Liaqat vs The State on 16 October, 1952

Equivalent citations: AIR1953ALL722, AIR 1953 ALLAHABAD 722

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. Liaqat has come up to this Court in appeal against his conviction and sentence of three years' rigorous imprisonment and six stripes for an offence punishable under Section 376 of the Indian Penal Code.

2. The prosecution case is that the appellant is a close neighbour of one Babhan Mirza, who had a daughter named Kumari Phunda aged about 7 1/2 years. Liaqat appellant is himself a boy aged about 16 years, though the medical examination report shows that he is fully developed & has attained a height of 5 feet 4 inches. On 29-5-1951, when. Phunda was playing near the door of her house at about 4 or 4.30 in the evening, the appellant came to her and asked her to come with him to his mango grove promising to give her some mangoes. She agreed and then the appellant carried the girl in his lap to the grove. On reaching the grove, Liaqat removed his own trousers as well as those of the girl, put her on the ground and had sexual intercourse with her the girl felt pain and cried and thereupon the appellant left her. The girl started bleeding; from her private parts. The appellant took her to a pond nearby and there washed the blood stained trousers of the girl as well as his own trousers. He escorted the girl back upto a place somewhere near her house and then left her. He had told her that she should not disclose the incident to any one otherwise they could both be caught implying that this would result in both being punished. The girl kept quiet at her house for some time; but, probably due to the pain she was feeling, she later disclosed the whole incident to her mother. The incident was then related to her father, who took her to a police station, which was situated three miles away There the girl lodged a report at 11.30 P.M. The case was investigated and the appellant was prosecuted for committing rape on the girl.

3. The appellant pleaded not guilty and stated that he had a quarrel with one Qasim, nephew of Babban Mirza, the father of the girl, and it was as a result of that incident that he had been falsely implicated in this case.

4. In this case the principal evidence against the appellant is naturally that of the girl Phunda, and the main question is whether her evidence is reliable. I have been taken through her statement and I cannot find anything at all in it which would indicate that she is not a reliable or truthful witness.

(After discussion of the evidence of this girl the judgment proceeds:) Her statement, therefore, appears to be quite correct.

5. The statement of the girl is further corroborated by other evidence produced by the prosecution. The principal corroboration is provided by the medicai evidence. (After discussion of the medical evidence and the evidence of two prosecution witnesses the judgment proceeded:)

6. No other witness has been produced by the prosecution to state that he also passed the girl and the appellant, either when they were going towards the grove or returning from it and learned counsel has tried to make a point out of it. His case is that a number of persons must have seen them going and it should have been possible to produce more witnesses in number who might also have been more reliable. The time when the appellant took the girl to the grove was about 4 or 4.30 P.M. on a hot summer day. It would not be surprising if people at that time might have kept indoors. In any case there appears to be no reason to hold that it was necessary for the prosecution to produce more than two witnesses who saw the appellant and the girl going towards the grove. So far as the return journey is concerned, the girl has clearly stated that she did not notice anyone, previously known to her, as she was coming back. They did pass some men, but who they were is not known. If they were strangers, there is no reason to assume that the prosecution were bound to succeed in discovering their identity so as to produce them in Court.

7. On return to her house the first version was given by the girl to her mother, but she has not been produced as a witness. Learned counsel has alleged that the mother of the girl would have been the best person to corroborate the testimony of the girl, as it was she to whom the first version was given by the girl. No attempt seems to have been made in this case on behalf of the appellant to elicit why the mother was not produced, nor was any explanation volunteered by the prosecution. It is, therefore, not possible for me to hold that it was essential for the mother to be produced when there might be an adequate reason for her non-production. On the face of it the explanation that strikes one is that being a Muslim law she might be observing 'pardah' and might have hesitated in coming to Court if she thought that her husband's evidence would be quite sufficient. Babban, the father of the girl, has been produced and he has corroborated the girl in her version. Of course, corroboration by him does not carry the same value as the corroboration by the mother would have done, but as I have said earlier, corroboration is provided not merely by his evidence but by the medical evidence, the reports of the Chemical Examiner and Imperial Serologist and the evidence of the two witnesses Jumman and Abdus Sattar. The statement of the girl, has also appeared to be impressed with truth. In these circumstances I see no reason to differ from the view taken by the learned Sessions Judge that the charge against the appellant is established.

8. Learned counsel has urged that the sentence awarded is illegal inasmuch as in the case of a juvenile offender the punishment of whipping cannot be awarded in addition to the sentence of imprisonment as Section 4 of the Whipping Act does not apply to a juvenile offender who is governed by Section 5 of that Act only. Learned counsel in support of this contention has cited before two Single Judge's decisions of this Court, in --'Lurkhur v. Emperor', AIR 1934 All 976 (A), and -- 'Ram Prasad v. The State', AIR 1950 All 726 (B). As against these, there is a Division Bench decision of this Court in -- 'Emperor v. Motha' AIR 1929 All 322 (C). In the latter case it was clearly

held that a sentence of imprisonmeut can be inflicted in the case of a juvenile in addition to whipping under Section 4 of the Whipping Act. With respect, I may say that I entirely agree with the view that has been taken by the Bench in this case. Both the decisions by the learned Single Judges cited above were subsequent to this Bench decision, but neither of the two learned Single Judges took notice of this case or of the reasons given in for the view that a juvenile offender can be punished under Section 4 of the Whipping Act with whipping in addition to imprisonment for those offences which are mentioned in that section. Since this Division Bench view is binding on me, and I entirely agree with it. I follow it in preference to the view taken in the two Single Judge's decisions referred to above and hold that the sentences awarded to the appellant in this case were legally correct.

9. In view of the fact that rape was committed by the appellant in this case on a young child of about 74 years of age, the sentence awarded does not appear to be at all severe. The appeal is consequently dismissed.