

Joseph Vs. State of Kerala

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Court : Kerala

Decided On : Sep-29-1961

Reported in : 1962CriLJ668

Judge : P. Govinda Menon, J.

Appellant : Joseph

Respondent : State of Kerala

Judgement :

P. Govinda Menon, J.

1. Accused Chanda Pillai Joseph, has been convicted for an offence Under Section 376 Indian Penal Code, for having committed rape on a young girl aged 18 from near a culvert on the main Alleppey-Changanacherry public road of the afternoon of 6-10-1960.

2. Pw. 1 the victim is the daughter of Pw. 7; who is a mazdoor. On 6-10-60 at about 3 p. m, she was returning home after having taken food t her father. While passing bang the road, the accused and Pw. 13 were going ahead of her. As she almost neared them, Pw. 13 left the place. When she reached near the accused he suddenly caught hold of her. She cried aloud and tried to escape from his clutches. The accused threatened her that she would be killed if she shouted. He forced her down by the side of a metal heap on the road and committed rape on

her.

3. Two fish-mongers, of which Pw. 2 is one of them, were then passing that way on their cycle. They saw this and after proceeding a little distance stopped in front of one Madavan's house and called him. He was not there, but his wife Pw. 6 came out. To the east of the house there is a car shed of one Narayanaswamy and Pw. 4 his driver was there. He also came out and Pw. 2 told them that a girl was being molested by a man a little to the west. Pws. 4 and 6 thereupon proceeded towards the west and saw the accused and Pw. 1 lying down.

4. Pw. 2 proceeded on his cycle and on the way saw a jeep coming. He stopped the jeep and told Pws. 8 and 9 who were in the jeep as to what was happening. Pws. 8 and 9 proceeded towards west. They saw Pws. 4 and 6 and on enquiries were told that the occurrence was still to the west. They proceeded in the jeep and from a distance of about 50 feet they saw the accused committing rape on the girl. By that time the accused got up and left the place. Pw. 1 also got up and put on her dress which had been removed by the accused and appealed to Pws. 8 and 9 to save her. They stopped there for a while and finding that the accused had gone sufficiently eastwards asked her to go home.

5. Pw. 1 proceeded westwards and met her father near the Thekkekara bridge. She told him what had happened and pointed out the accused who was then proceeding on the road eastwards. Her father followed the accused. The accused was seen getting into Pw. 10's house and he also went there. A little later Pw. 1 also reached the house.

6. Pws. 3 and 5 are two persons who are living to the south of the place of occurrence. Pw. 3 noticed a girl being attacked by a man on the public road. So he called out his neighbour Pw. 5 and together they came in a boat to the place. They saw the accused and Pw. 1 lying on the metal heap, getting up from there and leaving the place. Pws. 3 and 5 proceeded in their boat towards the eastern side to follow the accused. They got down at the bridge and proceeded to Pw. 10's house to which place the accused had gone.

7. The matter was reported to Pw. 10 and on his advice Pws. 1 and 7 went to the police station and gave the first information statement Ex, P-1. Pw. 1 was sent to the hospital for medical examination and Pw. 18 the Head constable went to Pw. 10's house and arrested the accused. After completing the investigation, the accused was charge-sheeted. The defence of the accused was one of complete denial. According to him it must have been a case of mistaken identity.

8. The question for decision is whether the prosecution has succeeded in bringing home the guilt to the accused beyond reasonable doubt. The main evidence in the case is that of the girl Pw. 1. The learned Sessions Judge who recorded her evidence and saw her in the box has believed her evidence. I have been taken through her evidence and after giving careful consideration to the strong criticisms made by the learned Counsel for the accused, I am of opinion that the learned Judge was fully justified in accepting her evidence.

9. The rule, which according to the cases has hardened into one of law is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, before a conviction without corroboration can be sustained. Even if corroboration were necessary it is not necessary that there should be independent confirmation of every material circumstance by independent evidence. All that is required is that there must be some additional evidence rendering it probable that the story of the victim is true and that it is reasonably safe to be acted upon. In this case Pw. 1's evidence is fully corroborated and reference will be made to it later.

10. Comment was made by the learned Counsel that her evidence is disproved by the medical evidence in the case. Ex. P. 11 is the wound certificate issued by the Medical Officer, Pw. 20 who examined Pw. 1 on the date of occurrence at about 5 p. m. She found six injuries. Injury No. 1 were two bruises on upper part of left breast one above the other 1/2' x 1/2' each; (2) bruise on inner side of left breast 1/2' x 1/2'; (3) linear abrasion in length on the back just below the right scapula; (4) abrasion 1/2' x 1/2' on the back part of right elbow; (5) abrasion 1/2' x 1/2' on the upper and lateral part of left leg and (6) small abrasion 1/2' x 3/4' on the left side of

the clitoris. Injuries 3 to 5, according to the doctor, could be caused by coming into contact with any hard and rough object and she has stated that it could be caused by that portion of the body coming into contact with a metal heap. Injury No. 6 the doctor stated, could have been caused in the course of committing rape. Injury Nos. it and a according to the doctor could be caused as a result of violence as a result; of-a struggle or a violent squeezing of the: breast. It is, therefore, tortilla to argue that the medical certificate disproves her case. It is true that the doctor has stated that the hymen was torn, that it was an old tear, that no injuries were seen at the vulva and that she was not a virgin. .

11. The accused was examined by Pw. 16, the Medical Officer. Ex. P-6 is the certificate issued by him. The doctor did not notice any marks of violence on the body of the accused. A small quantity of smegma on the glans penis of the accused was noticed. Smear from the penis was sent for chemical examination and the chemt cal examination revealed that no human spermatozoa were detected in the smegma.

12. The learned Counsel referred to the following passage in Lyons' Jurisprudence, Seventh edition at p. 313:

Signs of recent intercourse Glans. If this be covered by uniform layer of Smegma. It negatives the possibility of recent complete penetration. If not, any abrasions should be noted, especially on fraenum.

To the same effect is the observation of Modi in his Medical Jurisprudence (Edn. 5) at p. 340:

If the accused is not circumcised, the existence of smegma round the corona glandis is proof against penetration, since it is rubbed off during the act of sexual intercourse. The smegma accumulates if no bath is taken for twenty-four hours.

The learned defence counsel therefore argued that the presence of sraegma disproves penetration since if there was penetration it would have been rubbed off during intercourse. The doctor when questioned has stated that smegma need not completely be rubbed off or removed during intercourse. He stated that a

negligible amount of smegma may be present even if a person has intercourse. The authorities referred to earlier only say that if the glans penis is covered by uniform layer of smegma it negatives the possibility of recent complete penetration. So it does not help the accused.

13. The learned Counsel for the appellant argues that the facts of the case may not amount to the completed act of rape, but only to an attempt at rape and that the conviction Under Section 376 is, therefore, unsustainable. The authorities have uniformly laid down that while there must be penetration in the technical sense the slightest penetration would be sufficient and a completed act of sexual intercourse is not at all necessary. As observed in Gour's 'The Penal Law of India,' 6th Edition (1955) Vol. II p. 1678:

Even vulval penetration has been held to be sufficient for a conviction for rape.

In the present case I have no reason to doubt the testimony of Pw. 1 and I find there has been penetration.

14. The learned advocate stressed the absence of sufficient external marks on the victim showing resistance which would negative rape. It has been laid down in Rao Harnarain Singh v. State that a mere act of helpless resignation on the face of inevitable compulsion, quiescence, non resistance or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent on the part of a woman as a defence to an allegation of rape requires voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent. Submission of her body under the influence of fear or terror is no consent.

15-17. I shall now come to the other evidence in the case. (After discussing evidence His Lordship concluded). On a careful consideration of the evidence, the probabilities and circumstances of this case, I have no hesitation in finding that the prosecution has proved the case conclusively against the accused.

18. The learned defence counsel then argued that the sentence of rigorous imprisonment for ten years awarded by the learned judge is extraordinarily severe. While agreeing with the Sessions Judge that- the conduct of the accused was highly reprehensive and that he deserves a very deterrent sentence, I think the interests of justice would be met if he is awarded a sentence, of five years imprisonment.

In the result while confirming the conviction, the sentence is reduced to rigorous imprisonment for five years. With this modification the appeal is dismissed.

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