

Parbati Debi Vs. the State

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Court : Kolkata

Decided On : Sep-04-1951

Reported in : AIR1952Cal831

Judge : R.P. Mookerjee and ; Lahiri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297 and 411A; ; [Evidence Act, 1872](#) - Sections 114 and 133; ; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B and 366

Appeal No. : Criminal Appeal No. 30 of 1950

Appellant : Parbati Debi

Respondent : The State

Advocate for Def. : S. Banerji (Standing Counsel) and ; A. Dutt, Advs.

Advocate for Pet/Ap. : N.R. Das Gupta and ; J.M. Bannerjee, Advs.

Disposition : Appeal allowed

Judgement :

R.P. Mookerjee, J.

1. The appellant Parbati Debi was convicted at the criminal sessions of this Court under Section 120B read with Section 366, Penal Code and sentenced to undergo

rigorous imprisonment for 4 years.

2. The case for the prosecution is that Kishori a minor girl between 13 and 14 years of age lived with her parents Bhanulal and Earn Dassi at 42 Brojodulal Street. This premises belonged to Harnam who lived with Parbati on the top floor. It is not material for us to consider which of the two stories viz, whether Parbati was the married wife or the mistress of Harnam has been made out. It is alleged that on 6-4-1950, Parbati took out Kishori in a rickshaw to the Howrah Station. Parbati asked Kishori to board a train and when it was about to start the former got down on the plea of purchasing betel leaves. Shewnath who was also living at 42, Brojodulal Street and on the 3rd floor thereof was in the compartment when the train steamed off without Parbati in the train. Kishori and Shewnath reached Mokama Ghat, crossed over the river, boarded the train again and got down at Dalsing-sarai. At the latter place, Shewnath and Kishori were met at the station by one Sriram. Shewnath and Kishori lived in the house of Sriram occupying the same room and the same bed. Kishori was rescued by the police on 10-5-1950 on a requisition from the Calcutta Police. Shewnath and Sriram were also arrested. Kishori was thereafter under the orders of the Magistrate kept in a rescue home.

3. The circumstances under which Kishori was rescued and the arrests as aforesaid may be shortly stated Kishori was missing from about 11 a. m. on the 6th April and her father Bhanu-lal lodged information with the local police on the following day that his daughter was missing. In the entry made in the records of the local police station there is no reference to any name of any person suspected to be responsible for the disappearance of Kishori. The police referred Bhanulal to Court. On 11-4-1950 a petition was filed in the Court of the Additional Chief Presidency Magistrate for taking cognisance of the matter. It was stated that Parbati, Shewnath and Sriram already referred to above and Bholaram a brother of Shewnath were suspected to be responsible or implicated. Sriram who had been arrested at Dalsinghsarai as also Bholaram who was arrested at Calcutta were discharged. The committing Magistrate committed Parbati and Shewnath for trial in the Sessions.

4. Parbati was charged under Section 366, Penal Code, for

'kidnapping a minor girl from lawful guardianship with the intent that she might be or knowing it to be likely that she would be compelled to marry against her will or in order that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse.'

Both Shewnath and Parbati were further charged under Section 120B read with S 366, Penal Code, for.

'criminal conspiracy to commit the offence of kidnapping a minor girl from lawful guardianship with the intent that she might be or knowing it to be likely that she would be compelled to marry against her will or in order that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse.'

Both the accused had pleaded that they were innocent. Shewnath's case further was as it transpired from the trend of the cross-examination that Kishori was his married wife, an allegation which cannot be held to have been proved in this case.

5. The jury unanimously found both the accused guilty under Section 120B read with Section 366, Penal Code. So far as the charge against Parbati under Section 366, Penal Code, was concerned, the jury was divided 5 to 4. The learned Judge accepted the unanimous verdict of the jury under Section 120B read with Section 366, Penal Code, and sentenced each of the two, accused to rigorous imprisonment for 4 years. On the charge of kidnapping against Parbati under Section 366, Penal Code, in view of the divided verdict the jury was discharged and it was directed that she should not be retried on this charge and an entry be made to that effect on the charge to operate as an acquittal.

6. Shewnath did not prefer any appeal against the conviction and the sentence. Parbati preferred an appeal under Section 411A, Criminal P. C. Leave was given to the appellant by this Court under Section 411A (1) (b) of the Code, as being a fit case for appeal against the conviction on any ground of appeal which involves either a matter of fact only or a matter of mixed law and fact or any ground which appears to an appellate Court to be a sufficient ground of appeal.

7. It is now well settled that even though this Court has now the jurisdiction to go into the facts but due weight to the verdict of the jury is to be given and only when the verdict appears to be manifestly wrong or unreasonable that the Court should interfere.

8. Only one point has practically been raised in support of the appeal. It is urged that so far as the charge against Parbati under Section 120B read with Section 366, Penal Code, is concerned, the complicity of Parbati is dependent upon the uncorroborated testimony of the girl Kishori. The learned Judge presiding over the Sessions did not caution the Jury that before an accused was convicted on the uncorroborated testimony in any sexual case, the Jury has to be careful in sifting such evidence before finding the accused guilty. It is further contended that apart from the misdirection in the charge to the Jury as the whole appeal is now at large in this Court it must be held on the evidence that the conviction cannot be allowed to stand in the circumstances of this case on the uncorroborated testimony of Kishori.

9. On careful analysis of the charge to the jury by the learned Judge it must be held as has been frankly conceded by the learned counsel appearing on behalf of the State that no reference was made therein to the risk involved in convicting a person on the uncorroborated testimony of the girl Kishori in this case. The learned Advocate for the appellant went so far also as to contend that there was no reference in the charge to any evidence of conspiracy between Parbati and any other person far less with Shewnath the other accused.

10. With regard to the question of law as to whether the testimony of a girl in a sexual case unless corroborated in material particulars should not be accepted for convicting an accused, reference has been made to series of decisions.

11. The observations of the Court of Criminal Appeal in *King v. Baskerville*, (1916) 2 K. B. 658 had been interpreted in *Noor Ahmed v. Emperor*, 38 Cal. W. N. 108 to support the principle that it was extremely dangerous and, permissible only in exceptional cases to convict a man of a sexual offence on the uncorroborated testimony of the complainant, This rule must be properly emphasised in the charge to the Jury. If there be any corroborative evidence whether such evidence is

sufficient or not would depend on the facts and circumstances of each case. This principle was followed in *Chamuddin Sardar v. Emperor*, 37 Cr. L. J. 359 (Cal.), *Surendra Nath v. Emperor*, 38 C. W. N. 52, *In Sarat Chandra v. Emperor*, A. I. R. 1937 Cal. 463, *Sikandar Mian v. Emperor*, 41 Cal. W. N. 641 and *Taser Pramanik v. Emperor*, 44 Cal. W. N. 835.

12. On behalf of the State it is contended, that the rule of English Law as in the *King v. Baskerville*, (1916-2 K. B. 658) (ante) is not always applicable and has not been applied in all cases. This rule should be limited to cases of rape only and particularly in the social conditions of India, should not be introduced with the same rigidity by Indian Courts. This question was considered by a Full Bench of the Bombay High Court in *Emperor v. Banubhai Ardeshir*, 45 Bom. L. B. 281: A. I. R. 1943 Bom. 150. The rule that when a woman comes into the witness box and alleges that a certain individual in the dock has, committed a sexual offence against her, the Court requires that her evidence shall be corroborated, is restricted to cases of rape only and should not be extended to other cases of sexual nature. In *Abdul Gaffur v. Emperor*, I. L. R. (1938) 1 Cal. 636 a Bench decision of 1937 it was observed that the absence of the usual caution given to the Jury in sexual cases to the effect that it is unsafe , to rely on the uncorroborated evidence of the prosecutrix does not necessarily vitiate the verdict. The effect of such omission depends upon the facts of each case.

13. In another recent Bench decision of this Court *Bechu v. The King*, A. I. R. 1949 Cal. 613 My Lord pointed out that the so-called English Rule of caution requiring corroboration of the statement of a complainant in sexual cases has been imported into Indian law and practice but whether this rule is really necessary or not in India is a debatable question. Consequences of such a charge in the set up of the Indian . Society are very often disastrous. In many cases on such charge being made even a young girl, becomes outcaste and her chances of ultimate marriage are either completely ruined or very seriously affected. This rule, however, having been imported into Indian practice and procedure it has to be followed. A statement made by the girl, shortly after the occurrence would in many cases be taken as corroborative evidence. Whether a corroboration should be considered sufficient or not is really a question of fact and the time which elapses

between the occurrence and her statement has to be considered.

14. There is no presumption that in every case of rape the prosecutrix must be deemed to be an accomplice so far as her credibility is concerned. There can be no assumption in the absence of evidence that she is an accomplice. It may be desirable that in every case of rape the Judge must warn the jury that they should not convict unless the evidence of the prosecutrix is corroborated in the same manner as the evidence of an accomplice i.e. in material particulars by independent evidence establishing not only the crime but the identity of the ravisher. It is not the law that in the absence of such warning the charge in all cases would be bad. In a particular case where the prosecutrix is found to be untruthful or to be of an immoral character such warning must be given and an omission to do so would make the charge bad. It should, however, be remembered that the Jury with the above rule of caution in their mind may still convict on the uncorroborated testimony of the prosecutrix if the Jury be satisfied of the truth of her evidence. *Sen J. in Harendra Prosad v. Emperor*, 44 Cal. W. N 830 : I. L. R. (1940) 2 Cal. 180, had also pointed out as in *Bechu v. The King*, (a. i. R. 1949 Cal. 613) (Supra) that even if there be any general rule or practice in England to regard the prosecutrix in every case of rape as an accomplice such rule having regard to the difference in manners, custom and mode of life of women in India ought not to be imported in India without clarification. A statement made by the girl shortly after the incident complaining against the accused is corroborative evidence.

15. If it were necessary for us to decide the present appeal on the omission of the learned Judge to caution the Jury against accepting the uncorroborated testimony of the girl in a case of sexual offence we would have recorded our dissent from the very wide and general observations made by this Court in some of the earlier decisions. It would have then been necessary to refer the point for decision by a larger Bench. It may be pointed out that the rule supposed to have been laid down by the English Courts as in *the King v. Baskerville*, (1916) 2 K. B. 658 did not as a matter of fact enunciate such a wide rule for all kinds of cases of sexual offences. If reference is made to other English decisions *Bex v. King*, (1914) 10 Cr. App. 117, *R. v. Ellis Arthur Southern*, (1930) 22 Cr. App. 6, it would be noticed that they

dealt with cases where the uncorroborated testimony of a single witness was that of a very young girl or boy. It is, however, not necessary for us to discuss further whether the omission of the learned Judge in his charge to the jury to caution them from accepting the uncorroborated testimony of the girl is sufficient to set aside the conviction or not as on the evidence on the record we are satisfied that the evidence of Kishori is not sufficient to prove a case of conspiracy under Section 120B, Penal Code.

16. Apart from the question that there are material points of contradiction, between the evidence of Kishori's mother Earn Dassi and that of Kishori, the latter contradicts herself on very important points. At one place Kishori says that; she was asked by Parbati when she was scouring utensils, when her mother was sleeping, to leave with her in a rickshaw. Earn Dassi states that she had sent up Kishori to Parbati's quarters at about 11 in the morning. There is no reference to this visit in the deposition of Kishori. There is no evidence even by Kishori that anybody had seen Parbati and Shewnath to be conspiring for removing Kishori from lawful custody. The only fact which is stated by Kishori is that when she was taken by Parbati to the Howrah station Shewnath was in the compartment in which she travelled from Howrah to Mokama and then to Dalsingsarai. This statement, however, is also contradicted by herself when she states at another place that when the train reached Mokamah that she saw Shewnath for the first time. She at one place states that she travelled in a women's compartment and at another place she states that it was a general compartment. That Kishori was traced in the company of Shewnath in the house of Sriram at Dalsingsarai is no proof of there having been any conspiracy between Parbati and Shewnath at Calcutta.

17. Though Parbati has been acquitted of a charge under Section 366, Penal Code, there is no bar in law of her being convicted on a charge of conspiracy to commit an offence of kidnapping. On an analysis of the evidence, however, it seems impossible to support a charge of conspiracy so far as Parbati is concerned. Although from the evidence there may be some foundation for making a charge, against other persons for having entered into a criminal conspiracy to commit an offence under Section 366, Penal Code, there is no material on which the conviction of the appellant Parbati can be allowed to stand on a charge under

Section 120B read with Section 366, Penal Code. It may be pointed out that Parbati has been acquitted of a charge under Section 366 of the Code.

18. We must therefore hold that there is no material on record to support the verdict of the Jury for a conviction under Section 120B read with Section 366, Penal Code, so far as Parbati is concerned. This appeal is accordingly allowed. She is acquitted of the charge made under Section 120B read with Section 366, Penal Code. She is discharged from the bail bond.

Lahiri, J.

19. I agree.

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