
(1996) 02 DEL CK 0023
In the Delhi High Court
Case No : Criminal A. No. 55 of 1993

Jai Chand

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Citation : (1996) 1 AD 576 : (1996) CriLJ 2039 : (1996) 3 Crimes 160 : (1996) 36 DRJ 424 : (1996) 2 RCR(Criminal) 244

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : V.K. Shal and V.K. Seth, for the Appellant; Ms. Seema Gulati, for the Respondent

Judgement

1. On April 15, 1991 at about 9-45 p.m. the Operation Theatre of the Guru Nanak Ry. Centre was a mute witness to an unfortunate incident. Involving Kumari Kiran Sharma and the present appellant Jai Chand. They were no strangers to each other. Whereas Kumari Kiran Sharma was employed in the said Centre as a Staff Nurse. Jai Chand was working there as a Nursing Orderly. This is how the prosecution witnesses unfold the events.

2. Kumari Kiran Sharma was on duty from 9 p.m. to 7-30 a.m. in the Operation Theatre. Jai Chand too was on duty on that very day. His duty hours were from 8 p.m. to 7-30 a.m. At about 9-45 p.m. after Ms. Sharma had finished her routine work she came to the Post Operation room of the Theatre. Jai Chand also arrived there and after catching hold of her, forcibly laid her down on the bed, broke the string of her Pyjama, gave a tooth bite on her left cheek and turned, her underwear. He even removed her sanitary pad. Ms. Sharma, however, did not give up. After giving him a push, she ran to the "Reception" at the first floor of the building where she narrated the incident to Sister A. Mathew (PW. 2). Later Dr. A. K. Gupta, Head of the Department, (PW, 3), also reached there who called the police leading to the recording of her statement. Ex.PW. 1/A and seizure of her clothes namely, Pyjama (Ex.P-1), underwear (Ex.P-2) besides the broken

string. (Ex.P-3).

3. One thing more before I bring this narrative to a close. Ms. Sharma was medically examined on April 16, 1991 by Dr. Prem Kumar (PW-9). Before him too she had narrated the entire incident but what is more relevant is that she had complained of pain on both her arms, upper lip and in the nape of neck, and that the said Doctor on her physical examination had found bruises on middle of her left cheek besides one abrasion.

4. The learned Additional District Judge convicted Jai Chand under S. 376 read with S. 511 of the IPC and sentenced him to pay a fine of Rs. 500/- and to undergo rigorous imprisonment for 3-1/2 years. 5. Hence this appeal

5. As already noticed the learned counsel for the appellant sought acquittal of the appellant on the ground that the statement of Ms. Sharma had not been corroborated. Besides that it was also his contention that the entire prosecution version was unnatural as Ms. Sharma was not expected to be in the Operation Theatre at about 9.45 p.m. as in eye hospitals surgeries are done during day time. Lastly it was argued that from the material on the record it could not be said that the appellant had attempted to commit rape.

6. Corroboration is not a sine qua non for conviction in a case like the present one. Rather refusal to act on the testimony of a victim of sexual assault on account of absence of corroboration as a rule would amount to adding insult to injury. Let us also remember that either there is any allegation of animus on the part of Ms. Sharma against Jai Chand nor is there any element of artificiality or unnaturalness in her story. Why should she foist such a story unless a remarkable set of facts or clearest motives are made out ? More so, when we know that feminine tendency is to conceal the outrage of masculine sexual aggression. There is nothing on the record to show that at the Guru Nanak Eye Centre surgeries are done only during day time. There is no suggestion even in cross-examination that Ms. Sharma was not on duty at the relevant time. Rather we have of the record the statement of H. C. Saluja (PW 5) who is the Administrative Officer of the Guru Nanak Eye Hospital that whereas Jai Chand was on duty on April 15, 1991 from 8-00 p.m. to 7-30 a.m., Ms. Sharma was on duty on that day from 9 p.m. to 7-30 a.m. The statements of sister A. Mathew and Dr. A. K. Gupta lend support to Ms. Sharma's version on material particulars while the recording of Ms. Sharma's statement without delay and the seizure of her clothes lend credence to her testimony, the statement of Dr. Prem Kumar (PW-9) who examined her on April 16, 1991 lends further support to the prosecution version and to the statement of Ms. Sharma.

7. Accepting the prosecution version as worthy, of reliance what emerges out in brief is this. Jai Chand caught hold of Ms. Sharma, forcibly laid her down on the bed, broke the string of her pyjama, turned her underwear and gave a bite on her left cheek and that after all this Ms. Sharma managed to push him and reach the Reception at the first floor. How these facts constitute an attempt to rape or

merely an indecent assault falling within the mischief of S. 354 of the IPC ? This then is the question.

8. In order to bring out a charge of attempt to rape the prosecution must establish that it had gone beyond the stage of preparation. The difference between preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination. In *Rex v. James Lloyd* 1836) 7C & P 817 : 173 ER 141 while summing up the charge to the jury, Justice Patterson observed :

"In order to find the prisoner guilty of an assault with intent to commit a rape, you must be satisfied that the prisoner, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events and notwithstanding any resistance on her part".

In *Express v. Shankar* (1881) 5 Bom 403 the accused was charged for an attempt to commit rape. There the observations of M. Malyill J., which as quoted below, are very pertinent :

"We believe that in this country indecent assaults are often magnified into attempts at rape, and even more often into rape itself; and we think that conviction of an attempt at rape ought not to be arrived at unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events and in spite of all resistance."

9. Keeping in view what has been noticed by me above though we do find the appellant having forcibly laid Ms. Sharma down on the bed; having broken the string of her Pyjama and having turned her underwear, he made no attempt to undress himself. What is more, after Ms. Sharma had pushed him away he made no effort to grab her again, or to prevent her from going to the first floor. If that be so, it cannot be said that the appellant not only desired to gratify his passions upon her person, but that he intended to do so at all events and notwithstanding any resistance on her part. This being the position it was not a case of attempt to commit rape under S. 376 read with S. 511 but one under S. 354 of the IPC. His conviction is thus altered to one under S. 354 of the IPC. As regards sentence, the appellant has already lost his job. I am informed he has four children and has already undergone incarceration for a period of about eighteen months. Consequently the sentence is reduced to the period already undergone. Fine, if paid, be refunded.

10. Order accordingly.