

Ramphool Vs. State

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Court : Rajasthan

Decided On : Jan-02-1975

Reported in : 1975WLN(UC)225

Judge : B.P. Beri, C.J.

Appeal No. : S.B. Criminal Revision No. 793 of 1971

Appellant : Ramphool

Respondent : State

Disposition : Petition dismissed

Judgement :

B.P. Beri, C.J.

1. Ramphool was convicted by the learned Assistant Sessions Judge, Jaipur District, Jaipur, by his judgment dated September 18, 1971 under Sections 368 and 376, Indian Penal Code, and sentenced to two years rigorous imprisonment under each count, along with others. On appeal, the learned Sessions Judge, Jaipur District, Jaipur, acquitted the other accused persons but maintained Ramphool's conviction unde Section 376, Indian Penal Code. He has come up in revision.

2. The story of this case which concerns a young girl Mst. Shanti is as long as it is lamentable. Way back in 1964, Mst. Shanti, said to be about 10 years age, with her sister-in-law Mst. Basanti, another girl of almost the same age, used to be live in Raipur (M.P.). Mst. Shanti's parents were far from being affluent and Mst. Shanti used to work as a domestic servant in the house of some Tehsildar. It is not exactly known how, but one Mohar Singh and another Babu Singh, found these two girls vulnerable and managed to take them away from Raipur to Nahri Khudadi, District Bulandsahar With what promise, threats, inducement or hopes these girls accompanied these two people do not come out very clearly but it is certain that these two girls were left with one Mst. Shakun who divulged to the two girls, presumably in confidence, that they would meet the same fate of being sold as the had met For 5 or 6 days they lived there and then both these girls were brought to Khirni Manpur There both these girls were separated by Mohan Singh and Babu Singh. But thereafter, we are not aware of what happened to Mst. Basanti and we shall, therefore, treat that chapter as closed. Mst. Shanti, however, was given to one Moti Meena who came to own her as wife by some ritual of a customary marriage described as 'jhadfera' and presented to her solid silver anklets in recognition of that status. According to the story trotted out by Mst. Shanti, she lived there for about five Diwalis, which will bring us in the neighbourhood of about five years, but she resisted all endeavours on the part of Moti Meena to exercise his martial rights. One Babu Shanker Das who used to come for farms to the house of Moti Meena managed perhaps got scent of the desire of Mst. Shanti to escape from the ill-matched arrange meet Mst. Shanti fell a prey to his persuasion and he took her away to Dausa and one of the things that he did was to sell away the silver 'kadas' of Mst. Shanti and transform them into thin silver anklets. Thereafter, he palmed off this girl to Babu Badri Das, probably another pretender of some spiritual status, and Badridas' 40 year-old son Kalyan, it appears, was in need of a wife, and the Baba passed off this girl to meet his need. It appears that Kalyan got scent that the police was pursuing the whereabouts of Mst. Shanti and rather than be caught in the net of a criminal case, he thought it discreat to smuggle her away to come quiet corner so that the link may not be established Thus Mst. Shanti traveled to village called ' Kutabpura near Chaksu where there was another Babu Rarrdas with an assistant called

Ramphool. While Baba Ramdas kept the a girl in custody it was the duty of Ramphool to play the sentry. At village Kutubpura, serveral attempts were made to dispose of this girl to some prospective purchaser but the deal never got through and the girl remained at hand as the prosecution story here is that the sentry Ramphool raped the girl day after day. The period that Mst. Shanti spent here was about six months. When one day according to the prosecution story, Bhima Mali erst-while Chairman of Municipal Board, Chaksu along with a few other persons feeling intrigued about the presence of strange young girl with Baba went to investigate into the matter. While Baba Ramdas was in the process of denial, the girl knocked the door from within and the concealment could not last any longer and the girl was brought out and with the consent of Bhima Mali's companions was entrusred to Bhima Mali for safe custody. Bhima Mali wrote seven registered letters at the addresses given by the girl of her father but because the girl had given wrong name of her father namely, 'Chhotulal' the letters returned without serving the purpose.

3. Having thus reached the blind alley, Bhima Mali it appears, advised that the matter be brought to the notice of the police and on April 5, 1970 a report was lodged in the Police Station, Chaksu and Mat. Shanti was sent to Nari Nikatan After investigation, five parious, namely, Babusingh, Shankerdas, Kalyandas, Ramdas and Ramphool were challaned under various sections Moharsingh was said to be absconding. The trial Court convicted Babusingh, Kalyandas, Ramphool and Ramdas under various sections The matter was taken up in appeal before the learned Sessions Judge, Jaipur District, Jaipur, who accepted the appeal of Kalyandas and Ramdas and acquitted them of offence under Sections 368 and 376 Indian Penal Code, partly accepted the appeal of Ramphool and acquitted him of the offence under Section 368, IPC but maintained his conviction and sentence under Section 376. Indian Penal Code, and rejected the appeal of Babusingh. Ramphool hat come in revision before me aggrieved by this judgment.

4. The learned Counsel for the petitioner Ramphool has urged, firstly that the ingredient of penetration under Section 376, Indian Penal Code, has not been proved and he relied on in re Karichiappa Goundan AIR 1942 Mad. 285 and Kana v. The State 1955 RLW 513. Secondly, be argued that the Radiologists opinion

about the age of Mat Shanti amounts to a process of elimination, namely, that she was about 14 years and below 16 years and when this is read in conjunction with the evidence of the mother Mst. Ramvati (PW/3) and the father Bago (PW/4) her age is anywhere near 18 or 20 with a reference to the offspring's of the union and the intervals between their arrivals Thirdly, be submitted that Mat. Shanti is an unabashed liar who consistently gave wrong name of her father and it was unsafe to convict Ramphool on the uncorroborated testimony of such an unreliable prosecutrix. This coupled with her conduct that she was being kept in apartments without coercion with opportunities of complaining her conduct in any event amounts to consent.

5. Mr. M.D. Purohit, learned Public Prosecutor urged that description of the transaction given by Mst. Shanti unambiguously leads to one conclusion, namely, of sexual congress that the modesty of the girl forced her to adopt polite expression and that does not mean that ingredients of Section 376, Indian Penal Code, have not been established, the regard to the question of of age, his submission is that the radiological examination and expert's testimony conducted by an independent medical witness with the as instance of radiological readings could not be brushed aside by putting it against the illiterate parents' testimony who are unacquainted with the niceties of calendar. In regard to the question of Mst. Shanti's concealing or giving wrong name of her father, her inability to exploit the opportunities of escapes should be viewed in the back ground of a young girl having been up-rooted from her parental moorings brought into a strange set up passed as a place of chattel from person to person oppressed by the cumulative effect of circumstances, she might have thought that she should be consistent in giving a wrong name of her father. She could not take advantage of the possibility of escape because she was in unfamiliar surroundings, helpless and without any prospects of a haven of safety. Lastly, he urged that this is a revision application where this Court should not lightly interfere unless there is a manifest error which hat resulted in a gross miscarriage of justice.

6. I have given my anxious consideration to the first argument advanced by the learned Counsel namely, whether all the ingredients of the offence under Section 376 of the Indian Penal Code have been proved or not. She has described the act

in the following words:

og esjs lkFk jkeQwy xwtj cqjk dke Hkh djrk Fkk A eS jksrh Fkh rCk Hkh eq>s ugh NksM+rk Fkk A og eq>s dgrk Fkk fd rsjs eka cki rks vk;sxs ugh eS rsjs lkFk 'kknh d:xk A

The question is whether it establishes the ingredients of penetration as required by Section 376 of the Indian Penal Code. Both the courts below have understood the meaning of the words cqjk dke to amount to sexual intercourse and I see no reason to take a different view because in common parlance in Rajasthan sexual intercourse is cqjk dke. The above quotation also has an ingredient of a complete lack of consent on the part of the girl when she says that Rampbool Gujar did not leave her even when she tried and wanted to get rid of him. He is about 40 years of age and the girl was in her teens all alone by herself in an isolated agricultural field. I am accordingly of the opinion that the penetration as envisaged by Section 376 of the Indian Penal Code has been proved, although not in naked words put in sufficiently intelligent and polite language.

7. In regard to the age, the report of the Radiologist goes to show that Mst. Shanti was below 16 years. This evidence, in my opinion, is conclusive and to contradict it by a process of time evaluation from the evidence of parents is not convincing. The reason is not far to seek. Illiterate people are not so exactly aware of the passage of time and to calculate it by the process of interval between the arrival of children even is not reliable. The assistance of science in age evaluation with reasons which are convincing is more reliable than the inaccurate estimate of intervals by illiterate people and therefore, in my opinion, I see no reason to differ from the opinion of the two courts below in regard to the age of the girl to be between 14-15 in any case being under 16 and, therefore, her consent also becomes immaterial.

8. The contention of the learned Counsel that Mst. Shanti gave the name of her fattier incorrectly even to Bhima Mali where she was secure and therefore, she is a liar. It is true that the registered letters sent by Bhima Mali did not reach her father because of wrong name. It is equally true that that Mst. Shanti said that when she was abducted from Raipur she was told by her abductor to give the name of her

father as Chhotelal. It may be that the constant repetition of the wrong name of her father got so deeply into her mind that she did not realise the consequence of this wrong name and she went on repeating it. What other motive could this girl have in not giving the name of her father as Bago At worst, she might not have liked to face her father with her past sad story but beyond this there could be no motive to give the false name of her father, and this, in my opinion, in the circumstances of this case, is not enough to discredit her testimony, so far as rape is concerned.

9. The last argument of the learned Counsel is that because she did not complain and therefore it amounted to consent, is devoid of substance. All that one has to do is to recall the various steps where she was abducted, sold from person to person, changed hands like a negotiable instrument and people making money by palming her from one hand to another. What confidence could be left in a person so situated so as to successfully resist With, all this process her confidence must have been liquidated and the only expression of her resentment could be helpless tears and I have already extracted her statement to evidence that.

10. It was also argued that she was free at village Kutabpura. This is far from being true. The room in which Mat. Shanti was confined had a door and when Bhima Mali and party went to investigate into the situation the girl was locked behind the room and when she knocked from within Ramphool Gujar was forced to open the door and to set her free. It could not be said that she was a free agent at Kutabpura and, therefore, it is idle to contend that she was free and she could complain and whatever little self confidence to get away from the situation might have been there it had got neutralised by the said situation, in which she was placed right from the moment she was abducted at Raipur.

11. Let me not forget, I have heard this case in revisional jurisdiction and unless there is manifest miscarriage of justice I should not interfere, and I see none and I, therefore, dismiss this revision petition maintaining the conviction and sentence of Ramphool.