

Bhagwat Prakash vs The State on 5 August, 1955

Equivalent citations: AIR1956ALL22, 1956CRILJ4, AIR 1956 ALLAHABAD 22

JUDGMENT

V.D. Bhargava, J.

1. The appellant and three others were tried under Sections 366, 368 and 376, I. P. C. for having kidnapped a minor girl in order to compel her to marry and force her to commit illicit sexual intercourse; and for wrongfully concealing or keeping in confinement a kidnapped girl and for committing rape on her.

The three other accused have been acquitted by the learned I Temporary Civil and Sessions Judge Allahabad, while the appellant has been convicted under Section 363, I. P. C. and sentenced to three years' rigorous imprisonment and a fine of Rs. 50/- or, in default of payment of fine, to three months further rigorous imprisonment. He has also been convicted under Section 376, I. P. C. and sentenced to two years' rigorous imprisonment; the sentences have been ordered to run concurrently.

2. In brief the story of the prosecution is that one Miss Indo Bala Basu resided at 11 Bank Road, Allahabad with her brother A.G. White's children. They were three sons and three daughters and they were under her guardianship as their mother had died. The incident is said to have taken place on 17-11-1953 in the evening when all these children had gone to their neighbour Dr. Beni Prasad's house where a marriage was being celebrated.

At about 6.30 p.m. one of the girls Kumari Veda White, who was the eldest, was coming along with her brother and a younger sister back to her house to take warm clothes. The appellant who was standing in the way stopped Veda White and asked the other two children to go home telling them that she would be coming a little later. When the two children had gone away the appellant Bhagwat Prakash, took Kumari Veda White along with him to the Exhibition and at about 10 p.m. she was brought to the house of one Shesh Dhar who was a co-accused in the Sessions Court but who has been acquitted.

It is alleged that she was kept there for the whole night and Shesh Dhar during the night committed rape on her. Next morning one Udai Prakash, who was another accused and has been acquitted, came with one Ghansham and took her to his house at about 11 a.m. There she was kept till evening and then brought to the house of Sri Ram, the third accused who has been acquitted, by one Indra Prakash brother of Bhagwat Prakash. Bhagwat Prakash came there in the night and is said to have committed rape three times during that night on her.

The next day Veda White remained in the house of Sri Ram throughout the day. In the evening she along with Bhagwat Prakash, Udai Prakash, Sri Ram and Ananad Prakash went to a hotel where they had dinner, and all took wine except Veda White. Thereafter they all went to Naini at about 11 p.m. and stayed in the night in halwai's house at the back upper portion where Bhagwat Prakash is said to have committed rape again on Veda White in the night.

The next morning Udai Prakash, Indra Prakash and Sri Ram went away, but Bhagwat Prakash and Veda White remained there. At about 2 p.m. Bhagwat Prakash again committed rape on Veda White.

3. Her aunt Miss Basu was very much perturbed when Veda White did not return in the night. She went to Bhagwat Prakash's house and there she asked Udai Prakash accused and her mother to give back Veda White to her and then Bhagwat Prakash promised to find out Veda Prakash. Ultimately she was returned to her aunt by Bhagwat Prakash. Her aunt took her to the thana and lodged a report on 20-11-1953 at about 6 p.m. The police took in possession the saree, the petticoat and other garments which were found on the person of Veda White and also those which were found at the halwai's shop. They were sent to the Chemical Examiner and were found to have stains of semen and blood.

4. The accused denied the charges and he said that the clothes which had been found were not given by him to her. He asserted that he had been falsely implicated by the police owing to the fact that his brother was being prosecuted in several cases which were pending and therefore the station officer was against him and he has falsely implicated him.

The reason why the girl has made this false accusation against him is that she had been constantly writing to him to marry her and take her but never replied to her letters and there-tore, she got annoyed and has falsely implicated him.

5. From the scholar's register filed and from the doctor's evidence it is clear that the girl was below 16 years of age. From the medical report it is further clear that she had been raped three or four days before; this medical examination took place on the 20th November. Further the clothes that have been found are those which, the prosecutrix says were worn by her at the time when rape was committed on her, and which had stains of semen and blood on them. Under the circumstances, it cannot be denied that she had been raped.

The question is: who was the person who raped her and would this girl bring a false charge against Bhagwat Prakash? Cases of rape, involving bad reputation on the family of the victim herself, frequently are not brought to Court, and if brought are with the greatest reluctance, and therefore if a girl does come forward and alleges that she has been raped her evidence should carry more weight than the evidence of an ordinary witness.

Here besides the evidence of the prosecutrix there are circumstances which cannot be explained on any other hypothesis except that it was Bhagwat Prakash who committed the rape.

There is evidence of Kumari Joan White, the younger sister of Kumari Veda White. She has come to depose that she had left her sister in the company of Bhagwat Prakash on the evening of 17-11-1953. After that it was for Bhagwat Prakash to explain where she had been for three days. He has given no explanation. On the other hand, he has totally denied having anything to do with the incident.

He accosted the girl himself and took her to the Exhibition and from there had been taking her from one place to another. I think the prosecution has fully established the case of kidnapping under Section 363, I. P. C. against the appellant.

6. As regards the conviction under Section 376, I. P. C., that also, to my mind, has been proved beyond any reasonable doubt. The statement of the girl clearly establishes the guilt against the appellant. Learned counsel for the appellant has shown certain discrepancies between the first information report and her statement under Section 164, Cr. P. C. The statement under Section 164, Cr. P. C. was not a complete statement and, therefore, a more detailed statement was made in the Court of session. Even if all the incidents of rape had not been disclosed in her statement under Section 164 and even if it was not proved that she had been raped several times, but if it was established that rape had been committed on her but once, that would be enough for conviction.

I do not see any such disparity in her statement on account of which I should discard her evidence. I have, already said that the circumstantial evidence of the sarees containing semen and blood found at a place where she had been taken and the clothes left there, fully establishes the guilt of the accused under Section 376. I. P. C.

7. I think he has rightly been convicted under Sections 363 and 376, I. P. C.

8. Learned counsel for the appellant has urged that, after all, the appellant is a young boy of 18 years and the girl was also of about the same age and there are letters forthcoming to show that the girl also cared for the boy and there was a kind of love affairs going on, and taking these points into consideration the question of sentence may be considered, for a sentence of three years imprisonment in a case like the present is much too excessive.

I think in the circumstances of the case, the sentence errs on the side of severity. I, therefore reduce the sentence to one year's rigorous imprisonment and fine of Rs. 50/- under Section 363 and one year's rigorous imprisonment under Section 376. I. P. C. The sentences shall run concurrently. In default of payment of the fine the accused shall undergo three months' further rigorous imprisonment.

Sentence reduced.