

SUPREME COURT OF INDIA

State (Andaman And Nicobar Admn.)

Vs.

Shyam Raj

(N S Hegde and B Singh JJ.)

04.11.2003

JUDGMENT

Santosh Hegde, J.

1. Andaman & Nicobar Administration is in appeal before us against the judgment of the High Court of Calcutta dated 19.6.1995 whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgment and conviction of the Sessions Judge, Andaman & Nicobar Islands in Sessions Case No. 22 of 1991 by which judgment the learned Trial Judge convicted the respondent for offences punishable under sections 363 and 376(2)(b) of the IPC, and sentenced him to undergo RI for 10 years with a fine of Rs. 2,000 for the principal offence.

2. Brief facts necessary for the disposal of this appeal are as follows :

“The prosecution alleges that on 21.1.1989 at about 7.30 p.m the respondent committed rape on PW-19 who at that time was aged about 3 1/2 years. It is the case of the prosecution that on 21.1.1989 in the evening parents of the victim i.e PW-3 and PW-9 had left the child in the custody of PW-1 while they had gone to their place of work. During the said time PW-1 with other members of family left the child in her own house and went to the house of PW-9 to watch a television programme and it is during their absence it is alleged that the respondent committed the offence on the child. Though according to the prosecution the child who was examined during the trial as PW-19 had immediately after the incident in question narrated the incident to PWs- 1, 4 and 9, when she was examined in the court she was unable to recollect what actually transpired at the time of the incident in question. But accepting the prosecution case on circumstantial evidence the trial court convicted the respondent herein for the offence as stated above.”

3. An appeal filed by the respondent before the High Court came to be allowed, setting aside the conviction imposed on the respondent. The High Court came to the conclusion that the case being one based on circumstantial evidence, the prosecution had not established all the material circumstances based on which the conviction can be imposed on the respondent. It also noticed the fact that the evidence of PW-1 if scrutinised carefully would indicate that

she was trying to protect her brother who could also have been a suspect. In such circumstances, the High Court was of the opinion that it is not safe to base the conviction in the absence of any evidence from the victim herself.

4. In this appeal Mr. S. Wasim A. Quadri, learned counsel appearing for the appellant, contended that the High Court could not have re-appreciated the evidence which was accepted by the trial court and substituted the same by its own subjective opinion. He contended that from the medical evidence as well as from the evidence of PWs-1, 3 and 4, it is quite clear that it is the respondent who committed rape on the victim. He also pointed out from the evidence on record that the respondent was a resident of the same locality and he had access to this child at the relevant point of time when there was nobody else around. He also pointed out that at the relevant point of time the respondent was seen around the place of incident therefore, these circumstances coupled with the injury on the respondent were sufficient to base the conviction which the High Court has erroneously reversed by the impugned judgment.

5. Shri P.K. Ghosh, learned Sr. Counsel appearing for the respondent contended that the High Court was justified in reversing the finding of the trial court because a complete link in the chain of circumstances has not been established by the prosecution. He submitted that the judgment of the trial court was based more on suspicion than on proved facts. He also contended that the fact that respondent was found near about the house of the victim cannot be treated as a circumstance against his guilt because he is a resident of that locality like most of the prosecution witnesses and his presence in the said locality even if it is true was nothing unusual or inculcating. He also contended merely because there was some injury on respondent that by itself would not conclusively prove that the respondent was responsible for the rape on the victim.

6. Having heard the learned counsel for the parties and perusing the records we think that the High Court was justified in coming to the conclusion that the prosecution has not established beyond all reasonable doubt that it is the respondent who had committed the rape on the victim. As contended by the learned counsel for the respondent that the alleged offence against the respondent has not been established by the prosecution in this case. The evidence of PWs-1, 4 and 9 by themselves would not be sufficient to come to the conclusion that it is the respondent who is responsible for the rape on the victim. As urged by the learned counsel for the respondent that the judgment of the trial court proceeds more on the basis of suspicion than on proved facts. As a matter of fact the respondent has pleaded an alibi which was supported by the evidence of defence witnesses examined by him which was not taken into consideration by the trial court. The High Court also failed to take into consideration the enmity between the victim's father and the respondent because of the complaint filed by the respondent against child's father, therefore, the High Court was justified in not accepting the prosecution case.

7. For the reasons stated above the appeal fails and stands dismissed.