

Lakhan Vs. State

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Court : Delhi

Decided On : Feb-03-1987

Reported in : 31(1987)DLT215

Judge : Malik Sharief-ud-din, J.

Acts : [Indian Penal code, 1860](#) - Sections 342

Appeal No. : Criminal Appeal No. 9 of 1986

Appellant : Lakhan

Respondent : State

Advocate for Pet/Ap. : Mukul Sharma and; R.P. Lao, Advs

Judgement :

Malik Sharief-ud-din, J.

(1) The appellant was convicted under secti

(2) The charge against the appellant is that on 19th October 1984 at about 1 Pm he took the minor daughter of Smt.Asha, namely, Kavita, aged about 5 years to his room and after bolting the same from inside attempted to rape her.

(3) The information that Kavita has been removed by the appellant to this room was given to Smt. Asha, mother of the victim, by Smt. Ram Wati Asha's maternal

aunt. The appellant, in fact, was living in one of the rooms of the same building in which the prosecutrix and her mother were residing. Consequent to the information given to the mother of the victim by Smt. Ram Wati, both of them rushed to the room of the appellant which they found bolted from inside. They knocked at the door and when the door was opened by the appellant, they found Kavita weeping. They also noticed semen stains on the under-wear of Kavita and also found redness on her private part. Kavita allegedly informed her mother that the appellant had tried to rape her. The appellant is alleged to have thereafter gone out of the room while the mother and the maternal aunt of Asha reported the matter to the police. During the course of investigation, apart from seizing other things, the investigating officer seized the semen stained under-wear of Kavita also and DrRajivRangras(PW8) also took the vaginal smears of Kavita, the victim in this case.

(4) At trial Smt. Ram Wati went hostile. The victim Kavita could not be examined because she was found to be too young and was in a panicky state. There is no dispute that at the time of incident she was a little less than five years of age. This fact has also been proved by Public Witness 12 Shiv Shanker Gupta, an employee of Girdbari Lal Maternity Hospital and as per records of the said hospital Kavita was born in this hospital on 31st December 1979. It appears that even then an attempt was made to find out if she can testify in respect of this incident. But having found her too young and panicky, the desire to examine her as witness was abandoned.

(5) The whole case, therefore, rests on the testimony of her mother, Smt. Asha and one or two pieces of circumstantial evidence. Mr. Mukul Sharma urged before me that what the victim has told her mother in respect of attempt by the appellant to rape her is not admissible in evidence. The fact, however, remains that at the time of incident the victim was found inside the room of the appellant. The door was bolted from inside. Kavita is not related to the appellant. The appellant opened the door and the victim was recovered from his room. She was weeping and her under-wear was drenched with semen. This is a fact to which sufficient support has been lent by Smt. Asha,

(6) Before I make reference to further evidence, it is necessary at this stage to notice the stand of the appellant at trial. The appellant has taken a stand that the victim came weeping to his room and he was only asking her as to what the matter was. Thereafter he goes on to say that he heard the knock at the door and he opened the door. In this way it is clear that at the time of incident Kavita was with the appellant in his room. The fact that the door was bolted from inside has been admitted. It is not disputed that at the time of the recovery of the girl the appellant has not informed her mother that the victim has herself come to his room weeping and he was only enquiring from her as to what had happened. This part of the defense set up is obviously an after-thought. This belief of mine is further strengthened by the fact that if Kavita had some trouble, she would normally go to complain to her mother in the next room and would not go to a stranger's room. This clearly shows that Kavita was confined in the room by the appellant against her will.

(7) In this case Public Witness 8 Dr. Rajiv examined Kavita and he had taken the vaginal smears. This fact has been proved by him. This smear was also examined by Dr. Bishnu Kumar Public Witness 13 on 22nd October 1984. He on examination found therein the presence of spermatozoa. There is no challenge to this opinion. Public Witness 9 Asha has categorically stated that the underwear of the victim was seized and it was properly sealed. This testimony is also corroborated by Public Witness 14. On an examination by CfsI, as per report Ext. Pw 14/E, the presence of human semen was detected.

(8) Mr. Sharma contends that the case at the most is covered by section 354 IPC. Having dealt with the evidence and come to the conclusion that there is no scope for the suspicion that the appellant has been involved the most important question that deserves the attention of the court is as to why did the appellant remove this child to his room and how the under-wear of the child got drenched with human semen. This fact by itself is sufficient to show that there has been an attempt on the part of the appellant to commit intercourse with the girl. Had there been penetration the offence of rape would have been complete. It is simply for the reason that there has been no penetration that he has been dealt with under section 511 IPC. This is a very important circumstance which cannot be brushed

aside on the basis of simple ipsi dixit of the appellant, In fact, in a case such as this once it is admitted by the appellant that she at the time of incident was with him in a bolted room, he should have come forward with some sort of cogent Explanation as to why it was so This I say particularly in view of the fact that he is nobody to the girl. In any case, be that what it is, I find that the trial court was completely justified in coming to the conclusion that there was an attempt on the part of the appellant to commit rape and that for this reason he had detained her.

(9) With these observations I find no force in this appeal it is dismissed. The conviction and sentence awarded by the trial court is confirmed

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