

Lalta Prasad

Vs

State of M. P.

Criminal Appeal No. 78 of 1973

(N. L. Untwalia, Syed M. Fazal Ali JJ)

11.01.1979

JUDGMENT

Untwalia, J. -

1. This is an appeal by special leave from the judgment of the High Court of Madhya Pradesh confirming that of the trial Judge, whereby the appellant was convicted under Sections 365 and 376 of the Indian Penal Code with imposition of 3 years' and one year's rigorous imprisonments respectively. The sentences were directed to run concurrently.

2. The prosecution case at the trial was that Shakuntala, PW 35 was a minor girl of about 14 or 15 years of age at the time of the occurrence in the year 1969. Her father had died a few years ago. She was living with her widowed mother and with her brother Jagdish, PW 1. Her mother was running a small hotel which was at a short distance from their house. The appellant was about 35 or 37 years of age and was a widower having two children from his first wife. Appellant started making overtures to Shakuntala, which was not liked by Jagdish. After Jagdish had gone to his shop on September, 28 1969, at about 9.00 p.m. the appellant is said to have kidnapped Shakuntala from the lawful guardianship of her mother. It is alleged that he kidnapped her under threat of causing hurt to her with a knife. It is further stated that the appellant took Shakuntala to various places in Madhya Pradesh and Rajasthan and was roaming with her for a period of about a month and a half. During this period the appellant is said to have committed rape on her. The defence of the appellant was that he had committed no offence. Shakuntala was a major girl of about 18 or 19 years of age. She was in love with him. They were betrothed and were to be married with consent of the mother and other relations. Only the brother, Jagdish, was objecting to this. The appellant had never committed any rape on Shakuntala. The trial Court as also the High Court found that the girl was 14 or 15 years of age at the time of the occurrence and, therefore, both the charges were established against the appellant on the evidence of the prosecution witnesses.

3. First we shall deal with the charge under Section 366 of the Indian Penal Code found proved against the appellant. In relation to this charge, we shall assume in favour of the prosecution that Shakuntala was below 18 years of age; but then, two ingredients further must be established : (i) that she was kidnapped or abducted from the custody of her lawful guardian, and (ii) that she was kidnapped or abducted with the intention of compelling her to marry any person against her will or in order that she may be forced or seduced to illicit sexual intercourse. According to the evidence of the mother Sohan Bai, PW 5 as also that of Shakuntala herself, it is clear to use that she was taken away by the appellant with the consent of the mother. The story of the girl that she was taken away under threat is not believable, in view of the number of letters Ex. P series, which were written to Lalta Prasad by her before the incident in question and which she was forced to admit that all these

letters were written by her. We have been taken through some of these letters and the trend of these letters written at a point of time when there was no question of kidnapping, abduction or rape clearly shows that the girl was immensely in love with the appellant. She was betrothed to him and had almost accepted him as her husband, although she was not till then married to him. In the background of the facts stated in those various letters, it is difficult to believe that the girl was kidnapped or abducted under fear of causing hurt to her. It is clear to us that she went with Lalta Prasad of her free will and with the consent of her mother, as her prospective marriage with Lalta was not liked by her brother Jagdish.

4. We are conscious of the fact that PW 5 Sohanbai was allowed to be cross-examined by the State counsel because whatever she had said in Court goes a long way against her statement before the police said to have been given during the course of the investigation. That statement was marked Ex.P. 36. When she was confronted with this statement, she said in Court that she had given no such statement. We have been taken through Ex.P. 36 in full. Judging that statement recorded by the police in the light of the facts which appear from the letters of Shakuntala as also in the light of the evidence of Shyam Lal PW 1, husband of Gita, elder sister of Shakuntala and the evidence of Mohanbai, aunt of Shakuntala (Chachi), we are not prepared to accept that her statement contained in Ex.P. 36 was her statement given before the police. Every line of that statement smacks of as being the statement of Jagdish, and not as that of his mother. That statement does not appear to us to be a true statement of Sohanbai made during the course of investigation. We are, therefore, inclined to believe her testimony in Court and not disbelieve that because of her alleged statement before the police.

5. Further, in the background of the contents of the letters Ex.P. series admittedly written by shakuntala to the appellant, it is clear that she was not taken away by the appellant for the purpose of compelling her to marry against her will. She wanted to marry him at that stage. It appears that after this occurrence Jagdish arranged her marriage with one Amba Lal. We are also not prepared to believe that she was taken away by the appellant to seduce her to illicit intercourse and we shall deal with this a bit more fully when we come to the charge under Section 376 of the Indian Penal Code.

6. Shakuntala's evidence in Court is very much against the appellant. But even so she had to admit in cross-examination that she accompanied the appellant because she was asked by her mother to do so. She has deposed about only one incident of the appellant's committing rape on her under threat of knife and that was in Kota. When she was deposing in Court, she was already a married woman and it is not strange to find that in order to save her honour she had to relate that incident in that fashion.

7. Now coming to the charge under Section 376 of the Indian Penal Code, the most important evidence to be looked into is of age. On the evidence of Shakuntala, uncorroborated as it is by any other piece of evidence, it cannot be held that she was ever subjected to sexual intercourse without her consent. That being so, her age plays a decisive role in relation to the charge under Section 376.

8. Before we refer to other pieces of evidence, we may mention that Sohanbai stated in Court that Shakuntala was born in Sambat year 2008. Roughly speaking, that will make Shakuntala 17 or 18 years of age at the time of the occurrence. Sohanbai definitely said in her testimony that she was at that time 19 or 20 years old. Even ignoring that definite assertion, we feel no difficulty in accepting the evidence of Sohanbai and in holding that Shakuntala was above 16 years of age at the time of the alleged occurrence. Next we want to point out that although Shakuntala in her deposition in Court stated that she was 14 or 15 years of age at the time of the occurrence, that testimony is

wholly untrustworthy because in a panchnama before the police she herself had made an endorsement in her own handwriting thus :

Sub-Inspector Saheb write my age about 19 years approximately. Shakuntala Devi.

It is important to remember that when she made that endorsement on the panchnama before the police it was immediately or shortly after the alleged occurrence and at that time she was not married to Amba Lal. When she was deposing in Court as we have already stated, she was married to Amba Lal. Here testimony in Court, therefore, cannot be preferred to what she has endorsed in the panchnama. Although that is not a substantive piece of evidence, we can safely say that her testimony in Court about her age is not reliable.

9. Now, we come to the medical evidence. On the side of the prosecution, two doctors have been examined, namely Dr. Arjun Sahai Verma and Dr. Shrilal Mathur PW 31 and PW 32 respectively. They deposed that Shakuntala was about 14 to 15 years of age. They had done certain tests on the basis of which they were giving their testimony. But then, Dr. Mathur was constrained to admit in cross-examination that there could be a difference of one or two years, even after all these tests regarding the estimation of the age of the girl and for several other reasons. On the other hand, we find Dr. R. K. Gupta, DW 6, was a doctor practising at Kota. He had deposed that on November 5, 1969 when he examined Shakuntala, he estimated her age to be about 18 years. He also gave his finding on the basis of X-Ray reports taken. We thus get different versions by different doctors and also the admission of Dr. Mathur that there can be a difference of one or two years in estimating the age of a girl.

10. The prosecution also relied upon the copy of the school certificate produced by Bansilal, PW 21 in which it is stated that at the time of her admission in the school on January 1, 1962, Shakuntala's father had given her date of birth as January 1, 1956. On that basis, she will be less than even 14 years of age at the time of the occurrence. Another application form was produced by Bansilal in re-examination which shows that the girl was again admitted in the same school in class VI. This application form is said to have been filled in by Jagdish, giving her date of birth as January 1, 1956. The statement in this application form could not be proved from the evidence of Bansilal in re-examination. Jagdish, the alleged maker of that statement was not asked about it. The copy of the school certificate which was proved by Bansilal was of a private school and not of a Government school. The date of birth mentioned in that copy could not be an evidence of the statement of the deceased father of the girl that he had mentioned her date of birth as January 1, 1956 in the application form when the girl was admitted in January 1962. That application form was not produced nor was it proved. In our opinion, therefore, the evidence of Bansilal does not help the prosecution case and cannot be said to have proved the age of the girl as being below 16 years of age. Jagdish's evidence on this point is wholly tainted. He was opposed to Shakuntala being given in marriage to the appellant. He had, therefore, his own axe to grind. Hence we have come to the conclusion that the prosecution has failed to prove by reliable evidence that the girl was below 16 years of age at the time of the alleged occurrence. On the other hand, on the basis the evidence which we have already alluded to, we are of the opinion that she was above 16 years of age. The charge under Section 376 will, therefore, fail on that account. It could not be established nor has the High Court found that she was ever subjected to any sexual intercourse by the appellant against her will. On the other hand we find from the evidence of Dr. Bina, PW 36, that when she examined the girl after the occurrence, she found old rupture of hymen and no sign of any rape or any forceful intercourse with her. That being so, the charge under Section 376 against the appellant also fails. It appears to us that it was an unfortunate case where the mother and other relations of the girl were

agreeable to Shakuntala being given in marriage to the appellant; but, somehow or the other, Jagdish was not reconciled to this. He was, perhaps, the sole staunch opponent of this proposal and the whole case seems to have been engineered at his instance. In our opinion, therefore, there has been a miscarriage of justice in this case and neither the trial Court nor the High Court was justified in convicting the appellant under any count.

11. For the reasons stated above, we allow the appeal, set aside the convictions and sentences imposed on the appellant. He will now be discharged from the bail bonds.

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