

Sittu Vs. State

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Court : Rajasthan

Decided On : Mar-02-1966

Reported in : AIR1967Raj149; 1967CriLJ920

Judge : C.B. Bhargava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354, 376 and 511

Appeal No. : Criminal Revn. No. 522 of 1965

Appellant : Sittu

Respondent : State

Advocate for Def. : B.C. Chatterjee, Adv.

Advocate for Pet/Ap. : V.S. Bhargava, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.B. Bhargava, J.

1. This is an application in revision by Sittu against his conviction under Section 376 read with Section 511 of the Indian Penal Code. He has been sentenced to rigorous imprisonment for two years and to pay a fine of Rs. 100.

2. The facts are that on 14th August, 1963, the petitioner forcibly took Vimla a girl aged 12 years to a nearby pit when she was returning from village Akbarpur to her own village Allapur, felled her down in the pit, removed her 'Shalvar' and made her naked. He too became naked by removing the 'Lang' of his Dhoti. He fell upon the girl and tried to introduce his male organ into the private parts of the girl. The girl put up a strong resistance and so there was no penetration. Cries of the girl attracted one Noor Shall (P.W. 9) to the place of occurrence. Noor Shah saw the petitioner lying on Vimla who was then naked. The petitioner hurled stones upon Noor Shah as a result of which he ran away from there, but on the request of the girl he informed her relations. The petitioner again felled her down and lay upon her, but the girl again resisted. In the meantime, Beliram (P.W. 3), Amarchand (P.W. 6), Santasingh (P.W. 4) and Nanak Chand (P.W. 8) arrived at the spot. The matter was reported to the police and the petitioner was taken out of the pit by the police Head Constable.

3. The Medical Officer found the lower part of hymen of Vimla reddened and in view of that he was of the opinion that penetration was possibly attempted but not effected. The girl had also as many as 39 injuries on her body which according to the medical opinion were caused by thorn pricks. There were also injuries on the lip of the girl which according to the medical opinion was caused by blows. At the time of medical examination, forehead, eye brows, neck, cheek and hair of Vimla were soiled with mud. Her Kurta was also soiled with mud.

4. The petitioner denied the charge and stated that he was beaten by Beliram (PW 3), Amar Chand (PW 6), Santasingh (PW 4) and Nanakchand (PW 8), He stated that Vimla who had taken his cycle got frightened and fell in a pit and that he was falsely implicated in the case.

5. Both the courts below believed the evidence of the prosecution witnesses and came to the finding that an attempt to commit rape was made by the petitioner, upon Vimla,

6. The only point which has been urged in this Court is that on the facts found by the courts below, the act of the accused amounts to an offence under Section 354 of the Indian Penal Code and not under Section 376 read with Section 511 of the

Indian Penal Code. In support of this contention reliance is placed on State of Madhya Pradesh v. Babulal, AIR 1960 Madh Pra 155. There the accused had caught hold of the girl and assaulted her with a stick. He felled her down on the ground forcibly, snatched her lugra and thereby made her naked. The cries of the girl attracted her uncle who came to the spot. On seeing him the accused ran away. In these circumstances the court held that the facts did not show that the accused was determined to have intercourse at all events because as soon as he saw the uncle of the prosecutrix, he ran away. Further he only made the girl naked. He did not expose nor attempted to expose his private part. Therefore, it was not a case of an attempt to commit rape but one under Section 354 Penal Code.

In the above decision reference has also been made to an unreported decision of the Bombay High Court where a milk-maid aged 12 or 13 years who was hawking milk, entered the accused's house to deliver milk. The accused got up from the bed on which he was lying and chained the door from inside. He then removed his clothes and the girl's petticoat, picked her up; laid her on the bed, and sat on her chest. He put his hand over her mouth to prevent her crying and placed his private parts against hers. There was no penetration. The girl struggled and cried and so the accused desisted and she got up, unchained the door and went out. It was held by Mirza and Broomfield, JJ. of the Bombay High Court that 'the accused was not guilty of attempt to commit rape but of indecent assault.'

7. In my view there is no force in this contention. As observed by the Supreme Court in Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698 that:--

'There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment

he commences to do an act with the necessary intention, he commences his attempt to commit the offence. A person commits the offence of 'attempt to commit a particular offence,' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.'

Whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the steps necessary to take in order to commit it. In the present case it has been found that petitioner made the girl naked, also partially removed his Dhoti, fell upon the girl and tried to introduce his male organ into the private parts of the girl. It is also clear from evidence that the petitioner was determined to have sexual intercourse with the girl. He did not stop in his attempt in spite of the strong resistance put up by the girl. The evidence of the girl is that after Noor Shah gone from that place to inform her relations, the petitioner again felled her down and remarked that he would have sexual intercourse with her even though he might be sent to Jail. It is only when Beltram, Amarchand, Santasingh and Nanakchand arrived at the spot and removed the girl from the pit that the petitioner was prevented from committing the act.

The M.P. case and the unreported Bombay High Court decision are distinguishable from the facts of this case. In the Madhya Pradesh case the accused had neither exposed nor attempted to expose his private parts. He fled away as soon as the uncle of the girl came to the spot and so it was held that the accused had not gone beyond the stage of preparation. In the present case the petitioner had not only exposed his private parts but had actually laid himself on the girl and had tried to introduce his male organ in her private parts. He did not succeed in the attempt because the girl had put up a strong resistance and later on the witnesses had come on the spot. In the Bombay case too, the accused though he had placed his private parts against that of the girl had desisted from the act when the girl struggled and cried which indicated that he was not determined to commit the act at all events and in spite of all resistance. I am

therefore, of the view that the act of the petitioner clearly amounted to an attempt to commit rape.

In this connection I may refer to a decision of the Lahore High Court in *Bhartu v. Emperor*, AIR 1933 Lah 1002(1) where the accused had caught hold of a girl aged 14 years, threw her down, put sand in her mouth, got on her chest and attempted to have intercourse with her. She resisted and cried and her screams attracted the witnesses on seeing whom accused ran away. It was held that:--

'The accused had gone much beyond the stage of 'preparation', and If he had not been prevented by the sudden arrival of the witnesses, there was not the least doubt that he would have had intercourse with her and that his act clearly amounted to an attempt to commit rape and not merely an offence under Section 354.'

8. I, therefore, do not find any force in the contention and accordingly reject the revision application. I also do not find any extenuating circumstance to interfere with the sentence passed on the petitioner.

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