
Mangal Singh Vs State of Rajasthan

Criminal Appeal No. 763 of 1976

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: April 12, 1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) & Section 313#Penal Code, 1860 (IPC) & Section 368, 373, 376

Citation: (1977) WLN 243

Hon'ble Judges: P.D. Kudal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

P.D. Kudal, J.

This is a criminal appeal against the judgment of the learned Additional Sessions Judge, Dholpur, dated September 4,

1976, where by the accts d appellatant was convicted and sentenced u/s 368 and 373 I.P.C. to three years" and five years" rigorous imprisonment

with a fine of Rs. 1,000/- on each count, in default of payment of fine to further rigorous imprisonment for six months on each count.

2. Accused Mangal Singh and Naresh were tried for offences of buying and obtaining possession of minor girls Km. Shanti alias Sharda and Km.

Radha for the purpose of prostitution and for wrongful selling or keeping them in confinement and for voluntarily causing hurt. Accused Naresh was

further charged for an offence u/s 376 I.P.C. for committing rape on Km. Radha.

3. The salient facts pertaining to this case are that on November 1, 1974, PW 5 Shri Prahlad Singh S.H.O. Police Station, Saipau was going to

village Kolua in connection with anti-dacoity duties The two minor girls Km. Shanti & Km. Radha came running out of the house belonging to the

accused & prayed for their safety and rescue. The S.H.O. recorded the statement of Km. Shanti, who told him that about one and a half month

back two ladies used to come to her village for selling cut-piece clothes, from whom she used to purchase some clothe Section That these ladies

took her into confidence and assured her that she would be provided with good dresses, better food and would be entertained nicely & would also

be given in marriage with suitable good boy. Km. Radha the cousin of Km. Shanti was also induced and lured in the same manner. Both these gigs

were then brought by these two ladies to Patina where they were kept in a locked room. When these two girls started weeping, these ladies

threatened them with dire consequences Ultimately both these girls were brought from Bihar to village Kolua in Rajasthan and they were kept in

confinement in the house of the accused Manger Singh. Manga! Singht and Naresh along with their elder brother Kumar beat these girls number of

times and told them that they have been ""purchased from those two ladies and that now they have to earn by selling their flesh in the open market

by way of prostitution. Budha, the father of the accused also told these girls that Radha has been purchased for Rs. 2,000/- and Shanti for Rs

700/-. He also insisted that they should earn by restitutions. These girls yare then sent for medical examination Dr. M.L Maru PW 1 conducted the

ossification test and he was of the opinion vide his reports Ex. p 3 and P 4 that the age of Radha was about 17 year s while the age of Shantiv Das

between 14 to 17 years. Dr. Sushila Shaima also examined these girls but according to her she did not find any injury on their breasts or on any

other part of their bodies She also did not find any injury on their private parts. Their hymens were found to be hem and their vaginas admitted two

fingers easily. Their vaginal smear did not disclose the presence of sperms. The lady doctor vide her reports Ex. P. 1 and 2 opined that these two

girls were not subjected to any recent rape.

4. The statements of the accused were recorded u/s 313 Cr.P.C. The accused pleaded not guilty and asserted that they have been falsely

implicated by the Thakurs of the village due to enmity. Accused Naresh contended that he is a student of 11th class and was residing at Dholpur.

5. The learned Additional Sessions Judge acquitted Naresh of all the charges levelled against him. The learned Addl. Sessions Judge, however,

convicted and sentenced Mangal Singh as indicated above.

6. It has been strenuously contended on behalf of the accused-appellant, Mangal sirgh, that there is absolutely no evidence on record regarding the

purchase of these girls by Mangal Singh from the two ladies Smt. Parvati and Smt. Pushpa. It was also contended that in her statement before the

court Mst. Shanti stated her age to be 20 years. It was also contended that the question of wrongful confinement did not arise as the two girls are

reported to have met the station house officer on the road. It was also contended that the learned Additional Sessions Judge has erred in holding

that Km. Shanti was a minor. It was also contended that the prosecution story is manifestly false as according to the statement of Km. Shanti

herself, she and Km. Radha along with eight others were recovered from the house of the accused. It was also contended that though these girls

were kept in the police station for more than two weeks still the prosecution has failed to record the statements of Smt. Pushpi and Smt Parvati It

was also contended that even the statements of the parents of these girls have not been recorded. It was this contended that the prosecution has

miserably failed to bring the guilt home to the accused. As a matter of fact, it was strenuously argued that for the reasons best known to the

prosecution to most material witnesses namely Smt Pushpa and Smt. Parvati, the parents of the girls and the other residents of the house of Mangal

Singh were not even examined. It was also contended that there was absolutely no justification for the investigating authorities to have kept these

young girls in the police station for about a fortnight. It was also contended that the medical examination of Km. Shanti does not reveal that she was

below 18 years of age at the time of her abduction from Bihar or at the time when she was kept confined in village Koluva in the house of the.

accused Mangal Singh.

7. In Ex. P. 8 on 1-11-1974 Parcha Bayan Km. Shanti stated her age to be of 14 years. In her statement u/s 164 Cr.P.C. Ex. D I she maintained

that her age was 14 years. When examined in court on 2-8-75, she deposed her age was 20 years PW 1 Dr. Mare has taken skiagrams Ex. P.9

& Ex. P. 10 According to Dr. Mare Km. Shanti measured 4' 7" in height on 11-11-1974 and her weight was 44 Kgs. She had 28 teeth. Her

breasts were well developed. The auxiliary and pubic hair were shaved. Her skiagram revealed the union of all epiphysis complete in the elbow

joint but the distal end of ulna radius and iliac crest were not completely fused In the opinion of Dr. Maru the age of Km. Shanti was between 14

years to 17 years.

8. The learned Public Prosecutor placed reliance on the following observations at page 34 of Modi's Medical Jurisprudence 1977 Edition:

Fusion according to Lall and Townsend in females of United Provinces is at the age of 19 Distal End of Ulna, fusion is also at the same age of 19.

According to Modi's Medical Jurisprudence at page 31, in ascertaining the age of young persons radiograms of any of the main joints of the upper

or the lower extremity of both sides of the body should be taken, and an opinion should be given according to the table. But it must be

remembered that too much reliance should not be placed on this table as it merely indicates an average and is likely to vary in individual cases even

of the same province owing to the eccentricities of development. Recent work has shown that the range of and may be upto (sic) 3 years.

9. The following observations have been made in Medical Jurisprudence and Toxicology by Glaister 11th Edition at page 70.

According to Brash, growth changes in the skeleton, although providing a very reliable basis for the estimation of age, do not permit of an exact

determination but only within a range since there is variation in relation to growth and age. In referring to this point he states that, before puberty,

when the skeleton begins to consolidate, so many active growth changes are going on including the development of the growing (epiphyseal) ends of

the limb bones, and the progressive calcification and the eruption of the teeth that it is relatively easy to determine probable age within a year or so.

From puberty until the consolidation of the skeleton (at twenty-two or twenty-three, or at the most twenty-five years), a fairly close estimate.-

.within a range of two to three years may still be made mainly on the progress of the union of the epiphyses.

10. The learned Counsel for the accused appellant has therefore, strenuously urged that the prosecution has miserably failed to establish that Km.

Shanti was below 18 years of age. Reliance has been placed on *Kishori Lal Raghbir Dass Vs. The State*, *Ram Murti v. State of Haryana* AIR

1970 S.C. 1020, *Amar Alt & Aer v. Emperor* AIR 1926 Lah 384 & *Emperor v. Zomin* AIR 1932 Oudh 28, The entire prosecution case hinges

upon the age of Km, Shanti. The ossification test carried out by P W 1 Dr. Maru does not conclusively prove that Km. Shanti was below the age

of 18 years. The learned Sessions judge has disbelieved the prosecution story about the abduction of these girls against their wishes. There is no

evidence on record to establish the bargain of selling of these girls by Smt. Parvati and Smt. Pushpa and buying of these girls by Mangal Singh

accused. Km. Shanti has herself stated in court that her age is 20 years. That she stated previously to be 14 years under the pressure of the Police.

Despite the fact that Km. Shanti was kept in the police station for about a fortnight, the prosecution did not care to examine Smt. Pushpa and Smt.

Parvati nor any efforts were made to examine the parents of Km. Shanti. The lady doctor Smt. Sushila Sharma has clearly stated that the hymen

was absent and that the two fingers could easily be admitted into the vagina. In these circumstances it is extremely difficult to hold that the

prosecution has succeeded in establishing that Km. Shanti was minor i.e. below 18 years of age. Km. Shanti has stated that the Police had

recovered her from the house while she was locked up in a latrine. The S.H.O. has, however, stated that Km. Shanti came running to him on the

main road where her parched Baniyan was prepared. Under these circumstances. I have no hesitation in holding that the prosecution has failed to

bring home the guilt to the accused.

11. The appeal filed by Mangal Singh is, therefore, allowed. His conviction and sentences are accordingly set aside. Mangal Singh is in judicial

custody. He is directed to be released forthwith if not required in any other case.