

Shafi vs The State on 7 October, 1952

Equivalent citations: AIR1953ALL502, AIR 1953 ALLAHABAD 502

JUDGMENT

Kaul, J.

1. Shafi, a young man of 20, was convicted by the learned Assistant Sessions Judge of Sitapur under Section 376, Penal Code for having committed rape upon Shanti, a girl aged 15 or 16 years, and sentenced to five years' rigorous imprisonment. He comes up in appeal.

2. The prosecution story as found established at the trial was as follows:

3. On the morning of 15-7-1950, at about 6 or 6-30, Mst. Shanti who is a resident of Baragaon went out to ease herself near a tank about 20 or 25 paces from her house. The tank is situated at the back of the house of one Debi Prasad and the place appears to be screened from public view on account of the existence of some bamboo clumps and bushes. After the girl had finished and was returning home, the accused came, caught hold of her, threw her down and overcoming all resistance that was offered by her, removed her dhoti and committed rape upon her. The girl raised an alarm which brought Debi Prasad P. W. 3 and Ram Ghulam P. W. 2 to the spot. They saw Shaft in the act. Seeing them come, he left the girl and attempted to run away but was chased and caught by these two persons. The girl went to her home and shortly after the accused, the girl as well as her husband and the two witnesses Ram Ghulam end Debi Prasad, proceeded to the house of the surpanch where a report of what had happened was reduced to writing. These persons then proceeded to the police outpost, at Baragaon. While on their way, they met the village chaukidar and constable Sri Krishen. The accused was handed over to them. The constable and the chaukidar then took these persons as well as the accused to police station Maholi 7 miles distant -- and handed over the written report prepared by the sarpanch to S. I. Bhagwan Sarup. A first information report was recorded on the basis of written report handed over to the S. I. Bhagwan Sarup. The dhoti which the girl was wearing at the time of the report and which was still on her person was taken over by the investigation officer.

4. In due course the accused was challaned and committed to the Court of Session. He pleaded not guilty to the charge. His defence was that this was a false case concocted against him by the prosecution witnesses who were inimical to him. According to him there was some parti land measuring 1 or 11/2 bighas to the south east of Debi Prasad's house which was used as a ghoora (place for storing refuse) by the village people. That about three or four years before the occurrence Shafi's brother Karim obtained a lease of this land from the Zamindar and brought it under

cultivation. The village people, including the prosecution witnesses, could therefore no longer use it as their ghoola and this led them to entertain hostile feelings against Shaft and his brother. In the statement made by Shaft before the Committing Magistrate this defence was further developed. He stated that inasmuch as he did not allow the prosecution witnesses to use the land for which his brother had obtained a lease from the Zamindar as their ghoola, they had formed a party against him. That on the morning of the occurrence while he was going to his sister-in-law and was at mile 2 of the canal which passes by the village, the prosecution witnesses caught hold of him and belaboured him; that the S. O. of Mitauli police station and the sarpanch of village Dhakia arrived on the spot and got him released. He added nothing to this statement in the Court of Session.

5. The learned Assistant Sessions Judge accepted the evidence of the prosecution witnesses, disbelieved the defence version and convicted and sentenced the appellant as already stated.

6. It was contended by the learned counsel at the hearing of the appeal that the evidence of the prosecution witnesses, who were inimical to his client was untrustworthy and should not have been relied upon. He pointed out that a perusal of the report prepared by the Sarpanch Ex. 1 would suggest that actually there was no rape committed, but at the worst there was an attempt at raping Shanti and the story that a rape was actually committed was an afterthought and a latter development. I am unable to attach much weight to this argument. The report prepared by the Sarpanch specifically mentioned that Shaft thrust his male organ into the private parts of the girl whom he had made the victim of his lust. A reference in the course of argument was also made to the attempt made by the prosecution witnesses to conceal from the Court the fact that there formally existed a ghoola on the land for which a lease had been obtained by Shafi's brother Karim three or four years ago, and it was contended that the prosecution witnesses were not truthful persons. It must be conceded that such an attempt was made by the prosecution witnesses but I agree with the learned Assistant Sessions Judge that this should not be allowed to detract from the weight to be attached to their testimony relating to the occurrence which formed the subject matter of this trial. Ram Ghulam and Debi Prasad were eye-witnesses of the occurrence. They fully corroborate the evidence given by the girl of how she was pounced upon by the appellant, thrown down and raped. Reference was also made by the appellant's learned counsel to the failure, of the prosecution to examine Sukhwa who was one of the witnesses named in the first information report. No question having been put to the investigating officer why Sukhwa was not produced, no inference adverse to the prosecution case can be drawn, from the fact that he was not called as a witness.

7. Mr. Hakimuddin learned counsel for the appellant invited my attention to the delay in the examination of the main prosecution witnesses by the police. The occurrence took place on 15-7-1950. The main witnesses belonged to village Baragaon. They do not appear to have been examined for six or seven days. No question having been put to the investigating officer in respect of the delay in examining these witnesses while he was in the witness box, it would be wrong to draw any inference adverse to the prosecution from this circumstance.

8. It was faintly argued that the Court might also consider if this was not a case of sexual intercourse having been committed with Shanti with her consent. No such plea was taken by the accused in his statement either before the Committing Magistrate or in the Court of Session. It was a case put

forward by the learned counsel on behalf of his client. The torn dhoti of the girl which was exhibited as also the injuries found upon her person when she was medically examined clearly negative any inference of consent on her part. It was pointed out by the learned counsel that the girl was medically examined 30 hours after the occurrence and so much importance cannot be attached to the injuries found upon her person. I am unable to follow this argument. She was made the victim of rape on the morning of the 15th July. The first information report of the occurrence was recorded at police station Maholi the same day before noon and she was sent up for medical examination to Sitapur the head quarters of the district. She was medically examined on the 16th, i.e., the next day after the occurrence. There is no delay in her medical examination.

9. I agree with the view taken by the learned Assistant Sessions Judge that the evidence of Shanti corroborated as it is by P. W. 2 Ram Ghulam and P. W. 3 Debi Prasad is wholly trust-worthy and the offence is brought home to the accused.

10. It appears to me, however, that the sentence passed by the learned Assistant Sessions Judge errs on the side of, severity. It is true, as pointed out by him, that the circumstances of the case call for a deterrent sentence. Shafi is a young man of 20 and I am, of opinion that the ends of justice will be met if the sentence is reduced from five years to three years rigorous imprisonment. The appeal is dismissed except in so far that while maintaining his conviction as recorded by the learned Assistant Sessions Judge, I reduce the sentence passed upon him from five years to three years' rigorous imprisonment.