

**Ashok Kumar Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Sep-15-1981

**Reported in :** 1981WLN(UC)243

**Judge :** Kanta Bhatnagar, J.

**Appeal No. :** S.B. Criminal Appeal No. 721/76

**Appellant :** Ashok Kumar

**Respondent :** The State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

**Kanta Bhatnagar, J.**

1. This appeal has been preferred against the judgment passed by the learned Additional Sessions Judge dated 6.8.76, by which he has convicted the appellant Ashok Kumar for the offences Under Section 363 and 346 I.P.C and sentenced him to one year rigorous imprisonment and a fine of Rs. 1000/-, in default to further undergo rigorous imprisonment for three months on the first count and six months rigorous imprisonment for the second count.

2. Briefly, stated the facts of the case giving rise to this appeal are that on 1.3.75 Mst. Sukhi (PW 6) had gone to ease herself in the Bada at a distance of about 15

pandas from her house and was enticed away by the appellant Ashok Kumar. Babulal (PW 5), father of the girl had gone to village Khara in connection with his business. Mother of the girl is said to have gone to the temple at 5 A.M. for worship. Babulal's son went to village Khara and informed Babulal about Mst. Sukhi missing from house since morning. Babulal came to the village Bhinmal and on inquiry his wife informed him about the girl going to ease herself and not returning. He went to the Police Station Bhinmal and lodged the report Ex.P. 5 on the same day. Mst. Sukhi was not traceable throughout the night. On the next day at about 9 A.M. Mst. Sukhi returned to her house weeping and narrated to her father that she was forcibly taken away by Ashok Kumar at the point of dagger and was kept confined in his room throughout the day and night and that she on availing the opportunity had managed to return to the house. Babulal again went to the police station and lodged another report Ex.P. 10. The police went to the site and took search of the room belonging to the appellant Ashok Kumar and certain articles were taken in possession. Ashok Kumar was arrested on 2.3.75

3. After completion of investigation, charge-sheet against the appellant was filed in the court of Munsif & Judicial Magistrate, Bhinmal, for the offences Under Sections 366, 392 and 346 I.P.C. The learned Magistrate finding a prima facie case against the accused, exclusively triable by the Court of Sessions, committed him to the court of Additional Sessions Judge, Jalore to stand his trial for the aforesaid offences. The learned Additional Sessions Judge charge-sheeted the appellant for these offences and recorded his plea. He denied the indictment and claimed to be tried. The prosecution examined nine witnesses in all. The appellant in his statement Under Section 323 Cr.P.C. totally denied the allegations leveled against him and stated that Mst. Sukhi was in love with him and had written love letters which he had produced in the court. He further stated that Mst. Sukhi was insisting upon him to take her with him and wanted to marry him which was not approved by her parents and, therefore, he had been falsely implicated in the case.

4. The learned Additional Sessions Judge came to the conclusion that prosecution had succeeded in proving the age of the girl to be below 18 years and, therefore, he held the appellant guilty for the offences under Sections 363 and 346 I.P.C. and passed the judgment of conviction under appeal.

5. The learned Counsel for the appellant has assailed the findings of the learned Additional Sessions Judge on a number of grounds. His first contention is that prosecution could not prove beyond reasonable doubt that Mst Sukhi was below 18 years According to him the transfer certificate Ex.P. 7 could not be proved to be correct arid, therefore, there was no reason to disbelieve the medical evidence based on the codification test of Mst. Sukhi. Another argument advanced by the learned Counsel is that love letters Ex. D. 3 to Ex. D. 6 clearly indicate the intimate relations between the prosecutor and the appellant hence it can be safely said that it was the girl who must have willingly gone to the house of the appellant and subsequently being again under the control of the parents might have stated against the appellant.

6. The learned Public Prosecutor controverting these arguments submitted that there is no reason to disbelieve the statement of Babulal, the father of the girl about her age which stands corroborated by Ex.P. 7, the transfer certificate proved by Smt. Sunder Kumari PW 7, the Head Mistress of the school. Mr. Acharaya emphasized that merely because there are love letters written by the girl, it can not be said that at the relevant time she must have gone of her own accord, specially when there is the evidence by the father that the girl when returned was weeping.

7. I heard the rival contentions and gave my anxious consideration to the material on the record. There are two questions to be determined in. this case. One is whether the circumstances indicate that Mst. Sukhi was having affairs with the appellant and must have gone to his house of her own accord. The second question calling answer is whether prosecution could substantiate its case that the girl was definitely below 18 years of age at the time of the alleged offence. So far as, the first point is concerned, the learned Additional Sessions Judge has elaborately discussed the evidence on the record and arrived at the conclusion that the love letters Ex. D. 3 to Ex. D. 6 are in the handwriting of Mst. Sukhi. Those letters are addressed to Raju and Rajkumar and the learned Additional Sessions Judge has opined that it cannot be specifically said that the letters were actually addressed to the appellant. Mr. M.M. Singhvi, the learned Counsel for the appellant has drawn my attention to the fact that one book Ex.P.A-7 has, been recovered from the room of Ashok Kumar which bears the name of Rajkumar and,

therefore, the statement of the appellant that Mst. Sukhi used to call him Raju should be believed. He has also referred to statement of PW 2 Mohanlal who has deposed that the pet name of Ashok Kumar is Raju. Taking into consideration this argument, I am inclined to hold that the letters Ex. D. 3 to Ex. D. 6 produced by Ashok Kumar must have been addressed to him by Mst. Sukhi. The learned Additional Sessions Judge has opined that to whomsoever the letters might have been written this fact of her having love affairs with someone taken together with the medical evidence of Dr. S.C. Mathur that the clinical examination of Mst. Sukhi shows that hymen was absent, clearly shows that the girl was of easy virtue. This type of material being there on record. I find full force in the argument of Mr. Singhvi that Mst. Sukhi was having affairs with Ashok Kumar. A connected question now arises as to whether on the relevant day she might have gone of her own accord or it was Ashok Kumar who at the point of dagger took her to his room and confined her by bolting the doors from outside. It is pertinent to note that Mst. Sukhi has stated that she was not ravished by Ashok Kumar. She has of course stated that Ashok Kumar made an attempt to commit rape on her but she pushed him aside and did not yield to his wishes. No injury or any assault was noted by Doctor on the person of Mst. Sukhi. If the boy had taken her at the point of dagger then there was no difficulty for him to ravish her. This shows that the girl was not forced to yield to the wishes of the appellant against her will. So far as her coming weeping from his house is concerned, the prosecution has examined one Sumer Mai but the witness has been declared hostile by the prosecution. I am, therefore, now left with the testimony of Babulal alone. Type of the statement as the girl has given does not inspire confidence that any force was used against her or she had no opportunity to go to her house at her will. A relevant factor worth noting in this case is that in the First Information Report Ex. P. 5 there is a clear mention of Ashok Kumar abducting Mst. Sukhi. In case Babulal was not knowing about the affairs of Mst. Sukhi and Ashok Kumar and the girl was altogether innocent where was the occasion for him to suspect Ashok Kumar. Explanation given by Babulal for this fact finding place in Ex. P. 5 is that as Ashok Kumar was going to attend certain hearing of cases, he suspected him. The explanation is not satisfactory. Taking all these circumstances of the case in view, I am of the opinion, that prosecution could not prove that any force was used by the appellant in taking

away the girl or she was confined at a place against her will.

8. case the girl is proved to be below 18 years of age at the time of the alleged offence, even if no force is used, the ingredients of Section 363 will be proved because if a person entices a girl of a minor age, he cannot escape the liability of committing offence even though the prosecutor might have accompanied him with her own free will. To decide this point the statement of Babulal and Sunder kumari, the Head Mistress of the school in which Mst. Sukhi is stated to have studied in 7th standard are to be looked into. The date of birth of Mst. Sukhi stated by Babulal is in the month of Chattru Samwat year 2016. The date of birth appearing in Ex. P.7, the T.C. issued from Rajkiya Balika Uchprathmik Pathshala, Bhinmal, is 15-5-60. Sunder kumari the Head Mistress of the institution could not definitely say as to on what basis the entry in the school register was made regarding the age of Mst. Sukhi. She has rather stated that it might be on the basis of some transfer certificate filed at the time of Sukhi's admission in that institution. It has been further deposed by her that she cannot say whether the entries in the register are original or copy of some other document. In this view of the matter, I am unable to agree with the learned Public Prosecutor that implicit faith should be placed on this document. It is noteworthy that Babulal has stated that he has given the date 15-5-60 at the time of getting his daughter admitted in the school. He has given the date of birth of Mst. Sukhi to be month of Chaitra Samwat year 2016 in his deposition at the trial.

9. Equivalent Hindi Miti of 15-5-60 is Jeth Vadi Pancham Sanwat year 2017. This falsifies the statement of Babulal. Babulal has stated that he had produced the 'leva' (horoscope) of the girl before the police. That 'leva' would have thrown some light on the matter and could have explained the inconsistency between Use date of birth given by Babulal in the court and that mentioned in the Transfer Certificate Ex. P. 17, but the prosecution, has withheld that important document for the reasons best known to it. In this view of the matter, I am not inclined to place any reliance on the testimony of Babulal and also on Ex. P. 7 so far as the age of Mst. Sukhi is concerned.

10. The case now is left on the medical evidence of Dr. S.C. Mathur and Dr. R.K. Gehlot so far. As the question of age of Mst. Sukhi is concerned. Dr. Mathur who had clinically examined Mst. Sukhi has given the date which shows that she was a completely grown-up girl at the time of her examination. The approximate age given by Dr. Mathur is 15-17 years. He has at the same time stated that codification test is the surest. Dr. R.K. Gehlot, the Radiologist has proved the X-Ray plates Ex. p. 16 to Ex. P. 18 and narrating the details about the fusion of various bones, has opined that the age was about 17 years. In cross-examination attention of Dr. Gehlot was drawn to the observation of Dr. Modi in his Toxicology on Medical Jurisprudence and he has agreed that he had kept, the criteria of the Bengali girls in view. His attention was drawn to the difference between Bengali-standard and that of U.P. and to the fact that fusion of bones in ladies in U.P. takes place at higher age than of Bengali ladies. He had admitted that he had not taken the X-Ray of both the extremities of the bones of Mst. Sukhi and on referring to Modi's book referred to above, admitted that there is a mention about the necessity of taking the X-Ray of the bones from the extremities. Dr. Gehlot has admitted that owing to variation in climatic, dietetic, hereditary and other factors effecting people of different provinces it cannot be expected to formulate a uniform standard for the determination of age of the union of epiphysis for whole of India and according to the variation the age of Sukhi could be 16 years & also 18 years. With this opinion of the doctor it cannot be said with certainty that Mst. Sukhi at the relevant time was decidedly below 18 years of age. Even if it is assumed that she did not attain the age of majority or was on the verge of attaining majority, still, in view of the peculiar circumstances of the case, that is her having affairs with Ashok Kumar as indicated by the love letters on record and her father also suspecting the same, her elopement at the time when her father was out of station and her mother had gone to worship in the temple, leads to the conclusion that prosecution could not substantiate the case beyond reasonable doubt so as to justify the conviction of the appellant.

11. Consequently, the appeal is accepted and the conviction and the sentence passed against, the appellant are set aside and he is acquitted of the charges level led against him. He is already on bail and need not surrender and his bail bonds stand discharged.

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