

Bechu Vs. the King

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Court : Kolkata

Decided On : Jan-24-1949

Reported in : 1950CriLJ153

Judge : Harries, C.J. and; Das Gupta, J.

Appellant : Bechu

Respondent : The King

Judgement :

Das Gupta, J.

1. This appeal is against conviction by the Sessions Judge of Midnapora Under Section 376, Penal Code in accordance with the unanimous verdict of the jury and a semiotic of rigorous imprisonment for five years,

2. The prosecution case was that on 18th January 1948 when Saraswati, the daughter of Anil Chandra Guinn, a tea-shop keeper, had gone out of her house to answer a call of nature and was sitting near a bamboo clump, this accused caught hold of her and taking her up in his arms carried her to a tamarind tree not far off and, after threatening her to keep quiet laid her down and had forcible sexual intercourse with her. It is said that thereafter the accused brought her back near her house and left her there, after which bob entered her house and on being asked by her mother where she had been she told her everything. Shortly after

that she was taken to the hospital where she was examined by two doctors. Late in the same night she along with her parents went to the thane where information was lodged.

3. The accused pleaded not guilty. His defence was two-fold. First, there was the rather fantastical theory that the girl's injuries had been caused by some bamboo shoot and secondly that somebody else, one Bechu Mucbi, a servant of Anil may have had ravished the girl and that he was falsely implicated.

4. The learned Judge rightly directed the jury that really there were three matters for their decision—first, whether any person had had sexual intercourse with the girl that night; secondly, whether the accused was that person; and thirdly, if they took the view, as he directed them to, that the girl was 14 years of age, whether the sexual intercourse was with her consent.

5. It has been contended before us by Mr. Mukherji on behalf of the appellant that the learned Judge has not placed before the jury all the points of contradiction in the evidence of the witnesses. As an instance he mentions that although the girl stated in the Court below that she had not seen the accused taking tea in their tea-shop and stated thereafter in the Sessions Court that she had seen him the attention of the jury was not drawn to the contradictory statement. It is to be noticed, however, that the girl herself did admit in the Sessions Court having made this earlier statement. In view of this admission by herself of the previous contradictory statement, there was not so much necessity in my opinion of the jury's attention being specifically drawn to this. The question of what previous opportunities the girl had had of seeing this accused is of course of importance and it is on this point, according to Mr. Mukherji, that the accused had been prejudiced by the learned Judge's omission to draw the jury's attention to this statement. It is to be noticed, however, that while dealing with this point the learned Judge directed the jury thus :

Bechu was a friend before. Then he became a bitter enemy against whom no information was lodged in the thana. Bechu destroyed Anil's property in the adjacent land and raised a hut there. After that they became friends again. You will consider whether these circumstances would not raise an interest in Bechu for

which the girl might have reason to know who Bechu was. Even if she had not seen Bechu at the tea-shop she would have seen him when the dispute about the land was going on and property was being destroyed. It is for you to consider whether you can accept this story that Saraswati knew Bechu from before

6. In view of this circumstance, as pointed out in the above passage about Bechu raising a hut in the adjacent land and a quarrel resulting from that, it was of very little importance whether the girl had seen Bechu taking tea in the tea-shop or not. The omission to draw the jury's special attention to the girl's contradictory statements on this point therefore is not, in my opinion, of any consequence.

7. Mr. Mukherji also pointed out that the learned Judge had made a mistake in saying that the girl had heard the voice of the accused before this occurrence. I find that all that the learned Judge said as regards the girl hearing his voice was :

The evidence of Anil in cross-examination is that the girl used to play with children in front of the shop. Bechu also used to converse in the shop. Therefore Saraswati could easily have seen and heard Bechu there.

8. He did not say that Saraswati heard his voice, but suggested to the jury that from the circumstances they might decide that Saraswati could have heard Bechu; but after giving the suggestion he left it to the jury to decide whether the story that Saraswati knew Bechu from before should be believed or not.

9. It was next argued by Mr. Mukherji that the learned Judge did not give the jury proper direction as regards the circumstances from which to decide whether the girl was a consenting party or not. The relevant passage in the charge is in these words:

You have heard about the injuries suffered by the girl (evidence of P.W. 10, Dr. San Gupta is read out and discussed). You have also heard Saraswati say that she was kept silent by threats, If you believe the statement it means that she was violated against her will and consent and that her content, if any, was obtained after threatening her with hurt.

10. It was argued by Mr. Mukherji that the story that the girl was taken up by the accused in his arms is improbable and the improbability of this would show that there was consent and that the learned Judge should have drawn the jury's attention to that. Obviously, the learned Advocate has overlooked the evidence of the doctor that the girl weighed 16 pounds only. It would not at all be difficult for an adult person . to lift a girl of such light weight and to carry her even a fairly long distance. I do not think therefore that this circumstance was of any importance at all and in my opinion there was no misdirection by the learned Judge's omission to point this out.

11. Another objection pressed by Mr. Mukherji was that the learned Judge wrongly admitted in evidence the bed-head ticket. I agree that as the doctor who had made the entries in this ticket was not examined, it was not admissible in evidence. It is clear however that the learned Judge warned the jury that they should not regard these entries as evidence for the prosecution, but might consider whether there was anything in the bed-head ticket which helped the accused. As the bed-head ticket was in-admissible in evidence the learned Judge was wrong, in my opinion, in asking the jury to consider it even in favour of the accused. But as he clearly warned the jury against using it in favour of the prosecution, I am unable to see how the accused was in any way prejudiced thereby or how it can be said that the mistake had been responsible for an erroneous verdict.

12. Mr. Mukherji's final contention was that the learned Judge erred in asking the jury to treat the evidence of the girl's mother as to what the girl had stated to her immediately after the occurrence as corroboration of the girl's evidence. For this Mr. Mukherji has relied on three decisions of this Court. They are, (1) a decision of Lord Williams and Conifer JJ. in *Camden v. Cunliffe and Henderson JJ.* in *Sikandar Mian v. The Emperor* : AIR1937 Cal321 and (3) a decision of Derbyshire O. J. and Lord-Williams J. in *Taser Pramank v. Emperor* : AIR1940 Cal391 .

13. The opinion of the learned Judges who decided these cases appears to have been that the evidence of the girl's own statement is not the corroboration which the law requires of the girl's own statement in Court. That the evidence of the victim of the rape requires corroboration is the rule of prudence which has been

followed in these Courts for some time and the learned Sessions Judge did tell the jury to remember that it is very risky to convict the accused on the uncorroborated evidence of the girl alone. That rule is too well established to be touched now. The question whether the statement made by the girl shortly after the occurrence has any corroborative value or not depends, however, in my opinion, entirely upon Section 157 Evidence Act which runs thus :

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact may be proved.

14. It appears that these provisions of S 157, Evidence Act were not considered at all either by Lord-Williams and Cunliffe JJ. in Chamuddin Sardar's case : AIR1936 Cal18 or by Derbyshire C. J. and Lord-Williams J. in Taser Pramanik's case, 44 O.W.N. 835 : A. I. R (27) 1910 Cal. 391 : 41 Cr.L.J. 841. Henderson J. in Sikandar Mian's case : AIR1937 Cal321 does take notice of Section 157, Evidence Act, but does not refer to the provisions thereof. At p. 644 of the report Henderson J. says this :

It was indicated to us that some difficulty has been caused in the trial of these cases in the Mafiosi, because of some doubt whether evidence admitted Under Section 157, Evidence Act is corroboration within the meaning of this rule. The rule is a rule of prudence based on experience and it is unnecessary to dilate upon the reasons for it. It seems to me that a previous statement made by the prosecutrix cannot possibly be corroboration within the meaning of this rule. If it were, instead of regarding it as a rule of prudence, I should regard it as a rule of folly.

15. It is true that this Bench is bound by the previous decisions of this Court. But it is still more bound by the statute. Where as in the present case there is no question of any interpretation of the statute, but the question is whether the plain words of the statute would be disregarded or given effect to, I have no hesitation in my own mind that the Court is bound to do the latter, that is, to hold that the statute must be followed in preference to any opinion of learned Judges.

16. On these considerations I am of opinion that the learned Judge rightly told the jury to consider the mother's evidence as to what Saraawati told her immediately after the occurrence as corroboration.

17. Whether corroboration should be considered sufficient or not is really a question of fact, and the circumstances under which the statement by the prosecutrix is made and the time which elapses between the occurrence and her statement have to be considered. The learned Judge did direct the jury on all these points and I do not find that there was any misdirection as regards this.

18. There is one statement in the learned Judge's charge which, Mr. Mukherji claims, certainly prejudiced the accused. After mentioning the two theories of the defence, namely, the rather fantastic theory that the girl was injured by a bamboo twig near the bamboo clump and the other theory that Anil had a servant named Bechu Muchi who might have violated Sara-awati, the learned Judge lightly told the jury that there was no onus on the accused to prove his innocence, the onus was on him to prove any theory or story he chose to put up; and thereafter that even if the accused failed to prove any of these theories he would not suffer in the least therefor and the jury would still persist in their initial presumption of innocence in his favour and the onus would still lie heavily on the prosecution to prove the guilt of the accused without the least doubt. It appears however that the learned Judge further told the jury that if the accused did succeed in proving either theory, the jury would have to be over careful during their deliberations. It is this statement which Mr. Mukherji says prejudiced his client I entirely agree with Mr. Mukherji that this was not the right way of putting the matter. Obviously if the accused succeeded in proving that some other person than the accused had committed the sexual intercourse, the accused could not be convicted; and the way the learned Judge puts it, namely, that the jury would have to be extra-careful during their deliberations is not the best way of making this clear to the jury. I am unable to agree however that the jury was or could possibly have been misled by this defect in the learned Judge's charge, It may at the same time be mentioned, as has been pointed out by the learned Judge in discussing this theory, that no suggestion was made to the girl herself as regards this theory of another person having ravished her. Even if therefore it was held that this defect in the learned

Judge's charge amounted to a misdirection, it could not, in the circumstances of this case, be held to have led to an erroneous verdict.

19. I have gone through the entire charge and I find that it is on the whole a full charge rather more favourable to the accused than to the prosecution. In my opinion the verdict of the jury has not been vitiated by any misdirection Hon.

20. The order of conviction must, therefore, be upheld. The sentence is not in my opinion too severe. The appeal is therefore dismissed.

21. Let the appellant surrender forthwith to his bail to serve out the remainder of the sentence imposed upon him.

Harries, C.J.

22. I entirely agree.

23. The so-called English rule of caution requiring corroboration of the statements of a complainant in sexual cases has been imported into Indian law and practice. Whether this rule is really necessary or not in India is a debatable question. Personally, I think there is very little danger of a false charge of rape being made by parents of any little girl. The consequence of such a charge are disastrous. In many cases the little girl becomes outcast and her chances of ultimate marriage are either completely ruined or very seriously affected. I must confess that after sitting on the Bench for nearly fifteen years in five provinces I have yet to come across a case where a false charge of this nature was made and the falsity thereof clearly established. However, the rule has been imported into Indian practice and procedure and it must be followed.

24. However, I entirely agree with my learned brother that the view expressed by some Judges of this Court that the corroboration required is of some special kind cannot be sustained. In England statements made by a little girl who has been ravished, even if made immediately after the offence and upon the first possible occasion, cannot amount to corroboration. At most evidence of such statements would only amount to evidence of conduct consistent with the girl's story. Evidence of previous statements concerning a fact at or about the time the fact

occurred cannot amount in English law to corroboration. The position, however, is entirely different in Indian law, because s 157, Evidence Act expressly makes these statements corroboration. The section reads :

In order to corroborate the testimony of a witness, any further statement made by such witness relating to the name fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

25. The value of statements of this kind will of course vary with the circumstances. But there can be cases when a previous statement can be the most powerful piece of corroboration. For example, if a little girl admittedly ravished ia rescued by a stranger, who hears her cries. The stranger on seeing the little girl asks her who did it and the girl at once names X, It appears to me that the evidence of that rescuing stranger would be most valuable corroboration, because it was evidence that the little girl named X immediately after the occurrence and before sha could have had any possible chance of inventing a story or before she could have been influenced' in any way by any other person. According to-the view of Lort-Williams J. in the cases cited' by my learned brother this could not be corroboration. But I cannot understand why not? It certainly is corroboration in India by Section 157 Evidence Act and as long as thatection remains, it appears to me the cases referred to by my learned brother cannot possibly be good law. What weight should be attached to such evidence is entirely a different matter. As I have already said, it may be valuable corroboration, on the other hand, the evidence may be worth very little. However, the learned Judge in this case was fully entitled to tell the jury that there was corroboration if they accepted the evidence particularly the evidence of the mother. There was, therefore, no misdirection, and I agree that the appeal fails and must be dismissed.