

Krishna Kumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-10-1962

Reported in : 1963CriLJ686; 1962MPLJ325

Judge : Shiv Dayal, J.

Appellant : Krishna Kumar

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Rajendra Singh

Judgement :

Shiv Dayal, J.

1. The appellant was tried by the 2nd Additional Sessions Judge, Raipur, for offence under Section 376 of the Penal Code. He was found guilty of that offence and sentenced to rigorous imprisonment for three years.

2. The case for the prosecution was that Kachrabai (P.W. 1), who was residing with her father Shobha (P.W.

2) at Mahasamund, left her father's house on May 17, 1961, because she had been reprimanded by her grandmother Mst. Rambha (P.W. 17). She decided to go to her friend Mst. Savitribai who resided at Tumgaon. After she had walked on foot for about two miles, Ghasiram (P.W.

3) happened to pass that way in his bullock-cart. He gave her a lift but, instead of going to Tumgaon, Ghasiram took her to his own village, Aiang, which is in a different direction. As it had become dark, she spent the night as Ghasiram's guest. The next day (that is, on 18th May), Dayalal (P.W.

4) persuaded her to go back to her father's house and purchased a railway ticket for her (from Arang to Mahasamund). Dayalal seated her in the train bound for Mahasamund at Arang railway station. However, Ramharl accused took her out of the compartment, seated her on his bicycle and took her to a 'Sitaphal' garden on the pretext, allegedly, that her father who had come in search for her was waiting there and wanted her. Khorbahara accused followed them on another bicycle. In the garden Ramhari had carnal knowledge of her. Nearby there was a hut of a blind man, Dukala (P.W. 21), where the girl stayed throughout the night with Ramharl by her side. In that hut Shankerlal accused had carnal knowledge of her. On the following morning (19th May), Ratanlal (P.W.

14) and Lalsingh (P.W.

15) happened to see Kachrabai coming out of the hut and on interrogation she told them that she had stayed in the hut at the instance of 'a Brahman and a Nai'. According to the prosecution, Ramhari being a Brahman and Shankerlal being a barber, the girl referred to these two accused. Ratanlal and Lalsingh asked her to leave that place. She remained at the nearby tank called 'Nawa Taria' for a while, awaiting the return of Ramhari from his house. As he did not come for some time, she left the tank all alone for Tumgaon. Having walked some distance, she saw Krishna Kumar appellant passing by her on a motor cycle. A little later, he returned with Shankerlal accused. With Shankerlal's aid, the appellant Krishna Kumar took her aside and had carnal knowledge of her. Shankerlal then took her to a tea stall. Thereafter the accu'sed Harold met her and then came Ramhari and also Badri. Ramhari and Kachrabai started towards Tumgaon. Ramhari seated her on his bicycle. They were followed by Badri and Harold. On the way, Harold pulled her by the arm, took her under a Mahuwa tree and he too had carnal knowledge of her. Then Harold went away. Thereafter, Ranjit Tiwari a police constable, reached there and, suspecting something foul, took her to Tumgaon Police Station. There

her first information report (original of Ex. P.

1) was recorded. She was then medically examined.

3. The learned Additional Sessions Judge, Raipur, has believed the prosecution story and has convicted the appellant as stated above.

4. Shri Rajendra Singh learned Counsel for the appellant, has taken me through the entire evidence. The statement of Kachrabai finds ample corroboration in the evidence of her father Shobha (P.W. 2), Ghasiram (P.W. 3), Dayalal (P.W. 4), Ratanlal (P.W. 14), Lalsingh (P.W. 15) and Ranjit Tiwari, the police constable in material particulars. I have carefully perused the statements of these witnesses and I have not the slightest doubt that except for the identity of the persons responsible for the actual commission of rape one after another, the entire prosecution case is fully proved. That the girl left Mahasamund on the 17th May is proved by the statements of her father and grand-mother (Shobha P.W. 2 and Rambha P.W. 17). The statement of the girl that she was remonstrated by the grand-mother and she left the house are undoubted facts. There is also no doubt as to Ghasiram having given her a lift and Dayalal having seated her in the railway train. The statement of Kachrabai that on the morning of the 19th she was seen by Ratanlal and Lalsingh near Dukalu's hut is fully corroborated and it is further beyond doubt that Ranjit Tiwari apprehended her and brought her to the police Station.

5. Whether Krishna Kumar committed rape or not is a question with which I shall deal later on. It must, however, be stated here that from the evidence of the prosecutrix herself it clearly emerges that she was a girl of easy virtue. She left her father's house on an ordinary remans-tration. Even if it be assumed that Ramhari took her from Arang railway station to Sitaphal garden on a false pretext, there she did not raise any him and cry when she was violated by Ramhari, nor when she was ravished in blind man's hut. It is remarkable that she did not make any complaint to Ratanlal or Lalsingh in the morning which fact conclusively proves that she was a willing party. On her own showing she was raped one after another by as many as five persons within less than 24 hours. She did not complain to anybody even at the tea stall. This leads' me to conclude that those who had

carnal knowledge of her had it with her consent.

6. Before I advert to the question whether the accused must be held to have had sexual intercourse with Kachrabai. the question of her age is of great importance. The learned Additional Sessions Judge has reached a definite conclusion that Kachrabai was born on 9-5-1946, so that on 18-5-1961 she was just a little over 15 years. This conclusion must be held to be correct. It is based on the evidence not only of the father but also on documentary evidence, namely, the entry in the Kotwari book (Ex. P.18). The entry is dated 9-5-1946 in respect of the birth of a girl to Shobha. The name of the girl is entered as Kachrabai on the 12th. May. The entry is proved by Shambhu (P.W. 10) and Ganpat (P.W. 12). There is nothing to doubt the correctness of this entry. I have perused the original. Nothing has been pointed out to me to discredit it. In the ascertainment of] her age, when this entry appears to be a genuine one, itl can certainly be taken into consideration as a strong piece of evidence. Besides, there is the evidence of Or. Miss! Dave (P.W. 5), in whose opinion the girl's age was 14 years. On behalf of the defence, Dr. Mudaliar Radiologist (D. W. 1) was examined but his statement is ambiguous. He says that the girl seemed to be of more than 20 years, but she could also be of 19 or below that age. Then he says that she could be below 18 years of age and further says that she could as well be below 16 years of age. He says, 'she could be 15 years of age also on the date of my X-ray examination'. There being nothing on the record to lead to a different conclusion, I agree with the trial Judge that Kachrabai was below the age of 16 on the 18th May, 1961.

7. Having found that Kachrabai was below the age of 16 years, it is immaterial whether she consented to the sexual act or not.

8. This brings me to the question whether the appellant had carnal knowledge of Kachrabai. The appellant was not known to the prosecutrix from before. His name was given out in the Police Station for the first time by Kachrabai and she admitted on cross-examination that, in fact, she. named him at the instance of Ramhari and also the police people. This makes the matter doubtful. She identified the. appellant at an identification parade. The parade in this case cannot be said to be dependable. At first an endeavour to hold an identification parade was made on

the 29th June but it proved abortive. There is material on record that Kachrabai was seated with the accused persons at the same place and in the precincts of the Court where the parade was to be held. An application was made by the accused complaining of this fact and then the parade was not held. Later on, after 20 days, i.e., on the 19th July, the identification parade was held. There is no explanation for this inordinate delay in holding the parade. The accused had been arrested on the 25th May. To put it differently, the identification parade was held after one and a half months. The identification after such a long lapse of time cannot be called to be infallible.

9. Shri Rajendrasingh strenuously relies on the decision in *Daula v. State* 1959 MPC 638 and argues that as in this case there was an inordinate delay of one and a half months in holding the identification parade, no reliance can be placed on the evidence of the prosecutrix at the identification parade. It is true that the whole purpose of holding an identification parade is defeated and its value almost completely lost if there is a long lapse of time between the date of arrest of the accused and the date of identification parade. What delay is inordinate is a question which must be answered by reference to all the circumstances of the case. The nature of the offence, the state of mind of the witness at the particular time when the offence was committed (terror, excitement, etc.) and the duration in which the witness had the opportunity to see the accused are facts to be particularly taken into account. For instance, at the time of a dacoity, the witness would be in a state of terror and naturally his mind would be fully occupied in protecting his person and property,

10. The reason for rejecting the evidence of identification on the ground of inordinate delay is that ordinarily the human mind does not register an impression of a face seen only once for a brief moment, for a long time thereafter, unless that face has some special features or peculiarities which help to fix its memory on the mind of the witness. Therefore, the fact that a long interval of time elapsed between the date of occurrence and the date of the parade is a circumstance which the Court is bound to take into account before the evidence of identification is accepted. Suspicion as to genuineness of a parade and as to credibility of identification is stronger if there is further delay in holding the parade after the

accused has been arrested.

11. In the present case it was possible to argue that this type of girl of 15 years who rendered herself easily accessible to five persons within 24 hours and did not complain to whom she had occasion and opportunity to complain must have become acquainted with the accused persons, because they were in physical contact with her during coition. She had intercourse with Krishna Kumar and Harod during day time. But the inordinate delay of one and a half months goes a long way in entitling the accused to the benefit of doubt. See *Muthuswami v. State of Madras* : AIR 1954 SC 4 . In this connection it is worthy of note that even Shankerlal was not identified by the prosecutrix. What is more, on the first occasion, the identification parade proved abortive. On the 29th June the accused were seated together with the prosecutrix at the same place. The accused raised an objection. On the second occasion also when the parade was held (19th July) she was seated in the courtyard while the accused were seated in the verandah in front of her. This takes away all the evidentiary value of the identification parade.

12. I am constrained to observe that I cannot believe that the prosecution agency is completely ignorant of the consequences of delay in holding an identification parade, and the only inference which one can draw is that either it was deliberately done to demolish the prosecution case or it was because of extreme callousness. In either case it must be deprecated in strongest terms. A copy of this judgment shall be sent to the Chief Secretary, Madhya Pradesh.

13. Before I leave this case, I must observe that I am surprised to find that in the committing Court of the Additional District Magistrate, Raipur, statements of the witnesses were recorded in the English language. I can understand medical evidence being recorded in English, but the statements of all others are not in the language of the witnesses. (See Section 356 Cr.P.C.) It must be remembered that while appreciating the credibility and value of evidence, the actual words used by a witness have their own importance. It must also be borne in mind that an appellate Judge does not have the advantage of hearing the witness personally and has to rely on his deposition as recorded by the trial Judge. Let me hope that this practice shall be forthwith abandoned.

14. The appeal is allowed. The conviction and sentence are set aside. Appellant Krishna Kumar is acquitted. His bail bonds are discharged.

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