Duli Chand Vs. the State

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Court : Rajasthan

Decided On : Feb-26-1952

Reported in : 1952CriLJ1575

Judge : Atma Charan, J.C.

Appellant : Duli Chand

Respondent : The State

Judgement :
ORDER

Atma Charan, J.C.

1. Heard the parties.

2. Duli Chand (accused-applicant) stands convicted under Section 376, I.P.C and sentenced to undergo four years' R.I. for committing rape on Mst. Bbagwanti, a girl aged about ten years.

3. The two Courts below have come to the finding that rape had been committed on the girl, This is more than obvious from the own evidence of the girl herself and that of her mother as well as that of the Lady Civil Surgeon, who examined her soon after the alleged occurrence. The girl was in an almost collapsed condition, and was white due to the loss of blood. She was about ten years of age, and everything in her vagina was ruptured. She had a lacerated wound on the left wall

of her vagina 3' x 1' x ' and another lacerated wound on her perinaeum 1' x ' x ', which were bleeding very profusely. In the opinion of the Lady Civil Surgeon, she had been raped 'completely and badly'. The fact that the girl had been so raped, as a matter of fact has not even been seriously challenged at the time of arguments in revision before the Court.

4. The questions that arise before the Court are as to what is the value of the evidence of the mother of the girl for purposes of corroboration of the evidence of the girl herself and whether such evidence is admissible. In the ruling as cited in Rameshwar v. State of Rajasthan A.I.R. 1952 S.C. 54 it has been observed as below:

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, and in jury cases must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child which is the victim of a sexual offence, coupled with other circumstances appearing in the case, such, for example, as its demeanour unlikelihood of tutoring and Bo forth, may render corroboration unnecessary but that is a question of fact in every ease. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them, There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand:

Further, when corroborative evidence is produced it also has to be weighed and in a given case, as with other evidence even though it is legally admissible for the purpose on hand, its weight may be nil.It may be that all mothers may not be sufficiently independent to fulfil the requirements of the corroboration rule but there is no legal bar to exclude them from its operation merely on the ground of their relationship. Independent merely means independent of sources which are likely to be tainted.

5. The ruling of the Supreme Court is the most recent one, and supersedes all other rulings to the contrary. The facts of the case in that ruling are practically on all fours with the facts of the present, case. The two Courts below have fully relied on the evidence of the mother of the girl, and there appears to be no reason for me to hold otherwise.

6. The defence version of the story more or less is that it is at the most a case of mistaken identity. The prosecution case against the accused-applicant rests mainly on the evidence of the girl and that of her mother, who is said to have arrived at the scene very soon after the occurrence in question. The mother of the girl saw the accused-applicant escaping to his own house out of the temple, whore the rape is said to have been committed. Admittedly, the accused-applicant is known both to the girl and her mother from before, being their neighbour. There is not an iota of suggestion even on the record of the trial Court as to why the girl or her mother should have thought of falsely implicating the accused-applicant in the matter. Dr. Debi Lal examined the accused-applicant soon after the alleged occurrence. His evidence shows that he was about nineteen years of age, and had a discharge at the external meatus giving rise to the suspicion that he had had a sexual-intercourse. There is no reason to suppose that the girl and her mother would have named the accused-applicant as the culprit for no rhyme or reason unless he had actually been the ravisher and had been seen escaping out of the temple to his house.

7. It appears that there were no marks of violence such as scratches or bruises on the person of the girl. It also appears that there were no injuries such as scratches or teeth bites on the hands, thighs and genitals of the accused-applicant. It has, as such, been contended by the counsel for the accused-applicant that the girl could not have been ravished or that the accused-applicant could not have been her ravisher. Modi in his Text-Book of Medical Jurisprudence writes to observe as below:

In small children the hymen, being situated high up in the canal, is not usually ruptured, but may become red and congested along with the inflamation and bruising of the labia, or, if considerable violence is used, there is often laceration of

the fourchettee and perinaeum.

In addition to scratches or lacerations on the penis caused by the finger nails of the victim during a struggle, an abrasion or a laceration may be discovered on the prepuce or glans penis, but more often on the pirinaeum, due to the forcible introduction of the organ into the narrow vagina of a virgin, especially of a child, but, it is not necessary that there should always be marks of injuries on the penis in such cases. I have seen oases in which there was no injury to the penis of the accused, although there were lacerations of the hymen, posterior commissure, perinaeum and even the vaginal walls of the complainant (victim).

8. Considering the age of the girl we could not have expected her to have caused scratches or teeth-bites to the accused-applicant. As a matter of fact, she could not have even anticipated as to what the accused-applicant was upto at the time. The presence or the absence of scratches or teeth-bites would have been relevant only in case the accused-applicant had pleaded 'consent' on the part of the girl to the sexual-intercourso. No question of consent in the present case arises because of the girl's age.

9. We are now left with the retracted confession of the accused applicant said to have been made before a Magistrate. The confession suffers from the various serious defects as pointed out by the Court in criminal Appeal No. 27 of 1950 (Ajmer) and for those very reasons is discarded in toto. The evidence re: the recovery of the underwear said to be stained with blood from the house of the accused-applicant appears to be rather questionable and is also discarded in toto. The discard of these two pieces of evidence, how ever, in no way affects the prosecution version of the story as against the accused-applicant otherwise.

10. The accused-applicant, in the circumstances has rightly been convicted under Section 376, Penal Code. He has been sentenced to undergo four years' rigorous imprisonment. He has also been issued a notice to show cause as to why the sentence of imprisonment be not enhanced. This notice was issued as it is usual in a case of rape attended with brutality to pass a sentence of whipping as well. In the present case the accused-applicant has been sentenced to undergo four years' rigorous imprisonment and. in the circumstances, there appears to be no

special reason as to why the accused-applicant be sentenced to whipping as well especially when the appellate Court below has not even thought it fit to recommend the case for the enhancement of the sentence. The notice for enhancement is thus discharged.

11. The application in revision accordingly is dismissed : the accused-applicant is on bail, and is directed to surrender to his bail-bond forthwith under intimation to the Court.

12. It appears that in this district persons are being invested with magisterial powers only for the purpose of recording confessions or conducting identification-proceedings. Most of these persona had nothing whatsoever to do with law at any time of their life. The reason why a Magistrate is asked to do these things is mainly because he is supposed to be conversant with law and is not likely to commit such mistakes as might be committed by a non-judicial man. I have not come across such a practice in any of the districts of the Uttar Pradesh. The attention of the authorities concerned is drawn to the practice prevailing in this district with the remarks that it may be reviewed in the light of the observations made as above, if full weight is desired to be attached to such confessions or identification-proceedings. It would be better if the practice of recording confessions and conducting identification-proceedings is confined only to those who do regular magisterial work and are at least in touch with the law as enunciated from time to time by the Court.