

Don FINK *v.* STATE of Arkansas

CR 79-37

582 S.W. 2d 3

Opinion delivered June 4, 1979
(Division I)

[Rehearing denied July 9, 1979.]

1. CRIMINAL LAW — FORCIBLE COMPULSION — DEFINITION. — Forcible compulsion includes physical force or an express or implied threat of physical injury, and physical injury means the impairment of physical condition or the infliction of substantial pain. [Ark. Stat. Ann. §§ 41-1801 (2) and 41-115 (14) (Repl. 1977).]
2. CRIMINAL LAW — RAPE — SUBSTANTIALITY OF EVIDENCE TO PROVE REQUIRED ELEMENT OF FORCIBLE COMPULSION. — There was substantial evidence from which a jury could conclude that a father, who was charged with rape, as defined by Ark. Stat. Ann. § 41-1803 (Repl. 1977), of his two children, ages 11 and 13, had achieved his purpose by forcible compulsion, where the children testified that they were forced by the father to engage in deviate sexual activity as defined in Ark. Stat. Ann. § 41-1801 (1) (Repl. 1977), that they did not want to engage in it, that they were afraid of their father, and that he would whip them with a belt if they didn't engage in such activity with him; and where a doctor testified that an examination of the children substantiated their testimony as to the type of deviate sexual activity to which they had been subjected.

Appeal from Hempstead Circuit Court, *J. Hugh Lookadoo*, Judge; affirmed.

James E. Davis, for appellant.

Steve Clark, Atty. Gen., by: *Catherine Anderson*, Asst. Atty. Gen., for appellee.

GEORGE ROSE SMITH, Justice. The Criminal Code definition of rape includes deviate sexual activity, which encompasses the penetration of the anus of one person by the penis of another. Ark. Stat. Ann. §§ 41-1801 (1) and 41-1803 (Repl. 1977). In this prosecution of the appellant for the crime of rape the State's proof showed that he had engaged for some months in such deviate sexual activity with his son and daughter, aged 13 and 11 at the time of trial. The jury

returned a verdict of guilty and sentenced the appellant to life imprisonment.

The only argument for reversal is that the State failed to prove the required element of forcible compulsion, which is defined to include physical force or an express or implied threat of physical injury. § 41-1801 (2). Physical injury means the impairment of physical condition or the infliction of substantial pain. § 41-115 (14).

Here one or both of the children testified that the conduct occurred a number of times, that they did not want to engage in it, that they were afraid of their father, that he would threaten to whip them with a belt, and that if they didn't "mess around" with him he would give them a whipping. A physician testified that the rectum of each child was stretched and inflamed and that in his opinion the conditions had been caused by the insertion of an adult penis many times. Thus there was an abundance of substantial evidence from which the jury could conclude that the accused had achieved his purpose by forcible compulsion.

Affirmed.

We agree. HARRIS, C.J., and BYRD, HOLT, and HICKMAN, JJ.
