

Ram Murti

Vs

State of Haryana

Criminal Appeal No. 62(N) of 1967

(I. D. Dua, J. M. Shelat JJ)

14.04.1970

JUDGMENT

DUA, J. -

1. This appeal is by special leave from the Judgment of the Punjab and Haryana High Court in Criminal Appeal No. 913 of 1966. The appellant, Ram Murti, along with Suresh Kumar, Pratap Singh and Prem Kumar Mittal, was tried in the Court of the Additional Sessions Judge, Ambala, on charges under section 366, 366-A and 376, I.P.C. Pratap Singh, Suresh and Prem Kumar Mittal were given benefit of doubt and acquitted. According to the Trial Court, the prosecutrix Satnam Kaur, a student of 9th class, Dev Samaj Girls' High School, Ambala City, had improved upon her earliest version in respect of these accused and the possibility of falsely implicating them by herself or at the instance of Shri Har Ram, Assistant, Sub-Inspector, could not be reasonably ruled out. The appellant was, however, held to be the chief and real culprit and was accordingly convicted under Section 366, 366A and 376, I.P.C. and sentenced to 5 years' rigorous imprisonment on each count. The sentences were ordered to be concurrent. It was observed that the appellant did not deserve any leniency because being a medical practitioner and a teacher he had taken undue advantage of his position in both capacities. On appeal the High Court acquitted him of the charge under Section 376, I.P.C. but maintained his conviction and sentence under Section 366, I.P.C. On appeal by special leave in this Court the appellant challenges his conviction and sentence. The appellant is not represented by counsel. He is on bail and is not present in court; but he has submitted written arguments and has requested that they may be considered in his absence.

2. The prosecution story, as given by the prosecutrix, may now be broadly stated, Satnam, Kaur, the prosecutrix, daughter of Hans Raj, a refugee from West Pakistan, was a student of 9th class, Dev Samaj High School, Ambala City, at the relevant time. One Sumitra Devi was also studying with her in the same class. Ram Murti, appellant, a medical practitioner also used to teach in this school. He used to take three periods a week of the 9th Class. The annual examination in the school concluded on March 23, 1965 and on the following day there was some function in the school. After the function, on March 24, 1965, Sumitra Devi took Satnam Kaur to the appellant's house so that he may disclose to them the marks secured by them in the examination. This was pursuant to the appellant's message conveyed through Sumitra Devi. Both these girls reached the appellant's house at about 6 or 7 p.m. A car was parked in front of that house. The driver was sitting in the car and Pratap Singh was standing near it. The appellant took both the girls inside the house and entertained them to tea. He also disclosed to them the marks secured by them in the examination. As the tea tasted somewhat bitter and Satnam Kaur felt slight headache, she requested the appellant to take her to her house. The appellant promised to do so. As Sumitra Devi went upstairs to talk to the appellant's wife Satnam Kaur was taken by the appellant to the car. Pratap Singh and Suresh Kumar

also got into it. Instead of taking her to her own house she was taken to Suresh's house where all of them had sexual intercourse with her against her will and without her consent. Outside that house the driver of the car threatened her that she would be killed if she refused to go in or raised alarm. At midnight they took her to Ambala Cantonment in the same car and in the shop of a tailor behind Nigar Cinema, the key of which was with Suresh, they again raped her under threat of life. In the morning at about 4 or 5 a.m. they took her to the house of Prem Mittal in Prem Nagar. Prem Mittal was in the house. After leaving Satnam Kaur there the appellant and the driver of the car, locked the front door of the house and went away. In the evening Ram Murti returned, entering the house by the back door. At night Prem Mittal had sexual intercourse with her against her will and in spite of her resistance. On the following day Pratap and Suresh again raped her in that house. She was also given some bitter liquid to drink twice against her will. On the night of 27th March, Pratap and Suresh took her to Chandigarh in a bus and kept her in the waiting room at the railway station. She was threatened with life if she raised alarm. In the morning she was brought back to Prem Mittal's house in Ambala where Pratap, Suresh and Prem Mittal had again sexual intercourse with her, She was kept in that house till March 29, 1965, Suresh and Pratap took her to Chandigarh and kept her in the waiting room at the Chandigarh railway station. The following morning when they were going from the railway station towards the town near the crossing of the roads she saw some police officers and raised an alarm. Suresh and Pratap left her there and she narrated her story to the police officers. They took her to the police station at Chandigarh and recorded her statement. The police brought her back to Ambala City where Hari Ram, Assistant Sub-Inspector threatened her not to involve Sumitra and Ram Murti in this affair otherwise he would get all the members of her family arrested. She was taken before the Chief Judicial Magistrate, Ambala, where she made her statement which, according to her, was in accordance with the directions of A.S.I. Hari Ram. After reaching her parents house she was taken by her father to the police station Ambala Cantonment and her statement was recorded by the Judicial Magistrate, Ambala city.

3. As the appellant was unrepresented by counsel in this Court we requested the counsel for the State to take us through the evidence. The first point which requires consideration is that of the age of the prosecutrix. In the Trial Court the prosecutrix gave her age as 17 years. In her statement before the Chief Judicial Magistrate made on March 31, 1965, she gave her age as 15 years. In her statement under Section 164, Cr. P.C., made before Shri Hiralal Mehra on May 21, 1965 she stated her age to be 15 1/5 years. In our opinion, it is not at all safe to rely on her own statements about her age.

4. Exhibit PA is the certificate given by Dr. Ajmer Kaur, Senior Medical Officer at Chandigarh (P.W. 1), who had examined Satnam Kaur on March 30, 1965. According to this certificate Satnam Kaur appeared to be about 16 or 17 years old but for a correct estimate of age the police was advised to get her bones X-rayed. This certificate further shows that Satnam Kaur was used to sexual intercourse and her hymen was torn, the rupture appearing to the doctor to be old. In her evidence in the Committing Court Dr. Ajmer Kaur, when questioned, was unable to say whether the rupture of Satnam Kaur's hymen was the years' old or more. Satnam Kaur's age as 15 years described at the top of Ex. PA was inserted at Satnam Kaur's instance. Exhibit PL is a copy of the entry from the Register of Births maintained by the Municipal Committee, Ambala City. According to this entry, on September 27, 1949, Bhagwanti Dai reported about the birth of a daughter on September 25, 1949, to Hans Raj, son of Ramkher, Jaggi labourer by profession, resident of house No. 393. Kaith Majri. The name of the child was not mentioned. The name of the mother also does not find place in the entry but her age was recorded as 25 years. This report also shows that the parents had three children.

5. Maya Devi, mother of the prosecutrix appeared as P.W. 14 on September 16, 1966. She gave her age to be 40 years. Her statement in regard to her children and their age is :

"My marriage with Hans Raj my husband took place about 27 years back when we were both in West Pakistan. After the partition of the country we settled at Ambala City. Six children were born out of this wedlock, 4 daughters and two sons. The first child was a boy, namely Jagdish Lal who is about 22 years of age. Second child was our daughter Shanta aged 20 years. The third child born was our daughter Satnam Kaur who is about 17 years of age. She was only 15 years old at the time of the occurrence. Satnam Kaur was born at Ambala City. The name of the Dai who had attended this delivery was Bhagwanti."

In cross-examination she stated that all the six children born to her were alive, Bhagwanti Dai was not produced as a witness though she was alive as stated by Maya Devi. Hans Raj appearing as P.W. 18 said on this point :

"I am a displaced person from West Pakistan having settled at Ambala after the partition of the country. Before coming to Ambala I had spent a year at Karnal. My marriage with Maya Devi was solemnised about 27 years back. Maya Devi gave birth to 6 children, 4 daughters and 2 sons. The first was son Jagdish Lal, aged about 22/23 years, the second daughter, Shanta Devi, aged 17/18 years and the third was Satnam Kaur who was born 2 1/2 years after her elder sister Shanta Devi. Satnam Kaur is about 17 years of age now. She was born at Ambala after the partition of the

In Cross-examination he stated :

"I cannot tell what was the age of my wife at the time of our marriage. I am 50 years of age. She is now 40 years old. Our marriage took place 27 years back. The age of my wife at the time of the marriage may be calculated. My son Jagdish Lal was born within one year of the marriage. Shanta, the eldest daughter was born 2 1/2 years after the birth of Jagdish. Satnam was born 2 1/2 years after the birth of Shanta It is correct that one of my daughters died at Ambala. The birth name of Satnam was Ram Rani but her name was entered as Satnam Kaur when she was admitted in the school. Bhagwanti Dai had given the name Satnam of this girl when her birth was reported by her."

6. The Trial Court, in support of its conclusion on the question of age of the prosecutrix, relied on the birth certificate Ex. PL and the report of Dr. Ajmer Kaur, Ex. PA. The mission on the part of the prosecuting agency to get Satnam Kaur's bones X-rayed as advised by Dr. Ajmer Kaur was not considered by that court to be very material. Considering that the prosecutrix was only a student of 9th Class at the time of the occurrence that court felt that Dr. Ajmer Kaur's estimate of her age was trustworthy and the prosecutrix was held to be definitely below 18 years of age. That court so took into consideration an unproved and unexhibited school certificate which appears to have been obtained by the Investigating officer from the Dev Samaj School. According to this certificate the date of Satnam Kaur's birth is stated by the Trial Court to be August 5, 1948. We had a look at this document. It is dated April 9, 1965 and purports to certify the date of Satnam Kaur's birth according to the School register to be November 5, 1948 and is signed by some one describing herself as Head Mistress, Dev Samaj Girls' High School. We fail to understand how the Trial Court felt justified in taking this document into consideration and holding the date of birth as entered in this document to

be August 5, 1948. We, however, need not say anything more about the merits of this document because the counsel for the State in this Court has rightly declined to place any reliance on it. In the High Court the learned single Judge dealt with the question of age in the following manner :

"According to her medical examination by Dr. Ajmer Kaur, mentioned above, she was between 16 and 17 years of age. During the course of investigation, her birth entry PL was obtained showing that a daughter was born to Hans Raj on 25th September, 1949, with the aid of Bhagwanti Dai. This entry was made in the register on 27th September, 1949. There is evidence on the record that Bhagwanti was acting as a Dai at the time of the birth of Satnam Kaur. Moreover it is also amply clear from the statements of Hans Raj and his wife that she was below 18 years of age. Besides the above, there is the school entry which shows that Satnam Kaur was born on 5th August, 1948. It is true that there is discrepancy between the school certificate and the birth entry PL. But in any case, her age was proved to be below 18 years at the time of the commission of this offence. The learned counsel for the appellant submitted that Dr. Ajmer Kaur advised X-ray examination of the prosecutrix to find out her age, but that was not done. The counsel, therefore, maintained that there was no satisfactory evidence on the record to show that she was below 18 years at the time of this occurrence. As remarked above, I have no doubt in my mind that taking into consideration the statement of Hans Raj, father of Satnam Kaur, and her mother as also the medical examination by Dr. Ajmer Kaur, entry PL, and school certificate, she was definitely below 18 years."

7. It is clear that in the High Court also it was not appreciated that this unproved and unexhibited school certificate could not be treated as evidence in the case. Nor was it noticed that according to this document Satnam Kaur's date of birth was November 5, 1948. The question of age of the prosecutrix in cases under Section 366 and 376, I.P.C. is always importance. It was particularly so in this case because according to the medical evidence the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old. The High Court having acquitted the appellant for an offence under Section 376, I.P.C., because the prosecutrix appeared to be a consenting party not only to the impugned acts of sexual intercourse in question but even on earlier occasions, it was, our opinion, a fit case in which that court should have examined the question of her age more closely. On the evidence on the record we are far from satisfied that there is any trustworthy evidence on the record on which the conclusion that Satnam Kaur, prosecutrix, was under 18 years of age in March, 1965 can safely be founded.

8. This takes us to the question whether Satnam Kaur was compelled or induced by deceitful means to accompany the appellant. The High Court has dealt with this aspect in these words :

"It was then argued by the appellant's counsel that it was not Ram Moorti who actually took or enticed her away but it was Satnam Kaur herself who went to his house and from there to various other places as already stated in the earlier part of my Judgment. But we have it on the record that Ram Moorti was a teacher in the school and had, even before this occurrence, committed sexual intercourse with Satnam Kaur a number of times in the school so much so that she became pregnant and he arranged her abortion by a Dai. Being a medical practitioner, it was not difficult for him to do so. However, it is clear from the statement of Satnam Kaur that the appellant approached Sumitra, asking her to bring Satnam Kaur with her on the day of occurrence on the pretext that he would tell them their marks. If this

enticement had not been offered, very likely Satnam Kaur would not have gone to Ram Moorti's house. Ram Moorti had arranged for a car and thereafter took her away to various place and raped her. Therefore, there is enough evidence on the record to show raped her. Therefore, there, is enough evidence the record to show that it was Ram Moorti who enticed her and took her away on the day of occurrence. The offence under Section 366 thus stands proved against him."

Here again, we are unable to agree. The prosecutrix has made several divergent statements. Keeping in view the medical evidence which shows that the prosecutrix had been used to sexual intercourse, in order to accept her statement that she was compelled, threatened or otherwise induced to go with the appellant, there should, in our opinion, be corroboration of some material particular from some independent source and her bare statement cannot be considered sufficient to sustain the appellant's conviction. It is true that according to the courts below the appellant has exploited his position both as a medical practitioner and as a teacher and he has been having for some time past illicit intimacy with Satnam Kaur. But the charge in the present case consists of what is stated to have happened between March 24 and March 30, 1965, when she is not shown to be under 18 years of age. In those days we do not find any evidence of inducement, threat or compulsion on the part of the appellant towards the prosecutrix. There is thus no evidence on the record on which the offence under Section 366, I.P.C. can be sustained against the appellant. The appeal is, therefore, allowed and the appellant acquitted. He need not surrender to his bail bond which must be considered to be discharged.

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