

The State Vs. P. Balan

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Court : Chennai

Decided On : Mar-06-1996

Reported in : 1996CriLJ3705

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 341, 354 and 376; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 284 of 1988

Appellant : The State

Respondent : P. Balan

Advocate for Def. : S. Govindarajan, Adv.

Advocate for Pet/Ap. : R. Raghupathy, Additional Public Prosecutor

Judgement :

1. This appeal by the State is against the acquittal of the respondent who was prosecuted for the offences under sections 341 and 376 of Indian Penal Code by the Sessions Judge, Uthagamandlam in S.C. 1/87. The victim in this case P.W. 1 is the daughter of one Sundaram whose wife died some years ago and, therefore, he had taken a second wife and was living separately leaving the victim girl P.W. 1, in the custody of his mother, P.W. 2. The brother of P.W. 1 was living with P.W.

2 in warwick estate of Rotagiri Taluka. P.W. 1 was aged 13 at that time and was studying in VI Standard in Kerbetta. Daily she used to go to the School in Kerbetta by walk through a short-cut pathway across the jungle. On 24-4-1986 by about 4.30 p.m., she was returning from the school to her house and the respondent-accused was found grazing his cattle in the way. The respondent way-laid her and pulled her to a nearby bush where she made to lie. The respondent lifting her skirt M.O. 1 and the undergarment M.O. 3, thrust his male organ into her female organ. P.W. 1 shouted for help but no one came to her rescue, as it was a lonely place in the forest. The respondent closed her mouth also when she shouted. After satisfaction of his desire, he left the place driving his cattle. P.W. 4 soon came by that way and seeing P.W. 1 who was weeping asked her the reason. She told him as to what had happened, for which P.W. 4 advised her to go to her house and inform the elders. P.W. 1 went to her house, informed her grandmother P.W. 2, as to how she was dealt with by the respondent. They were waiting for the arrival of the brother of P.W. 1, Karunakaran and after his arrival by 6.00 p.m., P.W. 2 directed him to inform about the incident to the girl's father Sundaram who was in another estate. By 6.00 p.m., P.Ws. 1 and 3 went to Kotagiri police Station where P.W. 5 the Sub-Inspector of Police recorded the statement of P.W. 1 under Ex. P. 1 and registered the case in Crime No. 77 of 1986 for the offences under sections 341 and 376 of Indian Penal Code. Ex. P. 5 is the First Information Report forwarded by him to the Court and its copy to his superior officers. He sent the girl to the Government Hospital for medical examination. Meanwhile P.W. 6, the Inspector of Police received the message about the occurrence and took up the investigation. He examined P.Ws. 1 and 2 and sent them to the hospital. At 11.00 p.m., P.W. 3 the medical officer attached to the Government Hospital at Kotagiri examined P.W. 1. He found an abrasion of 1/8' x 1/16' over interior aspect of vaginal orifice. He did not find any other symptom in the body of P.W. 1. The vaginal smear was taken Ex P. 2 is the wound certificate issued by him. The Doctor was of the opinion that this injury which was simple in nature was possible by forcible penetration of the male organ. P.W. 6 the Inspector of Police seized M.Os. 1 to 3 worn by P.W. 1 under the Mahazar Ex. P. 6, in the presence of witnesses. On the next day morning at 6.30 a.m. visited the scene of occurrence and prepared the observation mahazar Ex. P. 7 and also the rough sketch Ex. P.

8. On the same day at 10.00 a.m. he arrested the respondent/accused near the Donnington bus-stand in the presence of the witnesses. The respondent/accused gave a confession statement, the admissible portion of which is Ex. P. 9 and he took the Police party and the witnesses to his house from where he took up the Lunghi M.O. 4 and also his shirt, M.O. 5 and the drawer M.O. 6 which were seized under the Mahazar Ex. P. 10. P.W. 6 sent the requisition to the Judicial Magistrate Court, Kotagiri for sending the seized clothes and the vaginal smear to the Forensic Laboratory for examination under Exs. P. 11 and P. 12. The Judicial Magistrate sent the articles for examination and Ex. P. 13 is the Forensic report for the clothes and Ex. P. 14 is the report for the vaginal smear. The Inspector of Police after completing the investigation filed the charge-sheet against the respondent for the offences under sections 341 and 376 of Indian Penal Code. After the examination of the witnesses on the prosecution side, the respondent/accused was asked to explain the incriminating circumstances found against him in the evidence, under section 313 of the Criminal Procedure Code. The respondent had stated that he advanced a loan of Rs. 300/- to the brother of P.W. 1 for erecting fence for his encroached land but he did not commence the work and, therefore, on 21-4-1984 asked him as to why he did not commence the work and scolded him. He enraged by that beat him twice and P.W. 2 came with broomstick shouting that she would see him to spend Rs. 5,000/- in the Court. On account of this quarrel, there was enmity between him and the brother of P.W. 1. He also has stated that on 25-4-1986 at 6.00 a.m. the police party took him from his house to the Police Station. He had not chosen to examine any witness on his side. The learned Sessions Judge, Uthagamandalam after having gone through the evidence on the side of prosecution has found that the prosecution has failed to establish the guilt of the accused and, therefore, the accused was acquitted of all the charges. Challenging this judgment of acquittal of the learned Sessions Judge, the State has come forward with this appeal.

2. The learned Additional Public Prosecutor Mr. Raghupathy would contend that this is a case in which a young girl of 13 years old has come to the Court to depose about the sexual assault committed on her by the respondent/accused when she was coming alone from her school, that her evidence in no way has been shattered by the cross-examination of the counsel for the accused except for

one inconsistency and that is the absence of the seminal smear in the body or on the clothes and for that reason the learned Sessions Judge, Uthagamandalam has disbelieved the entire prosecution case for acquitting the respondent/accused and this approach of the learned Sessions Judge is not correct. According to the learned Additional Public Prosecutor the evidence of P.W. 1 a young girl of 13 years old is amply corroborated by P.W. 2 and P.W. 4 for the subsequent events and on the same night this girl was taken to the hospital for medical examination and all these events subsequent to the occurrence clearly establish that there could not have been a fabrication of the case by the prosecution against the accused for the alleged quarrel between the accused and the brother of P.W. 1. I was taken through the evidence of P.W. 1 and as stated by the learned Additional Public Prosecutor, except the inconsistency as to the absence of seminal smear I do not find any other infirmity in the evidence of P.W. 1. P.W. 1 has stated in her evidence that she used to come alone from the school to her residence in Warwick Estate through a foot-path across the Jungle. The respondent/accused also would appear to be grazing his cattle in the Jungle. P.W. 1 has narrated that 24-4-1986 she was returning after attending her English Paper Examination, with the pad in her hand and at that time the respondent/accused who was grazing his cattle took her forcibly from the foot-path to the nearby bush where she was sexually assaulted. It is also her version that after she was released by the respondent/accused, she came to the foot-path where she saw P.W. 4 to whom she informed about the incident.

3. The learned Counsel appearing for the respondent/accused would argue two aspects in this connection. The learned counsel argued that even though P.W. 1 in her evidence has stated that she found the discharge of semen on her skirt and also vagina from the respondent/accused that was not found in the chemical examination and further, even though P.W. 1 had stated that she was taken through the thorny bushes and was thrown down in the midst of the thorny bushes and she also sustained scratches on her body due to the pricking of thorns leading to bleeding on her body, the medical evidence does not support this version of P.W. 1 and, therefore, the evidence of P.W. 1 is totally a tutored version which cannot be acted upon. The learned counsel for the respondent further contends that when P.W. 1 would say that soon after the occurrence she saw P.W. 4 to

whom she narrated the incident and P.W. 4 was also able to see the respondent/accused at some distance driving his cattle, he did not take any step immediately to apprehend the accused or at least to question him as to why he behaved in such a way with the young girl and, therefore, the presence of P.W. 4 at the scene of occurrence and the narration of the facts to P.W. 4 by P.W. 1 cannot be true. It is true that though P.W. 1 would say that there were seminal stains in her clothes and body and P.W. 2 also had corroborated that version, the medical evidence does not support it. But the abrasion in the interior part of the vagina has been found by the Doctor P.W. 3. However, he would say that this abrasion could have been caused by a simple scratch in the vaginal part by the girl herself. As rightly contended by the learned Additional Public Prosecutor Mr. Raghupathy, it becomes a practice when a fact was narrated, to emphasis it some embellishments also are being added and Courts have held that the embellishments which are like Chaff can be removed from the grain namely, the truth. For the reason that the girl did not have the scratches on her body due to the pricking of the thorns, it cannot be taken that she could not have been taken to the bushes by the respondent/accused. From the absence of the seminal stains no doubt we can take it that there was no discharge of the semen. Probably the respondent/accused did not attempt to make the sexual assault on the young girl either for the reason that he found her to be unfit for the sexual intercourse due to her tender age not even attained puberty or due to the arrival of P.W. 4 who was coming by that way during the time of occurrence. Therefore due to these reasons namely the absence of seminal stains and the absence of injuries on her body, the entire version of P.W. 1 cannot be branded as a total lie, because this young girl had no necessity to fabricate the case that she was taken by the respondent/accused to a nearby bush, as stated by her to P.W. 4 and also to her grandmother P.W. 2. Further, as mentioned above this small girl was able to withstand the test of cross examination, by which her evidence has not been falsified except the embellishments mentioned above. Therefore the case of the prosecution that when this girl was coming alone, along the foot path in the Jungle she was waylaid by the respondent/accused and she was taken forcibly to the nearby bush, has been placed before the Court by P.W. 1 in the acceptable manner.

4. The learned Counsel appearing for the respondent contended that the evidence of P.W. 1 discloses the presence of workers at some distance about 40 feet in the upper-tier of the hill and therefore the respondent/accused might not have risked in taking this girl to quench his sexual appetite and even the shouting made by P.W. 1 would have certainly drawn the attention of the workers in the nearby estate and therefore this circumstance would falsify the evidence of P.W. 1. Though P.W. 1 would say that some workers were in the estate about 40 feet in the upper region of the hill, it is only an approximate distance which she could not say accurately. Further when there were workers in the estate in the upper region, we cannot expect that her shouting would have reached the ears of the workers in the upper area of the estate. Therefore, it can be safely accepted that before the arrival of P.W. 4 in the scene of occurrence there was no one and therefore none came to her rescue.

5. For the criticism that P.W. 4 after knowing that this young girl was sexually assaulted by the respondent/accused, he did not question the respondent and therefore doubt is created as to the presence of P.W. 4 in the scene of occurrence, the evidence of P.W. 1 discloses that after she came to the main foot path, P.W. 4 joined her and at that time the respondent/accused was going at some distance, driving his cattle. We cannot expect P.W. 4 to chase the respondent/accused or either question him or apprehend him for the act done by him against P.W. 1. It depends upon the courage and, attitude of an individual. Except the fact that he also is a Ceylon repatriate there is nothing to show that he has any special interest on P.W. 1. Under those circumstances we cannot find fault with P.W. 4 for having not chosen to chase the respondent/accused.

6. From the conduct of P.W. 1 namely, immediately telling to P.W. 4 that she was taken by the respondent/accused to the bush and also informing her grand-mother P.W. 2 when she went to home and thereafter going to the police Station, certainly transpires that something had been done to P.W. 1, otherwise there was no occasion for her to inform P.W. 4 and her grandmother. As mentioned above from the absence of seminal stain as noted from the medical evidence, the rape is not established. But the act of the respondent/accused in taking this girl forcibly to the bush where she was asked to lay down, will certainly prove the intention of the

respondent/accused to outrage the modesty of the young girl. Therefore the Court below ought not to have totally rejected the prosecution case in the light of the evidence which is natural and acceptable. For the reason that the respondent/accused would state in his statement that the brother of P.W. 1 owes Rs. 300/- to him and there was quarrel between them on account of this amount, the whole prosecution case cannot be thrown out. There are no probabilities or circumstances to support the theory of enmity between the brother of R.W. 1 and the respondent/accused. As the respondent/accused is entangled in this crime, naturally he will have to attribute something against the prosecution witnesses to wriggle out of the prosecution. Therefore some motive has been attributed against the brother of P.W. 1. As mentioned above, the evidence is cogent and convincing with regard to the conduct of the respondent/accused in way laying P.W. 1 and also taking her to the lonely place near a bush. Even though, giving the benefit of doubt to the respondent/accused, he cannot be convicted for the offence under Section 376 of Indian Penal Code. The evidence of P.W. 1 and the other circumstances go a long way to establish the offences under Sections 341 and 354 of Indian Penal Code. Therefore the findings of the Lower Court for acquittal of the respondent/accused has to be set aside and he is found guilty for the offences under sections 341 and 354 of Indian Penal Code.

7. As the occurrence had taken place in 1986, and more than 9 years have elapsed how, I feel that a light punishment is sufficient to meet the ends of justice. For the offence under section 341 of Indian Penal Code. I feel that one month Rigorous Imprisonment and for the offences under Section 354 of India Penal. Code one year Rigorous Imprisonment is sufficient in this case.

8. Therefore, setting eside the order of acquittal, the respondent/ accused is found guilty of the offences mentioned above and is convicted and sentenced to undergo Rigorous Imprisonment for one month under Section 341 of Indian Penal Code and one year Rigorous Imprisonment under section 354 of the Indian Penal Code. Though the respondent is convicted in the above manner, in view of the G.O.Ms. No. 180 Home, Department dated 28-1-1989 and G.O.Ms. No.781 (Home) P.R.C. Department, dated 11-4-1990, the entire sentence is remitted. Therefore with the direction that he shall not be either arrested or detained, the appeal is disposed of

accordingly.

9. Order accordingly.

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