

Nanda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-26-1987

Reported in : 1987(2)WLN251

Judge : Mahendra Bhushan Sharma, J.

Appeal No. : S.B. Cr. (J) Appeal No. 40 of 1987

Appellant : Nanda

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Mahendra Bhushan Sharma, J.

1. The accused appellant has been convicted by the learned Additional Sessions Judge, Jhalawar under his judgment dated December 19, 1986 under Section 376, IPC and has been sentenced for the said offence to undergo seven years rigorous imprisonment and to pay a fine of Rs. 500/-. In default of payment of fine to further undergo six months' rigorous imprisonment. The accused has further been convicted for offence under Section 341, IPC and has been sentenced to undergo 15 days rigorous imprisonment.

2. The case of the prosecution is that Shamshad Begum is a girl aged about 12 years. She is the daughter of Shabbir Ali (P.W 2) and Smt. Jamila (P.W. 3). On February 3, 1985 Shamshad Begum (P.W. 1) had gone at about 10.00 a.m. to the jungle to graze a she buffalo. It is alleged that the accused appellant along with one other person arrived there. The accused appellant felled her on the ground and caught her by both hands and his companion committed rape on her. Then the companion caught hold of Shamshad Begum by her hands and the accused appellant is said to have committed sexual inter-course. Shamshad Begum was left by the accused appellant himself at her house and it is alleged that she narrated the incident to her mother Smt. Jamila (PW 3) that the accused had ravished her. Shri Shabbir Ali (PW 2) father of Shamshad Begum, was not present in the house at that time and he was called. There was bleeding from the vagina of Shamshad Begum his daughter. Shri Shabbir Ali first called some Vaidhya in the village but he said that it is not possible for him to treat Shamshad Begum. She was taken to the general hospital at Jhalawar, where Dr. Chandra Prakash Barta (PW 6), the then Medical Jurist examined Shamshad Begum and he reported that except the bleeding from vagina there was no other injury on her person. For further examination it was necessary to administer anesthesia but her father refused and, therefore, further internal examination could not be done. Dr. Chandra Prakash (PW 6) in the absence of internal examination of the vagina was not in a position to give any opinion in respect of sexual intercourse, which is said to have been committed with Shamshad Begum. Dr. Smt. Pushpa Gupta (PW 10) was also present and she was also of the same opinion. It was only on February 7, 1985 that Dr. Smt. Pushpa Gupta(PW 10) examined Shamshad Begum and she found that there was bleeding. She examined her under general anesthesia and found that there was no injury on her body and even on her private parts. She noticed the following injury:

A liner tear about 3' in length 2-1/2' in depth on left lateral vaginal wall 1/2' inside the hymen. It was bleeding. Four cat-gut stitches were applied. Slough was present on the wound which was cleaned.

3. The Salwar of Shamshad Begum(PW 1) as well as the vaginal swab. smear etc. were sent for chemical examination and the Chemical Examiner in his report (Ex.

P 21) found that there was human semen on the Salwar and two Chaddies, whereas in vaginal swab or in the Duputi of Shamshad Begum there was no human semen.

4. After investigation, a charge-sheet was filed against the accused appellant and Kajor. The learned Additional Sessions Judge only framed charge against the accused-appellant under Sections 376 and 341 IPC and discharged the other co-accused Kajor under his order dated December 19, 1985. As already stated earlier the accused-appellant was convicted as aforesaid.

5. I have heard Amicus Curiae and have gone through the record of the case. The contention of learned Amicus Curiae is that the FIR was lodged by Shabbir Ali father of Shamshad Begum (PW 1), after talking to Shamshad Begum in which it was not stated that the accused appellant committed sexual intercourse with her. According to the learned Counsel, it was only a later development in the statement in the Court that the appellant committed rape on Shamshad Begum. Learned Counsel, in view of this serious conflict, in the FIR and as stated by Shamshad Begum (PW 1) in her statement, has contended that the accused is entitled for an order of acquittal. He further contends that there is no medical corroboration of the statement of Shamshad Begum (PW 1) that she was subjected to sexual intercourse. There were no injuries on her private parts as well as on other parts of the body and the two doctors who have been examined by the prosecution admitted that the injury can be received if she would have fallen and received the injury of nature which was found at the time of examination. It is also contended that Shamshad Begum (PW 1) admitted that there was enmity in between the accused and her aunt. The possibility of false involvement of the accused cannot be excluded. The accused himself at the time of examination was aged about 18 years and if as is alleged he would have committed sexual intercourse with a girl of 12 years then there should be some injuries on the penis of the accused also. Hence on examining him no such injury has been found.

6. A look at the FIR (Ex P 1) will show that it was lodged by Shabbir Ali (PW 2), the father of Shamshad Begum after she was taken to the hospital she regained consciousness and she disclosed to him that Nanda caught hold of her hands and

the boy who was with him committed sexual intercourse with her and she could identify that boy. It is not mentioned there in that the accused has also committed any sexual intercourse with Shamshad Begum. Shabir Ali (PW 2). the informant and the father of Shamshad Begum has proved the FIR (Ex. P 1) which has been lodged by him. He states that her daughter told him that Nanda caught hold her hands and one more boy who was with him committed sexual intercourse with her. He stated that whatever was stated by him (Ex P 1) was truly stated. He admits that his daughter had not told him that the accused has also committed sexual intercourse with her and she had only disclosed to him that a fair colour boy who was with Nanda has committed sexual inter course with her Smt. Jamela (PW 3) the mother of Shamshad Begum (PW 1) has also stated similarly. Therefore, it can be said that the FIR (Ex P 1) was lodged after Shabbir Ali (P W 2) her father had taken Shamshad Begum and there is no mention that the accused appellant committed sexual intercourse with Shamshad Begum (PW 1) No doubt Shamshad Begum (PW 1) has stated in the Court that the accused as well as his companion committed rape with her, but in view of the version contained in the FIR only on her statement it will not be safe to hold that the accused appellant committed sexual intercourse with her It may be stated that Shamshad Begum is a girl of about 12 years and as such is a child witness The learned Court put certain questions to her and was of the opinion that Shamshad Begum does not understand the importance of oath and therefore no oath was taken by her Shamshad Begum in her statement stated that there is some dispute between her father and Nanda's father. She also admits that the dispute was going on in between the members of the family of Nanda and her aunt. Thus, it is not possible to hold that the accused-appellant committed sexual intercourse with her. The conduct of the accused appellant that he himself took Shamshad Begum to her house is also such which goes to show that the case of the prosecution that the accused also committed sexual intercourse with Shamshad Begum is not correct. Had the accused committed sexual intercourse, he would have been the last person to go with her to her house. Had he done so the girl immediately would have disclosed that the accused-appellant committed sexual intercourse and the accused would have been apprehended or at least named in FIR as having committed sexual intercourse.

7. Apart from what has been stated earlier, despite the statement of Shamshad Begum (PW 1), there is no other corroborative piece of evidence that the accused committed rape. If she would have been ravished not by one i.e. the accused-appellant but also by his companion as alleged by her at a place which was found surrounded, there should have been some injury might be minor injury on her person. Hymen should have been found ruptured and the possibility of the accused aged about 18 years allegedly committing rape with girl of 12 years of receiving injuries also cannot be excluded. No injury was found on the penis of the accused. The doctors who have been examined by the prosecution namely Dr. Chandra Prakash (PW 6) and Dr. Smt. Pushpa Gupta (PW 10) do not rule out the possibility of Shamshad Begum receiving the injury in her vagina otherwise than by sexual intercourse. Dr. Chandra Prakash (PW 6) has stated in his cross-examination that because he was not allowed to examine the private parts internally, he could not give any opinion as to whether the girl was subjected to sexual intercourse or not and Dr. Gupta is also of the same opinion. He states in cross-examination that if Shamshad Begum falls on some projected portion and vagina struggles the injury received by her is possible to have been received. Similarly Dr. Mrs. Pushpa Gupta has stated that if the girl falls on some stick or stone she can receive the injury of the nature received by her. The Salwar and other articles were sent for chemical examination and a look at the report of the Chemical Examiner will show that no human semen was detected except on Salwar. No doubt human semen was detected in Salwar which the girl Shamshad Begum was wearing at the time of incident. But as already stated earlier that the accused-appellant has not been proved to have committed sexual intercourse and it was alleged in the FIR that the other boy who was discharged has committed sexual intercourse.

8. Consequently, I allow this appeal and set aside the order of the Addl. Sessions Judge, Jhalawar convicting the accused-appellant under Sections 376 and 341 IPC. The accused is acquitted from the charges under Sections 374 and 341 IPC. He is in jail and shall be released forthwith if not wanted in any other case.