

Ghanashyam Misra Vs. the State

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Court : Orissa

Decided On : Nov-27-1956

Reported in : AIR1957Ori78; 1957CriLJ469

Judge : Narasimham, C.J. and ;Mohapatra, J.

Acts : [Evidence Act, 1872](#) - Sections 156; [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 377

Appeal No. : Criminal Revn. No. 17 of 1956

Appellant : Ghanashyam Misra

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : M.S. Rao, Adv.

Judgement :

Narasimham, C.J.

1. This revision petition is filed against the appellate judgment of the Additional Sessions Judge of Cuttack, maintaining the conviction and sentence passed on the petitioner by the Assistant Sessions Judge of Dhenkanal, for an offence under Section 376, I. P. C. At the time of the admission of this revision petition a rule was issued on the petitioner to show cause why the sentence may not be enhanced,

and he was given full opportunity to argue against his conviction as well.

2. The petitioner was working as a Teacher in the M. E. School at Rainarusinghpur in Dhenkanal District in October, 1954. It was alleged that on the 4th October 1954 at about noon he committed rape on a girl student of the school, named Nalini Kumari Dei (P. W. 4) aged ten years inside the school premises. Soon after committing rape he was said to have given her two anna pieces for purchasing sweets and cautioned her not to reveal the incident to anybody.

The girl sustained an injury to her private parts in consequence of the offence and after returning to her house informed her mother Keli Dei (P. W. 3) about the outrage committed on her. Her father Kinu Charan Misra (P. W. 6) was immediately sent for and informed about the occurrence. News regarding the outrage reached several persons of the locality soon afterwards, and at about 3-30 p.m. some of the Bhadra Logs collected at the premises of the school to enquire into the matter. The petitioner was also present before the Panches and the girl identified him as the person who committed rape on her though he stoutly denied the accusation. Her brother Basanta Kumar Misra (P. W. 1) a young man aged 22 years, went next day morning to Kamakhyanagar police Station, 30 miles away, on a bicycle and lodged F.I.R. on the 5th October 1954 at 10-30 a.m.

The usual police investigation followed and the girl and the petitioner were both sent to the Medical Officer for examination. The saree of the girl which had been preserved by her parents, was seized by the police and the cloth of the petitioner was also seized and sent to the Chemical Examiner. The serologist's report shows that human bloodstains were found in the saree of the victim. No spermatozoa was, however, detected in either of the clothes.

3. The medical examination of the victim and the petitioner was held by Dr. Satyanarayan Satpathy (P. W. 15) on the 5th and 6th October 1954 respectively. He estimated the age of the girl at about 10 years basing his opinion mainly on the fact that she had only twelve teeth, had no pubic hair on her private parts and her breasts were not fully developed. He found a recent tear of the hymen 1/5' long, posteriorly, with bruising of the commissure present. There was no blood or abnormal discharge in the genitals but the genitals were extremely tender.

There was no other mark of injury on the girl, according to the opinion of the doctor the tear of the hymen appeared to have been caused by forcible penetration by a human penis within two days. The medical examination of the petitioner showed a linear abrasion of the skin 1/2' long Inside the prepuce, 1/4' above the glans penis simple in nature. There was also an abrasion on the back of the left thumb. Both these abrasions appeared to have been caused by finger-nail. There was no sign of venereal disease on the petitioner or on the girl.

4. The petitioner denied the accusation and urged that he was the victim of a conspiracy by his bitter enemies who had all combined to entangle him on this false charge. When called upon to explain the abrasions in hi's penis and his thumb he stated that the abrasion on his private part might have been due to scratching with his hand, but did not give any explanation to account for the abrasion on the back of his left thumb.

5. The principal witness in this case is undoubtedly the victim Nalini Kumari Dei (P. W. 4). She is well-known to the petitioner being one of his pupils studying in the M. E. School. The two are distantly related. Her evidence was to the effect that about 12 noon, when she was passing by the side of the school premises after purchasingsome coloured paper, the petitioner asked her to come inside the school room, and made her sit on a Bench. After going out to wash the feet of a cow which was suffering from some disease he returned and then committed rape on her after making her lie on the ground.

She felt considerable pain and raised an alarm on hearing which the petitioner desisted, and then attempted to pacify the girl by giving two anna pieces and asking her not to reveal the incident to anybody. The crucial question for consideration is whether the evidence of this girl has been adequately corroborated so as to sustain such a serious charge as rape. Both the lower Courts were fully aware of the rule of caution which requires that a person accused of a sexual offence should not be convicted on the uncorroborated testimony of the victim. This caution was specially needed in the present case inasmuch as the victim is a tender girl of about 10 years of age, and it is well-known that child witnesses very often confuse between what they have seen and

what they have heard.

6. The defence suggestion that the parents of the girl and other villagers combined and concocted this false case against the petitioner can be summarily dismissed as fantastic. It is highly improbable that false accusation of this type would be made by the girl's father against the petitioner who is also said to be one of his distant relations. Considering the community to which the parties belong, the parents of the girl must have known fully well that an accusation of this type, made in respect of their daughter might perhaps ruin her future life and whatever may be the bitterness of the enmity I cannot believe that such a false story would have been concocted.

Apart from that there is no clear evidence of such bitter enmity between the girl's parents on the one hand and the petitioner on the other, so as to induce them to take recourse to such a drastic step. There was some suggestion of enmity between the petitioner and the girl's brother Basanta Kumar Misra (P. W. 1) due to the Petitioner's exposure of the latter for his illicit affair with a Mehtrani woman, and one of the defence witnesses has spoken about it. But even if this allegation against the character of P. W. 1 be taken as true, it will not suffice to hold that the girl has been tutored to make such a false case against the petitioner,

7. The girl's evidence that she was raped is amply corroborated by the medical evidence showing the presence of a tear in her hymen. It is true that several alternative theories may be put forward to account for such a tear in the hymen, but in the circumstances of this case and having regard to the surroundings in which the girl was living it is difficult to accept any of these alternative theories. Her saree was stained with blood, which was pronounced to be human blood. Nothing however turns of this fact because once the tear in her hymen has been proved by the medical evidence the presence of human blood in her saree necessarily follows.

8. Some argument was advanced both before the lower appellate Court and before this Court about the improbability of the petitioner having committed such an offence at that hour of the day . inside the School Boom. Though it was a holiday on account of the Punjas there is evidence to show that the Headmaster

and some pupils were residing in the school hostel. The kitchen was close-by and there is also evidence to show that some of the doors and windows of the school room had no door leaves or window leaves and anyone interested in seeing what was going on inside could easily peep in.

But as pointed out by the lower appellate Court it should be remembered that the incident took place just after mid-day when the Headmaster and most of the pupils had gone to the kitchen and it was not difficult for the petitioner to seize an opportunity when there was nobody near by, to satisfy his sexual impulse. Unless there was something suspicious in his previous conduct so as to put the Headmaster and other pupils, on guard it is unlikely that they would bother to peep into the school room to see what he was doing to the girl.

I am not therefore prepared to hold that the girl's evidence to the effect that she was raped could not be believed because the inside of the room could be seen from outside by persons who want to see it. Some argument was also raised on the basis of the evidence of the Headmaster (P. W. 8) to the effect that the floor space inside the school room was too narrow for a man to lie down. It was urged that the girl's story that she was raped, after being forcibly made to lie down on the ground, should not be believed. The Headmaster has doubtless spoken about the presence of benches and chairs on the floor of the school room, but there is no evidence that these chairs or benches were fixed to the floor or were otherwise irremovable. The Headmaster's evidence does not therefore render the girl's version of the occurrence highly improbable.

9. The main question, however, is whether the identity of the petitioner as the culprit who committed rape on the girl has been established beyond reasonable doubt. She immediately complained to her mother (P. W. 3) after reaching home and named the petitioner as the culprit. Before the Panches also, within two or three hours after the occurrence, she was bold enough to charge the petitioner with having committed the offence. One of the Panches, Bholeswar Mohapatra (P. W. 9) is a respectable person of the locality and his evidence about what the girl told him and the other members of the Panchayat was rightly given great importance by the two lower Courts. It is difficult to believe that within such a short,

space of time a story of this type could have been concocted by anybody or else that the girl could have been tutored to falsely accuse the petitioner.

10. The presence of the petitioner in the school premises at about the time of the commission of the offence is practically admitted by him in his examination under Section 342, Cr. P. C. Moreover one of the pupils, namely, Antaryami Sahu (P. W. 18) has also spoken about the coming of the petitioner to the school at about 12 noon that day. He has also spoken about the presence of the girl inside the room at about that time. There is practically nothing on record to disbelieve this Witness.

The Headmaster (P. W. 8) also corroborated the girl's evidence to the extent of saying that at about 12 noon she saw her sitting in the school room and that he had some conversation with her before he went into the kitchen to take his food. Thus the statement of the girl about her presence inside the school room at about the time of the commission of the offence and the presence of the petitioner also there has been amply corroborated from independent sources. Her naming the petitioner as the culprit as soon as possible after the incident has also been amply supported by independent witnesses.

11. Some corroboration about the identity of the culprit is found in the presence of abrasion in the prepuce of the petitioner. The Medical Officer (P. W. 15) has stated that this abrasion might have been caused by finger-nails though he has not ruled out the probability that it might have been caused by other means. Unfortunately, the Public Prosecutor who conducted the case did not question the Medical Officer further as to whether the abrasion on the glans penis could have been caused by forcible intercourse of an adult with an immature girl. We find in Modi's Medical Jurisprudence, 11th Edition, at page 312 the following observation:

'In addition to scratches or lacerations on the penis caused by the finger nails of the victim during a struggle an abrasion or laceration may be discovered on the prepuce or glans penis, but more often on the feaenum, due to the forcible introduction of the organ into the narrow vagina of virgin, especially of a child, but it is not necessary that there should always be marks of injuries on the penis in such cases.'

The Medical Officer's attention should have been specially drawn to this passage and he should have been asked as to whether the abrasions found on the penis of the petitioner could have been caused by forcible intercourse with a girl of ten years. But though such a question was not put to him we see no reason to doubt the correctness of the observations made in the aforesaid standard book on Medical Jurisprudence, and in the absence of any satisfactory explanation from the petitioner to account for the injury on his penis we must hold this to be a corroborative piece of evidence relating to his participation in the commission of the offence.

12. I may also notice another point urged by Mr. Rao on behalf of the petitioner, based on the medical evidence to the effect that the orifice of the vagina of the girl was very narrow admitting only the little finger. The Medical officer further stated in cross-examination that if the penis had penetrated into the vaginal canal it would have caused dilation of the canal which would last for some days, and that he did not find any such dilation in the vaginal canal of the girl. On the basis of this answer, given by the Medical Officer, it was urged that the story of the girl having been raped should not be believed. But the girl has not stated that there was complete penetration or full intercourse.

Even partial penetration leading to the rupture of the hymen is sufficient to constitute rape, even though there might not be deep penetration into the vaginal canal. The girl's evidence was to the effect that she felt severe pain and raised a cry, after which the petitioner desisted from the act. Consequently, from the mere fact that there was no dilation of the vaginal canal it cannot be assumed that the offence was not committed when the injury to the hymen showed clearly that there was penetration by the male organ. The depth of the penetration is immaterial so far as the offence under Section 376 I. P. C. is concerned.

13. I may also refer to another argument based on the statement in the F. I. R. made by the girl's brother (P. W. 1) to the effect that the offence committed by the petitioner was an unnatural offence, i.e. under Section 377 I. P. C. This so-called discrepancy in the prosecution case seems to have been satisfactorily explained. The informant was not an eye-witness. He heard about the incident from his

mother and sister, and it appears that in slang language the offence of rape and the unnatural offence are both described by the same word. Consequently even if P. W. 1 mis-understood what was stated to him, nothing would turn on it. This so called discrepancy is wholly insufficient to discredit the prosecution story.

14. I may further state that the trial in the Court of the Assistant Sessions Judge was held with the aid of three assessors and though two of them held the petitioner guilty under Section 376 I. P. C. and one of them held him guilty under Section 377 I. P. C. it is clear that all of them believed the story as put forward by the girl. This is an important circumstance to be taken into consideration in deciding whether the testimony of the girl should be accepted in a case of this nature.

It is reinforced by the fact that the trial Court and the lower appellate Court both believed the evidence of the girl.

15. I am therefore satisfied that the charge has been brought home against the petitioner.

16. On the question of enhancement of sentence our attention was drawn to a recent decision of the Supreme Court reported in *Bed Raj v. State of U. P.* AIR 1955 SC 778 (A) where it was pointed out that the discretion exercised by the lower Court in imposing a sentence should not be interfered with except for very strong reasons which must be disclosed on the face of the judgment. The judgments of the two lower courts do not, however, indicate as to why such a lenient sentence of three years Rule I, was passed for an offence of this type. The circumstances are all of an aggravating nature. The victim is a young girl of ten years, and the culprit an adult of 39 years.

He was her School teacher and he took advantage of his position by inducing her to come inside the School room and committed such an atrocious act, the consequence of which might as well be the complete ruin of the future life of the girl. I am unable to find any extenuating circumstance in his favour. I would, therefore while maintaining the conviction of the petitioner under Section 376 I. P. C. enhance the sentence to seven years rigorous imprisonment. The sentence of fine of Rs. 200/- and the order for payment of compensation to the father of the girl

are both maintained.

The revision petition is disposed of accordingly.

Mohapatra, J.

17. I agree.

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