

Om Prakash Vs. State

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Court : Delhi

Decided On : Aug-11-1987

Reported in : 1988(3)Crimes279; 33(1987)DLT128

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363

Appeal No. : Criminal Appeal No. 59 of 1987

Appellant : Om Prakash

Respondent : State

Advocate for Pet/Ap. : H.C. Malhotra and; M.S. Siddique, Advs

Judgement :

M.K. Chawla, J.

(1) Kumari Rajni, the prosecutrix in this case is aged about 7 years. She was living with her father Padam Singh in a house adjoining to the house of the accused Om Parkash. As the story goes, on 11.3.1985 at about 8.30 P.M., Rajni was playing outside her house. The accused lured her away to show the television. On that pretext, she was taken to a lonely place. The accused removed his pant as well as the underwear. Seeing this Rajni started weeping. The accused asked her to keep quiet but she did not. Apprehending detection, Om Parkash lifted a stone lying

nearby and hit her on her head. She started bleeding and fell unconscious. After sometime Ram Dass, Public Witness lifted Rajni and brought her in an injured condition to her house. Puran Singh, the maternal uncle of Padam Singh (father of Rajni) made enquiries and reached Om Parkash. Om Parkash on hearing the complaint ran away from his house. Rajni was immediately taken to Dr. R.K. Sippy, where her injuries were attended to. On the next day, the report was lodged with the Police and on that basis, a formal F.I.R. No. 207 under Sections 307/354/509 and 363 Indian Penal Code was recorded by S.I. Khushi Ram. Rajni was sent to L.N.J.P. Hospital for medical check-up. The Investigating officer moved in the matter, took into possession the blood-stained frock of Rajni, sealed the same in a pulanda, prepared the rough site-plan and on the pointing out of the prosecutrix, the accused was arrested on the same day. The I.O. in due course of time took into possession the birth certificate of Rajni, collected the M.L.C. from Dr. R.K. Sippy, recorded the statements of the witnesses and after completing the investigation filed the challan in the Court. On these facts, the accused was charged to stand trial for the commission of offences under Sections 363/307 and 354 Indian Penal Code . He denied the charge, pleaded not guilty and claimed to be tried.

(2) On consideration of the oral as well as the documentary evidence, the the learned lower court believed the prosecution version and convicted Om Parkash for the offences charged with. He was sentenced to 7 years' R.I. for the offence under Section 307 Indian Penal Code . and 5 years' R.I. and a fine of Rs. 1000.00 for the offence under Section 363 Ipc, and one year R.I. under Section 354 IPC. He was further ordered to undergo one years' R.I. in case of failure to pay fine. However, all the sentences were ordered to run con- currently. It is against this order the present appeal has been preferred.

(3) The first and foremost contention of the learned counsel for the appellant is that there is a long gap in the commission of the alleged offence, the information of which was available with the Police and the lodging of the report which throws doubt on the correctness of the prosecution version. He has a point. PW-4, Shri Puran Singh was present in his house, when Ram Dass brought Rajni in an injured condition. He immediately took Rajni to Dr. R.K. Sippy for medical aid. Dr.

R.K. Sippy appeared as PW-2 and admitted having examined Rajni and given the first-aid. As it was a medico legal case, he advised Puran Singh to take her to the hospital. It is his further case that immediately thereafter, he telephoned the Police which arrived at his clinic. The Police Officer took the child from his clinic Along with her relations. He also handed over the clothes of Rajni to the Police at that time. The version of PW-9, Inspector Niranjana Singh, on the other hand, is that on 12.3.1985 at about 10.40. A.M. Puran Singh Along with the girl came to the Police Post Prasad Nagar and got recorded the statement Ex. PW-4/A. The I.O. made his endorsement PW-4/9A and sent the same to the Police Station Karol Bagh for registration of the case. The I.O. there and then prepared the injury sheet of the prosecutrix and sent her to Jp in Hospital for check-up.

(4) The evidence of PW-4 Puran Singh coupled with that of PW-2, Dr. R.K. Sippy run counter to the version of PW-9, Niranjana Singh. If the police had already taken cognizance of the case and had removed the injured on the night of 11.3.1985, it is not explained as to why an immediate action in the form of recording of the F.I.R. and taking further steps in the matter were not initiated and completed, particularly when they had come to know of the name of the accused. Presumably, the Police officers of the Police Post Prasad Nagar, or for that matter of Police Station Karol Bagh must have been aware of this incident on the night of 11.3.1985. No earthly reason is forthcoming as to why the statement of Puran Singh was recorded at about 10.45 A.M. on the next day on the basis of which the case was registered. This is a circumstance which throws doubt on the prosecution story.

(5) There is yet another small discrepancy in between the first information report recorded by PW-4 Puran Singh and PW-5 Ram Dass. According to Ram Dass who turned hostile, Rajni was conscious and had narrated the incident to Puran Singh. On the basis of the said disclosure Puran Singh and Smt. Shanti Devi had gone to the house of Om Parkash. The case of Puran Singh, on the other hand, is that Rajni was brought in an unconscious state and she remained in that condition till her examination by Dr. R.K. Sippy. In fact this the earliest version of Puran Singh. If we believe him, then, there was no occasion for him to have gone to the house of the accused to reprimand him.

(6) The statement of Rajni in a way absolves the accused. In the first instance, she does not mention his name as the culprit. While in Court she admitted that she made the statement as told to her by the Sub-Inspector standing outside the court room.

(7) She is also very clear that the accused hit her twice with stone on her head. This piece of stone has not been taken into possession. According to Dr. Sippy, there were three injuries on her head which could be by blunt force. If the accused had hit Rajni twice on her head, there was no possibility of her receiving the third lacerated wound. This discrepancy has not been explained by the prosecution. In this case, Rajni has been examined by two doctors. Firstly, by Dr. R.K. Sippy. In his report, he listed three lacerated bond-deep wounds on the different parts of the head. He opined that the nature of the injuries is dangerous. On the next morning, she was examined by PW-I Dr. N. Gupta of Din Dayal Upadhyaya Hospital. He described the injury as simple. The statement of Dr. Gupta has not been challenged by the prosecution. If we believe his opinion, the case u/s 307 Ipc stands knocked out from its base.

(8) The defense of the accused is that there was sixth ceremony at his house on the date of the incident where many persons had come to attend the dinner. At that point of time, a quarrel took place between his uncle and Puran Singh as Puran Singh had extended the roof over their wall. According to him, he remained busy with the function and was not aware as to how Rajni had received the injuries. He denied his involvement. In support of his defense, he produced two witnesses who had attended the dinner on the night of 11.3.1985. They had seen the accused present in the function till late at night. From their evidence, it has also come on record that the parents of the prosecutrix owned a television which was in order at the relevant time.

(9) Learned counsel for the accused submits that the possibility of the accused having been falsely implicated in this case cannot be ruled out on account of the enmity between the two families. There is some substance in his submission and keeping in view the material discrepancies which have come on record, I am of the considered opinion that the prosecution has failed to make out a prima facie case

for the involvement of the accused in this offence. It is a fit case where benefit of doubt can easily be extended to the accused.

(10) As a result of the above discussion, I accept the appeal by giving him the benefit of doubt and set aside the impugned order of Shri S.N. Kapoor, Addl. Sessions Judge, dated 26th February, 1987. The accused is in jail. He be set at liberty, if not wanted in any other case.

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