
(1985) 09 DEL CK 0014

In the Delhi High Court

Case No : Criminal Appeal No. 179 of 1984

Jai Bhagwan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-09-1985

Acts Referred:

Citation : (1986) 2 RCR(Criminal) 189

Hon'ble Judges : G.R. Luthra, J

Bench : Single Bench

Judgement

1. Jai Bhagwan sent his present appeal through the Superintendent Jail. He was convicted in respect of an offence of rape of minor girl Kumari Raman alias Ramnesh aged about 8 years, punishable under S. 376, IPC, and was sentenced to undergo rigorous imprisonment for 14 years besides a fine of Rs. 2,000/- in default of payment of which he was directed to undergo further rigorous imprisonment for two years. He was convicted and sentenced on February 28, 1984 by Shri S. M. Aggarwal, Addl. Sessions Judge, Delhi.

2. Kumari Raman is daughter of Smt. Lila Devi (P.W. 1) and Bhagwan Dass (P.W. 8). On June 2, 1982 (the date of occurrence) she was studying in 1st standard of Nagar Nigam Prathamik Vidyalaya (Municipal Corporation Primary School), Raghbir Nagar, New Delhi.

3. The case of the prosecution is briefly as follows :

Kumari Raman was born on November 7, 1974. On June 2, 1982 at about 3.40 p.m., she was sitting on an open drain for easing herself. The appellant Jai Bhagwan and one Rattan Lal forcibly took her in a room in the Municipal Corporation Primary School building which is near the aforesaid drain. Her mouth was gagged by Rattan Lal while the appellant made her lie down on the ground and raped her. She was crying. Smt. Lila Devi (PW. 1), mother of Kumari Raman (PW 5), was waiting for the latter. When Raman did not come back to her mother, the latter went out for search. Attracted by cries she went inside the

primary school. She found Raman crying and the appellant and Rattan Lal were there. Blood was trickling on the thighs of Raman. Both the appellant and Rattan Lal tried to run away. The appellant was apprehended by one Ram Chander (PW 9) after a chase of small distance while Rattan Lal escaped after scaling the boundary wall of the school.

4. Kumari Raman was taken by her mother to the police station where a report was lodged by Raman. First information report was registered. The clothes and underwear of Raman were got changed and those clothes and underwear were taken into possession by the police. The clothes of the appellant were also taken into possession by the police.

5. The appellant was sent by the police to the Police Hospital where he was examined by Dr. S. K. Bajaj (PW 16) who found that the appellant was capable of sexual intercourse and that there was an abrasion at the junction of skin covering glans with the glans penis and the under surface was slightly bleeding.

6. Kumari Raman was medically examined on that very day i.e. 2nd June, 1982 at 10.30 p.m. by Dr. Neerja (P.W. 14) who was then working as Registrar in the Department of Gynaecology Hindu Rao Hospital, Delhi. Dr. Neerja, inter alia, found that hymen was torn that the edges of the hymen were fresh and that vaginal examination was done with one finger and that too with difficulty.

7. Rattan Lal was arrested afterward and he was also sent for trial by the police. However, he was found to be child within the meaning of Children Act and hence his case was dealt with separately by the Children Court.

8. For the purpose of this appeal, Shri Joginder Nath, Advocate, was appointed as amicus curiae. I have heard Shri Joginder Nath, amicus curiae and Smt. Bharati Anand, counsel for the State.

9. Kumari Raman (PW 5) was examined as a witness. She supported the entire prosecution version to the effect that she was raped. As she happened to be a child, the learned trial Judge put certain questions for the purpose of satisfying himself that she fully understood the sanctity of oath. It was thereafter that she was examined.

10. Her statement stands corroborated by the depositions of her mother Smt. Lila Devi (PW 1) and Ram Chander (PW 9). Both PW 1 and PW 9 reached at the spot immediately after the rape. Smt. Lila Devi stated that she heard the cries of Kumari Raman coming from the school building, that she raised an alarm, that on hearing her alarm, many people including Ram Chander came there and that she saw Kumari Raman coming out of the latrine inside the school while the appellant and another boy started running. She added that the appellant was apprehended while the other boy was successful in escaping by way of scaling the boundary wall of the school. She also supported the statement of her daughter that she and her daughter went to the police station and lodged a report.

11. Ram Chander (PW 9) stated that on 2nd June, 1982 at about 3.45 p.m. he was on his way to return to his house after meeting one of his friends named Gurbachan Singh, that when he was near primary school of M block of Raghbir Nagar, he heard cries and shrieks of a child coming from inside the school building. He added that on hearing the cries, one woman who was standing near the school and he rushed and found a female child aged about 6 or 7 years crying inside the room and that she was bleeding from her "private parts" and underwear. He narrated that two boys were standing near her, that one of those boys was the appellant, that both the boys started running but that appellant was apprehended while the other boy escaped. He also told that the appellant and the female child were taken to police station by him as well as the woman where a report was lodged and the underwear and the frock which the female child was wearing at the time of the occurrence were taken into possession. His statement further is that the pant and shirt which the appellant was wearing at the time of the occurrence were removed and were also taken into possession by the police.

12. It is obvious that the statement of PW 9 is corroborative inasmuch as he describes as to in what condition Kumari Raman was and that the appellant was apprehended at the spot. His statement is of great importance because he is an independent witness and there is nothing in his cross-examination indicating that he had any motive to support the prosecution.

13. There is further corroboration to the version of the prosecution. The occurrence took place near about 3.45 p.m. There was prompt reporting of the matter to the police because the first information report was recorded at about 5.40 p.m. Head Constable Dharam Pal (PW 12) stated that on June 2, 1982 he was working as duty officer at Police Station Rajouri Garden and that on the statement of Kumari Raman, he recorded FIR No. 224, in the FIR register. On cross-examination he added that he gave a copy of the FIR to constable Megh Raj at about 5.40 p.m. for taking the same to SI Satbir Singh.

14. The medical evidence also supports the version of the prosecution. Dr. Neerja (PW 14) stated that she was working as Registrar in the department of Gynaecology of Hindu Rao Hospital, that on 2nd June, 1982 she examined child patient Raman at about 10.30 p.m. and that she found two blood-stains on her right ankle. She further told that hymen of Raman was torn with both edges fresh and that vaginal examination was done with one finger and that too with great difficulty. This clearly means that there was a fresh tearing of hymen indicating sexual intercourse. There is also indication that Kumari Raman was not used to sexual intercourse because even one finger could be inserted with great difficulty.

15. Shri Joginder Nath, the learned amicus curiae urged that there was inconsistency in the statement of Kumari Raman (PW 5) on the one hand and Ram Chander (PW 9) and Lila Devi (PW 1) on the other hand inasmuch as Kumari Raman (PW 5) stated that the appellant was apprehended when he had

scaled over the wall of the school while PW 1 and PW 9 stated that he was apprehended when he was inside the boundary wall of the school and that the said inconsistency made the case of the prosecution regarding apprehending of the appellant unbelievable. He argued that when it cannot be said that the appellant was apprehended at the spot, it was absolutely necessary for the prosecution to have held identification parade which was never done and that, Therefore, the case of the prosecution must fail for want of identification of the appellant.

16. But the aforesaid inconsistency is very minor one and can be ascribed to an error of observation of Kumari Raman (PW 5) who after all is a small child of tender age.

17. The prosecution has also produced the evidence regarding age of Kumari Raman. Lila Devi (PW 1) states that Kumari Raman is her daughter and that the latter was born about 9 years ago. She was examined on October 13, 1983. Therefore, according to her, Raman was born near about October, 1974. Mrs. Swaran Kumari (PW 3) was head mistress of the Municipal Primary School, Raghbir Nagar. She stated that Ramnesh (referring to Kumari Raman) was admitted in the school on 21st July, 1980 and that her date of birth was given as 7th November, 1974. Bhagwan Dass (PW 8) is father of Kumari Raman (PW 5). He inter alia, stated that his daughter Kumari Raman was born on November 7, 1974 at his residence situated in Raghbir Nagar, but that her birth was not reported to the municipal authorities. It is apparent from the above evidence that Kumari Raman was born on November 7, 1974 and that she was below 8 years of age on the date of occurrence. There is no reason to disbelieve this evidence. No doubt, a certified copy of an entry in the register of births maintained by Municipal Corporation of Delhi would have been the best evidence. But, as Bhagwan Dass (PW 8) stated, birth of Raman was not reported to the municipal authorities, the aforesaid best evidence was not available. That being so, the entry regarding the date of birth in the school records coupled with the statements of parents of Kumari Raman form the best evidence and is very reliable.

18. It is clear from the above that Kumari Raman was a very small child when she was raped. It is also clear that she was kidnapped for the aforesaid purpose in broad day light and the act of rape was very cruel.

19. The case of the appellant was of total denial when he was examined under S. 313, Cr.P.C. He stated that he had been falsely involved due to enmity with Bhagwan Dass, the father of the prosecutrix. Obviously, the aforesaid statement is palpably false and is a blatant lie. No father would like to play with the honour of his female child for the sake of wreaking vengeance. Further, it is most unbelievable that the entire police, Dr. Neerja (who medically examined the child) and a person like Ram Chander (PW 9) would enter into a conspiracy to falsely implicate the appellant with a view to oblige Bhagwan Dass.

20. The appellant examined two witnesses in defense. They are Harbans Lal (DW 1) and Moti Ram (DW 2). DW 1 stated that Bhagwan Dass had a quarrel with Banwari Lal, father of the appellant, about 8 years back and that the boundary wall of the primary school is about 5 high which cannot be scaled over. On cross-examination he admitted that he had only heard about a quarrel between Bhagwan Dass and Banwari Lal. That means that his statement about the said quarrel is not a direct evidence and is thus irrelevant and inadmissible. The mere fact that the wall is 5 high does not mean that it cannot be scaled over. That height is not much.

21. Moti Ram (DW 2) stated that he knew the appellant and his father and that the appellant had good moral character. He added that the height of the boundary wall of the school was about 4"-9"/5" and that only a full grown up man could jump over the wall. The mere fact that the appellant and his father had good character does not make the appellant having committed the offence as improbable. I have mentioned the evidence of the prosecution which is clearly unimpeachable and proves beyond doubt that the appellant committed the offence of rape and kidnapping in the manner as is described by the prosecution. The mere fact that the boundary wall of the school is 5" high is of little importance in this case. According to the case of the prosecution the appellant did not scale over the wall of the school and was apprehended inside the boundary wall. Therefore, he did not jump over the wall. It was only Rattan Lal who jumped over. There could not be any difficulty for Rattan Lal having done so because he was near about 16 years of age at the time of the occurrence and a boy of that age can easily do so.

22. Hence, it is proved beyond doubt that the appellant had committed the offence of rape punishable under S. 376, IPC, and he had been rightly so convicted by the learned Addl. Sessions Judge, Delhi. The learned amicus curiae Shri Joginder Nath, Advocate laid more emphasis on the desirability of reducing the sentence of the appellant. He relied upon a judgment of the Supreme Court in Phul Singh Vs. State of Haryana, in which the following proposition of law was laid down :

"Ordinarily, rape is violation, with violence of the private person of a woman - an outrage by all can none .In our conditions of escalating sex brutality a four-year term for rape is not excessive. However, in the instant case the accused was in his early twenties and he was not a habitual offender and signs of repentance were seen. The families of accused and victim being closely related were also ready to take a lenient view of the situation. In the circumstances the sentence was reduced from 4 years to 2 years" R.I.

Sentencing efficacy in cases of lust loaded criminality cannot be simplistically assumed by award of long incarceration, for, often that remedy aggravates the malady. Punitive therapeutics must be more enlightened than the blind strategy of prison severity where all that happens is sex starvation, brutalization ,criminal companionship, versatile vices through bio-environmental pollution,

dehumanized cell drill under "zoological" conditions and emergence, at the time of release, of an embittered enemy of society and its values with an indelible stigma as convict stamped on him - a potentially good person "successfully" processed into a hardened delinquent."

23. But the aforesaid authority was on the facts of its own case. In that case, the accused showed signs of repentance and also there was inter-relation between families of the accused and victim and relations of victim were ready to take a lenient view. Those circumstances do not exist in this case. There is no indication of repentance on the part of the appellant. Further, this case is of exceptional type. It was in broad day light at about 3.45 p.m. that Kumari Raman was forcibly picked up by the appellant with the aid of his accomplice and then the helpless child of near about 8 years was criminally ravished. It is, Therefore, clear that not only that the offence was extremely highhanded without any regard for law but was also very cruel. Severe punishment is, Therefore, called for so that seeing the example of the appellant, such evil minded are deterred from committing such like crimes.

24. The judgment of the Supreme Court does say that as far as possible long term sentence should not be given so that a convict does not become a hardened criminal. But the way the appellant has committed the crime in a highhanded and cruel manner, shows that he has scant regard for law and he is nothing less than a hardened criminal. He, Therefore, does not deserve any soft corner on that account.

25. The learned amices curiae also relied upon a judgment of the Supreme Court in *Kakoo Vs. The State of Himachal Pradesh*, . In that case, a boy of the age of 13 years committed rape on a child of two years. The Supreme Court reduced the sentence from four years to one year rigorous imprisonment. Obviously, that case has no application in the present case. The case before the Supreme Court was that of a child. Here the appellant was not a child and his age was near about 18 years when he committed the crime. The appellant does not deserve any leniency.

26. But for the legal flaw, which is being mentioned hereinafter, I would have confirmed the sentence awarded by the learned trial Judge. According to S. 376, IPC, a person guilty of rape can be punished with either imprisonment for life or with imprisonment of either description for a term which may extend to 10 years. It is, Therefore, clear that two choices are open before the Court. The first one is to award imprisonment for life. If the Court feels that imprisonment for life will be excessive, then it has the second choice of awarding imprisonment for a term, the maximum limit of which has been fixed as 10 years. Therefore, if the Court wants to impose the sentence for a term, the same cannot be for a period of 14 years because it must not exceed 10 years. The power to impose sentence of imprisonment for life does not mean that the Court has power to sentence a convict to any term and even of 14 years. As an example, it may be mentioned that in case of murder punishable under S. 302 IPC, either sentence of death or

imprisonment for life can be awarded. Yet the mere fact that the Court has power to award sentence of imprisonment of life does not clothe a Court with power to impose sentence of any term like 14 years or even 10 years or any number of years. Therefore, awarding of sentence of 14 years by the learned Addl. Sessions Judge is not legal. Under these circumstances I am of the opinion that the sentence of imprisonment should be reduced from 14 years to 10 years.

27. I, Therefore, maintain the conviction of the appellant and dismiss the appeal to that extent. However, the appellant shall undergo rigorous imprisonment for ten years instead of fourteen years, besides the already imposed fine and in default of payment of that fine undergoing of further rigorous imprisonment of two years.

28. Jail authorities be informed accordingly to whom a copy of the judgment shall also be sent for handing over to the appellant.

29. A copy of this judgment shall also be sent to Shri S. M. Aggarwal, Addl. Sessions Judge for information especially for inviting his attention to the observations contained in para. 26 relating to awarding of sentence.

30. Order accordingly.