Ram Kishan Aggarwala

Vs

State of Orissa

Criminal Appeal No. 140 of 1971

(Y.V. Chandrachud, V.R. Krishna Iyer JJ)

04.03.1976

JUDGMENT

KRISHNA IYER, J. -

1. The circumstances of this case establish beyond doubt that there is no law of limitation on the lascivious propensities of man and that age cannot wither overpowering moods or voluptuousness.

2. The appellant, a 65 years old businessman of Cuttack is alleged to have committed rape on a girl, 6 years of age, on June 24, 1967. The scene is a colony where poor people live. The victim, Anjali (PW 6), is playing with her playmate Ashok and another little girl Soudhamini on the verandah of the house of the rather well-to-do Marwari hexagenarian. The time is around 11 a.m. The old man lifts Anjali in an erotic impulse, takes her upstairs, places her on his lap and, after removing the tiny garment or underwear, goes through the exercise of inserting his genitals into the vagina of the victim. There is bleeding consequent on the violent violation and then the appellant brings the little belle downstairs crying. She tearfully complains to her mother about what had happened and within a short while the aunt and uncle of the little girl convey the first information to the police who, after investigation, prosecute the appellant for an offence under Section 376 I.P.C.

3. The Assistant Sessions Judge, who tried the case, found the offence of rape proved and punished the offender condignly by sentencing him to three years' rigorous imprisonment plus a fine of Rs. 5,000. The Sessions Judge, who heard the appeal, confirmed the conviction but showed commiseration on sentence, probably persuaded by the advanced age of the culprit and reduced the period of imprisonment to six months and fine to Rs. 500. The appellant evoked the revisional powers of the High Court but, repelling the contentions - factual and legal - the learned Judge held that the conviction and sentence were amply justified. The last court in the country - that is, the Supreme Court - has been moved by the desperate appellant and his counsel Shri D. Mukherjee has been given a long and patient hearing by us both on the question of culpability and the quantum of punishment. We have not been persuaded to differ from the finding of guilt and the imposition of sentence. In such cases, brevity in the statement of reasons should be the rule at the Supreme Court level and so we are not inclined to launch on lengthy discussion of the many points we listened to.

4. We are satisfied - and, indeed, Shri Mukherjee fairly admitted - that the six-year-old Anjali had been the victim of rape on the date and at the time set out by the prosecution. The main point on which Counsel laid stress was the identity of the criminal. The plea of the appellant was one of total denial which was consistently disbelieved at the forensic triple-decks through which he had passed. There is the evidence of Anjali and her mother. The playmate Ashok (PW 2) has given corroborating testimony. The first information has been prompt and has implicated the accused.

There was blood on the genitals of the appellant to explain which he invented the story of itches and scratches thereon. It is true that while the evidence before the committal Court has been consistent and total, implicating the accused, there has been some wobbling in the trial Court on the part of the little girl and her mother, for reasons not far to seek. Even so, the evidence in the trial Court is explicit enough to implicate the accused, even apart from the depositions in the committal Court which have been read as evidence under Section 288, Cr. P.C. There are corroborating materials inescapably fixing the guilt on the accused, such as the bloodstain on his clothing. Even assuming that the evidence of little children requires general corroboration, we are satisfied that the proved circumstances that the girl was playing in broad daylight, that she was carried away by the accused and brought bake crying after a time, that there was a first information lodged before the police shortly thereafter, that the medical examination of the accused's genitals indicated the presence of spermatozoa, are sufficiently corroborative of the guilt of the appellant. Even otherwise, only grave injustice, manifest on the record, can induce this Court to demolish the concurrent finding of guilt by the three courts below. There is little to be said for such a drastic step in the circumstances unfolded in this case.

5. We therefore hold that the conviction is correct. Counsel for the appellant movingly submitted that his client is past 70, belongs to a respectable family, has served some days in jail and may not be incarcerated again. Having regard to the beastliness of the crime and the short term of imprisonment imposed, we are in no mood to attenuate the punishment, and, accordingly dismiss the appeal.

6. One parting thought. According to temporal laws and lights we judge. Who knows this jail life of an old man may, by a process beyond out ken, kindle in him a new flame of search for the Truth and make him a finer person, inside and outside ? No one is too old to become good and De Profundis was written in prison by a sex pervert who was also a literary genius.

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