Supreme Court of India
State Of Chhattisgarh vs Lekhram on 5 April, 2006
Author: S.B. Sinha
Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (crl.) 326 of 1999

PETITIONER:
State of Chhattisgarh

RESPONDENT:
Lekhram

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

The Respondent herein was working in the house of the father of Sushila Bai (PW-1). She is said to have been born on 25.12.1970. She was admitted in a village school in 1977. She was married in the year 1985. She came back to her parent's place from her in-laws house after the 'gauna' ceremeony was celebrated. The Respondent herein is said to have induced her to leave the village along with him in the night intervening between 25th and 26th February, 1986. A First Information Report was lodged on 26.2.1986 by Jeewan Ram Chandel (PW-6) who happened to be the brother-in-law of the prosecutrix Sushila Bai. In the said report, the Respondent herein was said to have been abducted her. The father of the prosecutrix, however, was asked by the officer-in- charge of the police station to produce proof of her age whereupon certificate as per the school register was filed. A case under Sections 366 and 376 was thereafter initiated against the Respondent. The prosecutrix (PW-1) and the Respondent thereafter were found to be residing at Nagpur. The first informant was sent there by the father of the prosecutrix with the police party. PW-1 was recovered on 23.3.1987.

PW-1 alleged in her evidence before the court that she was taken out of the house by the Respondent stating that he would take her to the Narmada Fair.

The prosecution admittedly was proceeding on the hypothesis that the Respondent had assured her that he would keep her like his wife. When she denied the said fact, she was declared hostile.

Before the learned Trial Judge, evidence was adduced on behalf of the prosecution to show that as on 25.2.1986, she was minor. Apart from the statement of the prosecutrix herself, her father (PW-3) as also the Head Master (PW-4) and the Assistant Teacher (PW-5) of the Primary Govt. School Baj Gauda were examined. The entry in the school register showing the date of birth of the prosecutrix to be 25.12.1970 was proved. The learned Sessions Judge on the basis of the said evidence opined that on the date of occurrence she was a minor.

The learned Sessions Judge proceeded on the basis that having regard to the age of the prosecutrix the stand of the defence that the accused had sexual intercourse with her with consent was of little importance. The learned Sessions Judge opined that in view of the fact that the Respondent herein had not disputed that he had sexual intercourse with the prosecutrix at Nagpur, the charge of rape must be held to have been proved. It was, however, held that no case has been made out against the Respondent under Sections 363 and 366 of the Indian Penal Code. Taking a lenient view of the matter, the Respondent was sentenced to undergo 3 years rigorous imprisonment under Section 376 of the Indian Penal Code.

In the appeal, the High Court did not enter into the evidences brought on record. The judgment of the learned Sessions Judge was reversed on the premise that entries made in a school register is not conclusive evidence as regards the date of birth of PW-1. The evidence of PW-3 the father of the prosecutrix was also disbelieved solely on the ground that he was not in a position to say about the date of birth of his other children.

The sole question which, thus, arises for our consideration is as to whether the State has brought enough materials on record to prove that PW-1 was a minor as on the date of occurrence.

PW-4 Shri Vishnu Prasad Shrivastava was working as a Head Master in the primary government school Baj Gauda. He stated on oath that while taking admission, her mother disclosed about the date of birth on the basis of which the same was recorded in the school register as 25.12.1970.

PW-5 Shri Jumuk Lal Sahu was an Assistant Teacher in the year 1977-78 when PW-1 was admitted in the said school. He proved the said entries as having been written by him. He further stated that the date of birth of PW-1 was certified by Shakuntala Devi, mother of the prosecutrix.

Nothing, in our opinion, has been elicited in the cross- examination of the said witnesses to show that their statements were not correct. PW-3 is the father of the prosecutrix. According to him, his eldest daughter Uttara was born in the year 1966 and the second daughter Nandni Kumari in 1968. Sushila Bai prosecutrix was born on 25.12.1970. He further stated that the son Santosh was born in the year 1973 and thereafter another son Kamlesh was born in 1976. The last child Mukta was born in 1980.

PW-1 prosecutrix admitted that she was the third child of her parents and two of her sisters are elder to her.

A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Indian Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW-5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. Father of the prosecutrix also deposed to the said effect.

The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late.

She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws place for some time and after the 'gauna' ceremony, she came back. The materials on record as regard the age of the prosecutrix was, therefore, required to be considered on the aforementioned backdrop. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.

Only because PW-3 the father of the prosecutrix could not state about the date of birth of his other children, the same, by itself, would not mean that he had been deposing falsely. We have noticed hereinbefore, that he, in answer to the querries made by the counsel for the parties, categorically stated about the year in which his other children were born. His statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. We, therefore, are of the opinion that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly.

This brings us to the question of quantum of sentence. The question which, thus, arises for consideration is whether a case has been made out to invoke the proviso appended to Section 376 of the Indian Penal Code. The Trial Court did so.

The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The Respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the Respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the Respondent again may not arise. She lived for some time with the Respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The Respondent preferred an appeal before the High Court in the year 1987. The same remained pending about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one and a half year. In the peculiar facts and circumstances of this case and having regard to the fact that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the Appellant back to prison.

For the aforementioned reasons, while setting aside the judgment of the High Court and affirming that of the Trial Court, we are of the opinion that the interest of justice would be met if the Respondent is directed to be sentenced to the period already undergone by him. This appeal is allowed with the aforementioned directions.