

Dharam Pal Vs. the State

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Court : Himachal Pradesh

Decided On : Mar-29-1971

Reported in : AIR1971HP17,1971CriLJ1750

Judge : D.B. Lal, J.

Acts : [Evidence Act, 1872](#) - Sections 5, 118 and 133; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 367

Appeal No. : Criminal Appeal No. 5 of 1970

Appellant : Dharam Pal

Respondent : The State

Advocate for Def. : K.D. Sud, Adv.

Advocate for Pet/Ap. : P.N. Nag, Adv.

Disposition : Appeal dismissed

Judgement :

D.B. Lal, J.

1. This is an appeal against the judgment and order of the learned Additional Sessions Judge, Kangra at Dharamsala, whereby he has convicted Dharampal aged 17 years. under Section 376 of the Indian Penal Code and sentenced him to

undergo rigorous imprisonment for six months and to pay a fine of Rs. 200/-, in default to undergo further rigorous imprisonment for one month.

2. The prosecution case may briefly be stated. On 2nd November, 1968 at about 5.00 P.M. Kumari Ishro aged 10 years, who is the daughter of Munshi Ram of village Chhatrer, Tehsil Hamirpur was sent by her father to get grinded wheat at the flour machine of village Toni. The girl returned with a small bag of flour and when she reached the field of one Devi Singh, Dharampal accused had been waiting to meet her. He gave her a push, untied the string of her Salwar and criminally assaulted her. It is stated that when the girl started crying, her mouth was attempted to be gagged by her Dopatta. The penetration had taken place and the girl started bleeding. Her cries were heard by Sant Ram and Durga Dass who happened to pass by that place. Sant Ram could see the accused running away towards the village Toni. On reaching the place of occurrence, the witnesses found the girl lying naked and she was weeping. On enquiry she narrated the incident to them. Thereafter, Sant Ram informed the father of the girl, Mushy Ram, who came to the spot. He also found the girl with the Salwar near her feet which she was made to wear. The Salwar also got blood-stained. The girl was brought back to the house. It had grown dark and the distance for the Police Station was about eleven miles. Thereafter, on the next day, i.e., on 3rd November, 1968, the father brought the girl to the Police Station and the First Information Report was instituted. The police, as usual, sent the girl for medical examination to the Primary Health Centre at Hamirpur. The Lady Doctor S- Sharma could not examine her on 3rd November, 1968 because she herself was not feeling well. Accordingly, on 4th November, 1968, the girl was medically examined. The accused was also arrested and he was produced before Dr. M. N. Bannerji who medically examined him. No injury was found on his private parts. However, a mark of abrasion was noticed over his abdomen. The pyjama which the accused was wearing was subsequently recovered and it was found blood-stained. Similarly, the Salwar was also found blood-stained and the report of the Sexologist was also obtained to that effect. In this manner the accused was indicted for the offence of rape under Section 376 of the Indian Penal Code.

3. The prosecution produced eleven witnesses including Kumari Ishro. Sant Ram eye-witness and Munshi Ram the father of the girl. Besides them the Lady Doctor S. Sharma and Dr. M. N. Bannerji were also examined. The other witnesses were witnesses of the recovery or some police officials including the Investigating Officer.

4. The defence was one of denial, although the accused admitted that he did go to the spot as he was proceeding to village Tonk and happened to see the girl Kumari Ishro who was found weeping and when he asked the reason she could not reply anything. Subsequently, as the accused stated, he brought her to her residence and he himself went back to his house. The accused admitted that the pyjama belonged to him but failed to give explanation for the bloodstain. In respect of the abrasion mark, however, he stated that he was clearing a hedge and the abrasion was caused by the thorny bushes. It was also stated that there was enmity between Munshi Ram, the father of the girl, and the father of the accused who is a shopkeeper. Munshi Ram used to purchase articles on credit and there was some quarrel in respect of the dues. It was also stated that at the instance of Munshi Ram the shop of the father of the accused was once searched by the staff of the Food Inspectorate although no further action was taken thereafter. Then it was stated that there was some dispute in the Biradari of the accused who is a Khatri, as a marriage between a Khatri boy took place with a Rajput girl and Munshi Ram is a Rajput and hence he thought it proper to implicate the accused.

5. The accused did not examine any witness.

6. The learned Sessions Judge believed the prosecution witnesses and held that the offence of rape was proved against Dharampal accused and that resulted in his conviction and the sentence in the manner stated above. The accused has felt aggrieved of the decision and has preferred this appeal.

7. There is no dispute regarding the age of Kumari Ishro who was 10 years old at the time of occurrence. There is further no serious dispute regarding the time of occurrence. However, it was urged by the learned counsel that it had grown dark but there could not be any question regarding wrong identification because Kumari Ishro knew the accused from before and it was not difficult for her to have

recognized him. Similarly. Sant Ram (PW) could also recognize the accused as it had not grown sufficiently dark for non-recognition. Regarding the injury on the person of the girl, the Lady Doctor found the hymen torn and lacerated. The middle finger could easily be made to pass through the vagina, which was found red and tender on touch. She also found dried bloodstains on both sides of labia majora but no semen was found. However, the doctor did not find any signs of bruising or swelling on the labia majora or labia minora. She was of 'definite' opinion that the penetration of the male organ had taken place. The suggestion of the defence that the girl probably inserted her finger in her vagina and thus suffered injuries was rightly considered fantastic by the learned Sessions Judge. It was stated that the girl was ravished on a stony surface and. therefore, some injuries on that account could have been found. It was urged that some injuries on labia majora or labia minora should have been present but that too does not carry any weight, because the vagina was red and tender on touch and hymen was found torn and lacerated. She could not have necessarily suffered any more injuries. The learned Sessions Judge rightly discarded the suggestion of the defence that any injury on the male organ was probable in the circumstances. However, an abrasion was found on the right side of the abdomen and according to the doctor it could have been caused in the scuffle which must have taken place with the girl. It is further undisputed that the accused was found near the girl at the time of the occurrence. It is different that according to him he was innocent and found the girl weeping and brought her back to her house.

8. The main contention of the learned counsel for the appellant is that the statement of Kumari Ishro who is a child witness, cannot form the basis of conviction unless it is corroborated by other evidence in material particulars. The learned counsel referred to AIR 1933 Lah 667, Abbas Ali Shah v. Empreor. wherein it was held that:--

'Children are a most untrustworthy class of witnesses, for, when of a tender age they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others, and are greatly influenced by fear of punishment, by hope of reward, and by desire of notoriety.'

The case for which their Lordships made this observation related to a child witness who had seen the occurrence of murder committed on two elderly women. The instant case is one where the child witness is herself a victim of the assault and, therefore, the observation made in that case would not be strictly applicable to the facts and circumstances of this case. The rule of corroboration of the Statement of a child witness is not a rule of practice but it is rather a rule of prudence. That rule has been crystallized with the experience of Judges who very often find such witnesses under influence and their testimony tainted by extraneous circumstances. If the statement of a child witness inspires confidence and there is unlikelihood of tutoring and his demeanour is found straight-forward by the trial Judge, no corroboration would be required of his statement. The tender years of the child which is the victim of the sexual offence coupled with the circumstances stated above, rather render corroboration unnecessary, which, of course is a question of fact in every case. At the same time, the rule of prudence regarding corroboration must be present in the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case be corroboration before a conviction can be allowed to stand. The authority in support of this proposition is reported in AIR 1952 SC 54, Rame-shwar v. State of Rajasthan where it was observed that:--

'The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge.'

Similar view has been accepted In 1962 (11 Cri LJ 650 (Ker), Krishnan Chi-than v. State of Kerala. It is then to be considered, as to whether the statement of Kumari Ishro could form the basis of conviction without corroboration. The learned trial Judge noted the demeanourof the witness and found it truthful. She has given a consistent and intelligent account of crime that has been committed upon her. She is a girl of average intelligence which is clear from the questions put to her and the answers given by her leading to the satisfaction of the learned trial Judge. There is no material contradiction in her own statement. It is clear that she is not an accomplice but she is rather a victim of outrage. It was pointed out that she stated

that her Sal-war got stained with blood although the accused, according to her, had forcibly taken off her Salwar and had thrown it away at some distance. This is hardly a contradiction, because she was made to wear the Salwar later on and it got stained with blood because of the injury received by her. That is how the girl stated that the Salwar got stained with blood which was the result of the occurrence. She further stated that Durga Dass and Sant Ram (PW) had come to the spot, which she cannot be stated to have stated incorrectly simply because Sant Ram happened to state that he had come alone to the spot of occurrence. It may be that Durga Dass followed him soon after. According to Kumari Ishro, as the learned counsel pointed out, the two witnesses had seen the occurrence, but as evident, the witness stated her own estimate of the situation. When Sant Ram was obviously there and Durga Dass might have also arrived, it was natural for her to infer that both of them had seen the occurrence. It was then stated that Sant Ram had also come back to the place of occurrence. However, Sant Ram denied this statement but the contradiction is of a very minor character. As pointed out by their Lordships in AIR 1965 Puni 291, Mohan Singh v. State, such minor discrepancies in testimony of the child witnesses are in proof of their truth rather than a badge of falsehood. I am, therefore, of the opinion that the statement of Kumari Ishro (PW) could be relied upon and the conviction was rightly based upon her statement and circumstances existed which required no corroboration of her statement.

9. At the same time I do not hesitate in stating that if corroboration is sought for it does exist in the statements of the witnesses, Sant Ram (PW) and Munshi Ram (PW). Kumari Ishro narrated the event to these witnesses. The learned counsel for the appellant pointed out that there were material contradictions in the statement of Sant Ram as he compared his statement made to the police with the statement which the witness made before the trial Court and it was found that he had stated before the police that he saw a scuffle between the accused and Kumari Ishro which statement he denied before the trial Court.

Then the witness also stated that he had seen the Salwar lying on one side of the person of the girl and further that he had gone alone to the place of the occurrence and that he did not come back to the spot along with the father of the girl. All these

statements he denied before the trial court. The learned trial Judge relying upon AIR 1965 SC 277, Ugar Ahir v. The State of Bihar stated that the witness could be believed in part as the maxim falsus in uno falsus in omnibus, is neither a sound rule of law nor a rule of practice. Thus the circumstance that Kumari Ishro narrated the event to Sant Ram (PW) as severed from the rest of the statement of Sant Ram could be considered a corroborative piece of evidence. Similarly, she narrated the event to Munshi Ram (PW) her father who also came to the spot and brought her to her house. That was again a corroborative factor in the case. The discrepancy regarding the actual place where the Salwar was found either on the person of the girl or near her, amounts to a very minor contradiction which should not engage our attention. The blood stain found on the payjama of the accused remained unexplained. Similarly the blood stain was found on the Salwar of the girl coupled with the injury received by her. These are also corroborative factors. The accused was admittedly present at the spot, although according to him in entirely different situation, but a bruise was found on one side of his abdomen. There are also factors which corroborate the story of the child witness.

10. It was then urged by the learned counsel that Durga Dass one of the two eye-witnesses was not produced, according to the prosecution the reason was that he was won over by the accused. As I have stated before, the very statement of Kumari Ishro could form the basis of the conviction and no corroboration was needed by producing any witness. In the last it was pointed out that several years ago the shop of the father of the accused was searched at the instance of Munshi Ram, the father of the girl, and there was also a marriage of a Rajput girl with a Khatrl boy and all that accounts for enmity between the two families. According to Munshi Ram (PW) the search took place some 19 years ago and I do not think the enmity was of such a nature that Munshi Ram falsely implicated the appellant and thus exposed his daughter to a serious disrespect and disrepute. In AIR 1956 All 22, Bhagwat Prakash v. The State there is a valuable observation to the effect that 'cases of rape, involving bad reputation on the family of the victim, frequently are not brought to Court, and, if brought, are with the greatest reluctance, and therefore, if a girl does come forward and alleges that she has been raped, her evidence should carry more weight than the evidence of an ordinary witness.' In this background the statement of Kumari Ishro required extra weight and as I have

stated before, she gave a candid statement which was rightly believed by the learned trial Judge.

11. For the reasons, stated above. It was proved beyond reasonable doubt that the appellant committed the offence of rape upon this minor girl and the sentence awarded was rather lenient. I do not find any ground to interfere with the decision and dismiss the appeal. The appellant is on bail and he should at once surrender to serve out the sentence and pay the fine imposed.

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