 'rape' in his examination-in-chief left no manner of doubt that the words, 'indecent act' and 'hath path' were understood by all the witnesses suggesting sexual intercourse. This is further fortified by the fact that subsequently, a female child was born from Sashikala after a pregnancy of about 34 weeks. We see no reason to differ from the learned trial Court that in local common parlance 'hath path' means sexual assault on a woman and that the appellant committed rape on Sashikala Basnett in September/October, 1998, when she was aged less than 16 years.

7. In the result, the appeal is dismissed.

