

Golam Md. Khan Vs The State

Court: Calcutta High Court

Date of Decision: Jan. 25, 1989

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 164

Evidence Act, 1872 â€” Section 157

Penal Code, 1860 (IPC) â€” Section 376

Citation: (1989) CriLJ 1203

Hon'ble Judges: Shamsuddin Ahmed, J; Pabitra Kumar Banerjee, J

Bench: Division Bench

Judgement

Pabitra Kumar Banerjee, J.

The accused Golam Mohammad Khan has been convicted u/s 376, I.P.C. and sentenced to R.I. for a period

of eight years and a fine of Rs. 1000/- in default R.I. for a further period of six months by the learned Assistant Sessions Judge, Midnapore by his

judgment and order dated 7th February 1981 in Sessions Trial Case No. III of August 1980. It is this order of conviction and sentence which is

under challenge in this appeal.

2. Briefly stated, the case of the prosecution was that on 26-4-79 corresponding to 12th Baisakh 1386 B.S. which was a Thursday, while P.W. 1

Anwara Khatun was bringing back the cattle from the field, the accused Golam Mohammad caught hold of her and tied her face with a napkin and

physically lifted her to a bamboo grove at some distance, assaulted her in spite of her resistance and raped her against her will. Anwara returned

home weeping and related (narrated) the incident to her mother and brother's wife who in turn reported the incident to her father and brother. That

evening a salish was called which was attended to by some neighbours including the accused and his father. The salish proved ineffective and on

the following morning, that is on 27-4-79 the victim girl went to Ghatal P.S. along with her brother Murshed and grandmother Pearon Bibi and

made a verbal complaint which was recorded by S.I. Police Saroj Kumar Lahiri (P. W. 10) on the basis of which F. I. R. Exbt. 2 was drawn up

and Ghatal P.S. Case No. 12 dated 27-4-79 u/s 376, IPC was started against the accused who had been earlier produced at the P.S. and taken

into custody. The S.I. Police who took up the investigation of the case went to village Maricha, visited the place of occurrence, drew up a sketch

map Exbt. 3 of the place of occurrence as pointed out by the victim girl and examined some witnesses. The I.O. seized the wearing apparel of the

victim girl under the seizure list, Exbt-4 and sent the same to the Chemical Examiner for examination and report. The victim girl and the accused

were referred to S.D.M.O., Ghatal Hospital for medical examination. After completion of the investigation, the I.O. submitted charge-sheet against

the accused u/s 376, I.P.C. followed by a trial by the learned Assistant Sessions Judge and a conviction and sentence in the manner hereinbefore

stated.

3. The prosecution case mainly consists .of the direct evidence of P.W.s 1 and 2, corroborative evidence of P.W.s 3 and 4 and the medical

evidence of P. W.s 7 and 8. P.W.s 5 and 6 have been examined for establishing the fact of salish alleged to have taken place in the afternoon of

26th April. Mr. Chittaranjan Das the learned Counsel for the appellant, drew our attention to certain facts and circumstances appearing in evidence

and argued in his usual candidness that the entire prosecution case was a fabrication and the story of the accused committing rape on the victim girl

was highly improbable, In support of the improbability, the topography of the place of occurrence was brought to our notice and the medical

evidence ruling put the possibility of the girl being a raped victim was referred to. Emphasis was laid on the specific defence case that over some

quarrel between the accused on the one hand and the victim"s brother and father on the other regarding supply of irrigation water, the accused was

assaulted and wrongfully confined by P.W. 1"s father and brother.

4. The prosecutrix Anwara Khatun, a girl of 12/14 years of age had been in the field to take back the cattle in the noon of 26th April 1979. From

the evidence of P. W. 10, S.I., Saroj Kumar Lahiri, it appears that Maricha village is 500 yards away from the Nimgaria tank and the place of

occurrence as shown by the prosecutrix and noted in the sketch map Exbt. 3 was grassy with bamboo groves here and there. From the evidence

of the I. O., it further appears that there are open fields on all sides of the place of occurrence and Bareda Kharar road is about half a mile from

the Nimgaria tank. There is no reason to disbelieve the Investigating Officer who had the opportunity to visit the place of occurrence and take note

of the surroundings on the day following the occurrence. It is evident from the evidence of P.W.s 1 and 2 that on that summer noon the place of

occurrence and the area near about that place were secluded and no cowboy was seen grazing cattle in the field. It was mid-day and under the

scorching heat of the sun nobody was expected to roam about the place. The defence contention that it was improbable that the accused would

venture to commit the offence while the pitched road and the tea stall were close to the place of occurrence are not supported by legal evidence.

From the defence suggestion that the accused was drawing water with the help of machine and over the supply of the water for irrigation purpose

there was some quarrel between him and the victim girl's brother and father is indicative of his presence in the field on that date and at that hour

when the offence is alleged to have been committed. It is probable that the accused considered the situation ideal for the commission of the

outrageous act and he fully exploited it. Mr. Das contended that it was impossible for the accused to lift a girl of 12-14 years to some distance and

to commit rape in spite of stiff resistance. It is impossible to accept such contention in view of the fact that the accused and the victim girl were of in

equal strength and the sexual urge must have given him extra strength to commit the outrageous act at any cost. In her evidence P.W. 1 has given a

vivid description as to how the accused caught hold of her, how she was silenced on pain of being severely dealt with and how she was slapped

and raped. It must be recalled that Anwara was a teen-ager and there is no reason why this girl should involve herself in such a nasty act at the

expense of her virginity. Similarly, there is no reason why her father, mother and brother would support such a cause if they did not believe the

statement of the victim girl relating to the outrageous act of the accused. It has never been suggested that either Anwara or her relations wanted to

blackmail the accused. The supposed enmity between the two families has not been established. The evidence of the prosecutrix before the Court

has been substantially corroborated by her statement in the F.I.R. and further corroborated by the evidence of her mother P.W. 3 Rabea u/s 157

of the Evidence Act. After the alleged occurrence, the victim girl returned home weeping and on being interrogated she related the entire incident to

her mother in presence of her brother's wife soon after the occurrence. The girl went for a bath in the adjoining tank. The conduct of the victim girl

is consistent throughout and the conviction can be based on the sole testimony of the prosecutrix. P. W. 2 Anwar witnessed a part of the alleged

occurrence and there is no reason to discard his testimony outright, In his statement u/s 164 Cr. P.C. recorded on 7-5-79 P.W. 2 made consistent

and rational statements with regard to the alleged outrageous act of the accused. The trial judge believed his evidence and we find no reason to

take a contrary view.

5. P.W. 4 Sattar Ali, brother of P. W. 1 Anwara returned home in the afternoon and after hearing the incident from her mother called P. Ws.

Nauser Khan, Emdad Khan and others for salish. Emdad Khan has been examined as P. W. 5 and Nauser Khan as P. W. 6. From the evidence

of those two witnesses and that of P. W. 4 it has been Clearly established that there was a salish on that very day and in that salish accused made

extra judicial confession in regard to the commission of rape on Anwara. As the accused and his father took time for communicating their reaction,

the prosecutrix and her father and brother had to wait till the next morning and when the accused declined to settle the matter amicably the

prosecutrix went to the P.S. to lodge a complaint. The production of the accused at the P.S. on 27th April is a pointer to the fact that whatever has

been stated by the prosecution witnesses about the alleged salish and the extra judicial confession made by the accused is substantially correct. The

defence case that the accused was assaulted and confined by the brother and father of the prosecutrix cannot be accepted because there is no

evidence that at any point of time there was any complaint from the side of the accused and his father and other relations when the accused was

being taken to the P.S. by P. W. 9 Gour Kalindi who was the substitute Chowkjdar of village Maricha. Is it believable that the accused was

completely innocent and had nothing to do with the alleged offence and still no resistance would come from the side of his father and other relations

? The criminal case filed by Nur Islam against Nawsher Ali Khan and others was of the year 1976 and the same was dismissed on compromise

(Ext. A/A). The other case was initiated by Ali Ahmed Khan against Sattar Ali Khan and others in December 1979 (Ext. A). The initiation of these

criminal proceedings does not in any way establish the alleged animosity between the accused and P. Ws. Nawsher or Sattar. The case of

December 1979 was presumably launched to counter the charge of rape against accused Gulam.

6. Next we turn to the medical evidence of P. W. 7 Dr. Bimal Chandra Roy and P. W. 8 Dr. Lakshmi Kanta Das who had examined the

prosecutrix on 9-5-79 and 27-4-79 respectively. From the report of Dr. Roy, a Radiologist attached to Midnapore Sadar Hospital, it appears that

on the findings of the Ossification test the victim girl was between 12 and 14 years of age on the date of her examination. The evidence of the

Radiologist considered along with the oral evidence of the victim girl and her mother P. W. 3 Rabea, we can safely come to the conclusion that on

the date of occurrence P. W. 1, Anwara was between 12 and 14 years of age. The question of the victim girl's age is of little significance in the

instant case because if she is under 16 years of age at the relevant time, her consent is immaterial and there is no suggestion that PW 1 was a

consenting party, From the evidence of the other doctor, namely, P. W. 8 Dr. L. K. Das, it appears that he found no injuries on the external part of

the body or on the private parts of the rape victim. In his report P. W. 8 had remarked that ""the girl cannot correctly defined as raped now"". Our

attention was drawn to the evidence of P. W. 8 and it was argued that in the absence of any external or internal injury on the person of the victim

girl, the prosecution story of the accused committing rape on the victim girl offering resistance, seems to be highly improbable. In answer, to the

improbability urged by the learned Counsel for the defence, the explanation and clarification given by P. W.8 would be relevant for the purpose of

determination as to whether in fact the victim girl was raped as alleged. From the evidence of P. W. 8, it appears that injuries on the external part

of the body are not expected if the girl fails to resist during the rape. Injuries may not appear if rape is committed by lying her down on fallen

bamboo leaves or on grassy land. So also, injury on the private part of a raped girl will not invariably appear if she attains puberty. Again,

according to P. W. 8, there may be tenderness but not rupture of the vaginal wall if intercourse takes place without any emotion. In vaginal swab

there may be sperm if the discharge is made inside the vagina. We have already found from the evidence of P. W. 10, the I.O. that the eastern

bank of Nimgaria tank, where the occurrence is said to have taken place, is grassy and has bamboo groves. The accused who was 26 years of

age would have easily overpowered a girl between 12 and 14 years of age and it is in evidence that the girl was silenced when her mouth was tied

with a napkin and the accused had also slapped on her cheek when she tried to raise an alarm. There might have been some resistance offered by

the victim girl but that was not enough for having any external injury on her person. The medical evidence discloses that the accused was capable

of having sexual intercourse with the victim girl. It may be recalled that P. W. 8 had also occasion to examine Golam Mohammad who was

referred to by the I.O. in connection with his case. P. W. 8 has categorically stated before the Court that he expressed no opinion as to whether

the girl was ravished or not, It should be borne in mind that for Dr. Das (P. W. 8) this was the first case when he was called upon to examine a

rape victim and submit a report. Even if there is any unhappy expression in his report, it can be safely reconciled in the light of the direct and

circumstantial evidence appearing at the trial. Upon consideration of the medical evidence, our considered view is that the victim girl had been

raped by the accused at the place and hour and in the manner alleged by the prosecution.

7. Now, we come to the report of the Serologist Exbt. 5 which discloses that the pant was stained with human semen mixed with blood. The pant

which was examined by the Serologist had been seized by the I.O. under a seizure list Exbt. 4. The pant has been identified by P. W. 1 as her

pant. Mr. Das contended before us that if the pant had been washed by the victim girl while taking her bath in the nearby pond no stains of semen

or blood could be there at the time of the examination by the Serologist. The defence suggestion is that Sattar himself stained the pant with his own

semen. It is true that the girl had washed the pant but no soap was used. There is no evidence that stains of human semen or blood could be erased

by simply washing the pant casually in pond water. The defence suggestion is absurd in the sense that if Sattar himself had stained the pant with his

own semen, then there could have been no stains of blood on the pant.

8. In view of what has been stated above, we can safely conclude that the charge u/s 376, I.P.C. has been proved against the accused beyond all

reasonable doubts and the learned Assistant Sessions Judge has rightly convicted the accused for the aforesaid offence. The accused has

committed sexual offence on a girl of 12/14 years of age. He therefore deserves severe punishment, There is no extenuating circumstances

mitigating the offence. We are not therefore, inclined to interfere with the quantum of sentence passed by the learned trial Judge. The result is that

the appeal fails. The impugned order of conviction and sentence is upheld. The accused do surrender to the bail bond to serve out the sentence

after setting off the period already spent by him behind the bar in connection with this case.

S. Ahmed, J.

9. I agree.