

Parmod Kumar Vs. State

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Court : Delhi

Decided On : Jul-04-1989

Reported in : 39(1989)DLT45

Judge : Charanjit Talwar and; V.B. Bansal, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 15 of 1986

Appellant : Parmod Kumar

Respondent : State

Advocate for Def. : Mr. Lao

Advocate for Pet/Ap. : D.R. Sethi and; R.P. Lao, Advs

Judgement :

Charanjit Talwar, J.

(1) (RULE D.B.) The appellant, Parmod Kumar aged about 20 years, has been convicted under Section 376 of the Indian Penal Code for having committed rape on Public Witness 8, Rashmi, a girl of about 8 years. For this offence he has been sentenced to undergo life imprisonment and to a fine of Rs. 2,000.00 which on realisation is to be paid to the prosecutrix. In default of payment of fine he is to

undergo R.I. for six months. Further, he has been convicted for an offence of house trespass under Section 451 of the Penal Code and sentenced to undergo imprisonment for three months.

(2) The father of the prosecutrix at the relevant time was a Head Constable in the Delhi Police. He had been allotted a quarter in New Police Lines, Delhi. The father of the appellant who was also employed in the Delhi Police, was residing in another quarter in those very police lines. The offence was committed at the house of the prosecutrix's father.

(3) The learned trial court has accepted the prosecution version that on 8th November, 1982 at about 12.30 p.m. in the absence of the parents of the prosecutrix, the appellant trespassed into House No. F-8, li Type, New Police Lines, where Rashmi was playing with her younger sisters; took her into a room; forcibly removed her underwear and after removing his clothes, raped her, on account of which she began to bleed profusely. At that very time Rashmi's mother, Smt. Bimla, who had gone out of the house to purchase vegetables, came back and found the appellant having sexual intercourse with her daughter. On noticing her the appellant ran away while taking with him his pant which was lying on a nearby table. Public Witness 7, Smt, Bimla found that her daughter Rashmi was bleeding from her private parts. She also found blood on the bed sheet. She took Rashmi to police station Kingsway Camp, where she narrated the incident to the police. Her report was made the basis of the First Information Report. Exhibit Public Witness 6/A. The prosecutrix was sent by police station Kingsway Camp for medical examination to Hindu Rao Hospital where Dr. P.K. Jain, Public Witness 2 examined her; his report is Exhibit Public Witness 2/A. The appellant, Pramod Kumar, who was also known as Pappu was, however, arrested on 10th November, 1982. On that very day he was examined by Public Witness 3 Dr. Mukhtiar Singh at Police Hospital, Delhi. The doctor found him capable of doing sexual intercourse. He did not find any abnormality 'of penis, testies or herneal sides.' .However no injury was found on the male organ of the appellant. The doctor's report is Exhibited as Public Witness 3/A.

(4) Mr. D.R. Sethi, learned counsel for the appellant, has urged that the absence of injury on the male organ of his client points to his innocence. For this contention He relies on *Rahim Beg v. State of U.P.*, : 1972 CriLJ1260 . (1) In the said case the two accused who had been found guilty by the trial court for the offences punishable under Section 302 of the Indian Penal Code and under Sections 376 and 404 of the Indian Penal Code were acquitted by the Supreme Court. One of the grounds was the absence of the injury on the male organ of the accused. The allegations were that they had committed rape on a young girl of 10/ 12 years The absence of injuries was considered to be a factor showing their innocence. But that was not the only ground for allowing their appeal. The oral evidence produced and also the circumstances of that case created reasonable doubt regarding the complicity of the accused in the offence of rape and murder of the prosecutrix.

(5) In the said case the prosecution was not able to produce any eye witness to the occurrence. No one had seen the accused committing rape or strangulating the victim. The entire case was based on circumstantial evidence only. In the case before us apart from the medical evidence, which conclusively proves that the prosecutrix was raped, the testimony of Public Witness 7 Smt. Bimla and of Public Witness 8 Rashmi Devi establish the guilt of the accused. Smt. Bimla, in her examination-in-Chief, has affirmed that she had seen the accused having sexual intercourse with her daughter Rashmi Devi. She. inter alia, stated:-

'ON 8-11-82 at about 9 or 9.30 a.m. my husband had gone on duty, leaving me and my daughter Rashmi alone in our house. At about 12 or 12.30 in the day I had gone to purchase vegetables. After some time when I came back I heard the shrieks of Rashmi Devi. I entered the house and saw the accused Parmod Kumar present in court today having sexual intercourse with my daughter Rashmi Devi on the bed lying in our room. On noticing me the accused took his pant which was lying on the nearby table and ran away. After he had run away I noticed that Rashmi Devi was bleeding from her private part and blood was lying on the bed also. I then took Rashmi Devi to P.S. Kings- way Camp and lodged my report with the police. The copy of the report is Exhibit Public Witness 6/A. The original bears my signatures.'

(6) In cross examination she admitted that the accused was known as Pappu. She denied that he had been falsely involved in the case because of a quarrel which she had with the brother of the accused. Mr. Sethi, learned counsel for the appellant urged that this witness has contradicted her daughter on a number of vital points and, therefore, is not to be believed. According to him, Public Witness Bimla stated that she had heard the shrieks of Rashmi when she was still on the ground floor. But no neighbour has been produced to support this fact. Another contradiction highlighted is that Bimla found her daughter to be conscious when she entered the room whereas the prosecutrix stated that when her mother came back she was unconscious and that she regained consciousness in the hospital.

(7) We are of the view that the contradictions are very minor. Both these witnesses stood the test of lengthy cross examination. As far as non-production of a neighbour to support the factum of shrieks, Smt. Bimla has stated that there were only two other quarters on the floor of building in which her husband was allotted a quarter but she did not know as to who were occupying those quarters. Her Explanation was:-

'THOSE two quarters were occupied but sometimes their families used to go to their respective villages and I do not now remember whether on the day of occurrence the families living in those two quarters were living in Delhi or not. I did not approach any resident of the locality to help me. I did not go to any person in the locality because I thought that I should first go to the police station. The police station is not far off from our house.'

(8) The testimony of Public Witness 8 Rashmi the prosecutrix, distinctly brings home the guilt of the accused:-

'ON 8-II-82.my mother had gone to purchase vegetable I was in the house along with my younger sister. My mother had latched the door from outside and we had applied the kundi from inside. After some time the accused gave a knock from outside. The door of the room was opened and the accused entered our house. The accused took me inside the room and made me lie down on the bed. He removed my underwear. He also removed his underwear and plant penetrated his penis into my vagina. He had put his hand on my mouth. Thereafter my mother

had come and the accused had run away. Due to the accused having performed sexual intercourse I had bled. The bed sheet had received blood'. Blood had also fallen on the floor. My mother had tried to catch hold of the accused but he had run away. Thereafter, my mother had taken me to the police station from where I was taken to the hospital. I had remained admitted there for a number of days.

(9) It was in her cross examination that she stated' that she became unconscious when her mother entered the room. She denied that she had received injuries on her private part accidentally She further denied that it was because of strained relations with the brother of the accused that her mother had asked her to falsely depose in this case.

(10) In view of clear and cogent ocular evidence the contradictions sought to be highlighted by Mr. Sethi are of no effect at all. Most probably the prosecutrix who was just about eight years old, on being raped became semi-conscious for some time. According to Smt. Bimla she carried her daughter in her arms to go to the police Station, which was very near to the police lines. The fact conclusively established by the testimony of these two witnesses is that the appellant hereinafter trespassing into the house of prosecutrix on 8th November, 1982 at about 12 noon committed rape on Rashmi and while he was performing that dastardly crime Bimla entered the house and actually saw him doing so.

(11) Mr. Sethi, however, urged that apart from the absence of any injury on the male organ of the accused there were two other factors which entitled him to get the benefit of doubt. He stated that although his (appellant) name and address was known on 8th November, 1982, but he was arrested only on 10th November, 1982 and secondly the sample of his semen was taken for the purpose of comparison with the swab taken from the vagina of the prosecutrix but in fact that sample was not sent for comparison to the laboratory, showing thereby that the investigating officer himself was of the view that the accused was innocent. This submission needs examination.

(12) Dr. Mukhtiar Singh, Public Witness 3 who had examined the accused neither in his testimony nor in his report Exhibit P.W. 3/B (at page 84 of the record) has

stated that the accused was asked to give sample of the semen. The investigating officer, Public Witness 15 Shri Madan Gopal, however disposed that:-

'AFTER his medical examination a glass phial containing sample semen of the accused and sealed with the seal of Hrh which was given by the doctor was taken into possession vide memo Exhibit P.W. 14/B which is in my handwriting and bears my signatures.'

(13) We have gone through Exhibit Public Witness 14/B, which is memorandum of seizure of phial. In fact that phial contained the sample blood of Rashmi. Exhibit Public Witness 14/B reads as under:-

'IN presence of the witnesses mentioned hereinafter Janardan Pandey Const. No. 806 /N brought from Hindu Rao Hospital and produced one phial bearing M.R.D. No. 38854182 containing blood sample of Rashmi, aged 8 years duly sealed with the seal of H.R.H. along with the Laboratory report being No. 3790(82 together with the sample seal of H.R.H. The same have been taken into police possession as a pieces of evidence by means of a memo. Hence the memo has been prepared.

sd/- Madan Gopal (in English) 17-11-82 Produced: Janardhan Pandey Constable No, 806/N (in Hindi)Police Station Kingsway Camp, Delhi. 17-11-82'

(14) We are of the view that apparently there has been mistake committed by the trial court in asking the following' question based on the above memorandum:-

'Q.No. 19. It is further in evidence against you that you were got medically examined and your semen sample was taken vide memo Ex. Public Witness 14/B. What have you to say ?'

(15) The accused was medically examined on 10th November, 1982 whereas the blood sample together with the related laboratory report were taken into possession on 17th November, 1982, vide the above memorandum. It seems the investigating officer by oversight stated that sample of semen was also taken into possession when in fact the laboratory report about the blood sample along with the sample had been received through constable Pandey. Further the accused by

then knew from the documents supplied to him that only seven parcels had been sent to the Central Forensic Science Laboratory for Chemical analysis and none of those parcels contained phial of semen, allegedly taken into possession and deposed to by the Investigating Officer. therefore, he admitted in his reply to the above question that his semen was taken. Actually question No. 20 relates to that phial. That question reads as under :-

'IT is also in evidence against you that the blood sample of the prosecutrix was also taken into possession by the I.O. on 17-11-82 vide memo Ex. Public Witness 141B. What have you to say? Ans: I do not know.'

(16) As we have noticed above in the memorandum (which we have quoted above), there is no mention of phial containing semen of the accused, which according to the Investigating Officer was taken into custody on 10th November, 1982. At any rate the Doctor (P.W. 3) did not say that he had asked the accused to give a sample of the semen. There is no memorandum on record to show the seizure of glass phial, containing the same, on 10th November, 1982 or on any other day. We have checked it from the record that all the seven parcels which had been taken into custody were in fact sent to the Central Forensic Science Laboratory for Chemical analysis. We thus find that question No. 19 could not have been asked. Question No. 20 was, however, the correct question based on Ex. Public Witness 14/B.

(17) Mr. Sethi is right to the extent that the Investigating Officer has not given any reason for not arresting the accused on 10th November, 1982. It is that lapse on the part of the investigating Officer which most probably enabled the accused to get medical attention, which helped him to obliterate or diminish the swelling and redness on his penis. We may note another fact that in Rahim Beg's case (Supra), there was no Explanationn for to getting the accused medicate examined for about two days. That is not so in the present case In spite of the fact that Public Witness 3 Dr. Mukhtiar Singh did not find any injury on the male organ of the appellant, we accept the findings of the trial court that the accused did commit the offence as charged. The oral evidence produced inspires confidence and is entirely trustworthy.

(18) The other main contention urged by Mr. Sethi was that in the present case the learned trial court has proceeded on the wrong assumption that the offence was committed after the amendment of Section 376 of the Indian Penal Code and, therefore, the extreme penalty of life imprisonment should not have been awarded. The learned counsel is right in his submission that the offence having been committed on 8th November, 1982. the amended provision for punishment for rape is not applicable in the present case. Mr. Sethi has cited a number of authorities that in similar circumstances sentence ranging between 2 to 5 years was awarded to the accused by the Supreme Court. He urged that in the present case also the sentence be reduced to maximum of 5 years R.IT.

(19) Mr. Lao. learned counsel for the respondent . however. cited Prithi Chand v. State of Himachal Pradesh, : 1989 CriLJ841 . (2) wherein seven year? rigorous imprisonment, awarded by the High Court of Himachal Pradesh for a similar offence had been upheld by the Supreme Court. In the said case also the trial court after convicting the accused for an offence punishable under Section 376 of the Indian Penal Code. sentenced him to undergo imprisonment for life and to pay fine of Rs. 2000.00 . The offence had been committed on 15th .Tune. 1979. i e., prior to the amendment of the provision of Section 376 of the Indian Penal Code. The High Court had reduced the sentence of life imprisonment to seven years rigorous imprisonment but had confirmed the order regarding payment of fine. Thereupon, the appellant approached the Supreme Court under Article 136 of the Constitution of India. The apex court while dismissing the appeal did not alter the substantive sentences.

(20) After giving our careful consideration to the plea put forth, we are of the view that in the present case, in the interests of justice, we should reduce the sentence of life imprisonment awarded to the appellant. Accordingly we reduce the life imprisonment to seven years rigorous imprisonment. However, we maintain the sentence regarding payment of the fine Rs. 2.0001- which on realisation be paid to the prosecutrix. In default of payment of fine the appellant is directed to undergo rigorous imprisonment for six months. The sentence of three months rigorous imprisonment awarded to him under Section 451 of the Indian Penal Code is also upheld. The sentences, however, are directed to run concurrently. The appeal is

allowed to the extent indicated above.

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