Ram Prasad vs The State on 18 July, 1950

Equivalent citations: AIR1950ALL726, AIR 1950 ALLAHABAD 726

JUDGMENT

Chandiramani, J.

1. Ram Prasad appellant, aged about 14 or 15, has been convicted by the learned Sessions Judge of Rae Bareli on 11th April 1950, under Section 376, Penal Code, and sentenced to rigorous imprisonment for two years and five stripes.

2. The prosecution case briefly was the t on 14th June 1949, at about 1 P. M., the appellant Ram Prasad, called Smt. Parbhu Dei, a girl of about 11 or 12, to his mango tree, in village Ghonghara ka purwa, a hamlet of village Chhotaiya, police station Kotwali, Rae Bareli, on the pretext that he would give her some mangoes, and when she went near him, he felled her into a water channel and forcibly had sexual inter course with her. On her alarm certain people, Smt. Maharaja P. W. 2, Baijnath, Smt. Radha and others arrived. The appellant ran away. The girl was found bleeding. She was taken home by her mother and as she had injuries and no conveyance was available that day, the girl wont to the police station, nine miles away, next day, and made a report against the appellant. The appellant resides in the same village as the victim Smt. Parbhu Dei. The appellant pleaded not guilty and said that he had been implicated on account of enmity. That in fact the real culprit was one Ram Jiawan, a relation of Smt. Parbhu Dei. There was no evidence in defence. On the evidence produced the trial Judge was satisfied the t the appellant had committed rape. He was of the opinion that Smt, Parbhu Dei was a consenting party, but as she was 12 years old, her consent was really immaterial. In the circumstances he sentenced the appellant to Vigorous imprisonment for two years and five stripes. It has been urged in appeal that the evidence on record does not justify the conviction, and that in any case the sentence is too severe.

3. The evidence of Smt. Parbhu Dei the victim and of Smt. Maharaja P. W. 2 who saw the rape, leaves no room for doubt that the appellant is guilty. On the alarm raised, Smt. Maharaja, Mt. Radha, Smt. Lachhmin mother of Parbhu Dei and Baijnath her brother arrived. They saw the appellant running away from the scene. It was said the t Smt. Maharaja was inimical to the appellant as she had some dispute about canal water with Ram Lal uncle of the appellant. It appears that at one time there was such a dispute, but the evidence does not show how many years ago that happened, and whether the enmity on the t ground skill subsists or not. The evidence has been carefully considered by the trial Court and I also have been taken through the evidence of the witnesses but I find no good reason why the eye witnesses should not be believed. It was said that it was Ram Jiwan, son of Mt. Radha who had committed the offence, but there is no evidence whatever to support such an allegation. There is no good ground why the witnesses should conspire against the appellant to shield the guilty party and implicate falsely an innocent person. I am satisfied that the appellant has been rightly convicted under Section 376, Penal Code.

4. On the question of sentence it does appear to me that the sentence of imprisonment in addition to the sentence of whipping is not legal. Section 5, Whipping Act, provides that "any juvenile offender who abets, commits or attempts to commit :

> "(a) any offence punishable under the Penal Coda, except offences specified in Chap. VI and in Sections 153A and 505 of that Cods and offences punishable with death, or
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> (b) any offence punishable under any other law with imprisonment which the Provincial Government may, by notification in the official gazette, specify in this behalf;

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable."

The explanation to this section lays down that in this section the expression :

> "'juvenile offender' means an offender whom the Court, after making such inquiry, if any, as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive,"

The offence under Section 376 is not one of the offences excepted in this section and therefore if the appellant is a juvenile he cannot be given, both a sentence of imprisonment and a sentence of whipping. It appears from the finding of the learned Judge himself that according to the medical evidence the appellant is 14 to 15 years of age. Being under 16 years of age he is clearly a juvenile offender within the meaning of Section 5, Whipping Act. The sentence of imprisonment in these circumstances will have to be set aside, The result therefore is the t the sentence of imprisonment is set aside but the sentence of whipping is confirmed. With this modification in the sentence, the appeal is dismissed.