

Ramesh Ram Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Apr-30-2013

Judge : U.C. Dhyani

Appeal No. : Criminal Appeal No. 175 of 2010

Appellant : Ramesh Ram

Respondent : State of Uttarakhand

Judgement :

U.C. Dhyani, J.

1) Victim Km. Parwati Kapkoti lodged a complaint to Patti Patwari, Lamgarha, District-Almora complaining that the accused Ramesh Ram attempted to commit rape with her.

2) According to the complaint, the victim, on 17.08.2005, went to pasture her goats in the forest of Dabri. At about 2.00 p.m., co-villager Ramesh Ram s/o Ratan Ram came from behind the victim, snatched her dupatta, caught hold of her hands, pressed her breasts and uttered indecent language. She tried to release herself, but the accused caught hold of her, opened her trouser, caught her by her waist and tore her trouser. She raised an alarm. Chandan Singh, who was present in the forest, after hearing the voice of Parwati came there but Ramesh Ram fled away using abusive language. Accused also said that he would kill him the victim, if she disclosed the incident to anybody. Leela Devi, who also had came to the forest,

saw the incident. On the basis of such complaint a chik F.I.R. was lodged (Ex.Ka-4) on the self same day at 5.30 p.m. at Police Station Lamgara, District-Almora, in respect of offences punishable under Sections 376/511, 354, 504 and 506 of I.P.C.

3) Investigation started on the basis of said first Information report. The victim was medically examined. Investigating Officer visited the place of incident and prepared site plan (Ex.Ka-5). The Investigating Officer also took into possession the torn clothes of the victim and prepared recovery memo (Ex.Ka-6) thereof. He effected the arrest of accused. Investigation Officer also got the victim medically examined by Emergency Medical Officer, Almora, on 18.08.2008, at 2.50 p.m.

4) After the investigation was over and the Investigating Officer submitted chargesheet against the accused, the case was committed to the Court of Sessions. When the trial commenced and prosecution opened its case, charges against the accused in respect of offences punishable under Sections 376/511 I.P.C. and 504 of I.P.C. were framed against the accused Ramesh Ram, who pleaded not guilty and claimed trial.

5) Five witnesses, namely, PW1 Km. Parwati Kapkoti (victim), PW2 Ramoli Devi (mother of the victim), PW3 Chandan Singh (eye witness), PW4 Dr. Usha Upreti (who prepared medical report) and PW5 Hayat Singh Goswami (investigating officer) were examined on the behalf of the prosecution. Incriminating evidence was put to the accused persons under Section 313 Cr.P.C., in reply to which he said that he was falsely implicated in the case. No evidence was given in defence. After hearing both the sides, accused was convicted of the offence punishable under Section 376/511 of I.P.C. and was sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 1,000/-. Accused was acquitted of the charge under Section 504 of I.P.C.

6) Aggrieved against the said conviction and sentence, present criminal appeal was preferred.

7) Prosecution led the evidence through PW1 Parwati Kapkoti (victim), who, in her examination-in-chief, said that Ramesh Ram was her co-villager. The incident took

place on 17.08.2005 at 2.00 p.m. On that day, she had gone to a forest to pasture her goats. Accused Ramesh Ram came from behind and pushed her. He drowned her in the river. He started tearing off her clothes and pressed her breasts. He also tried to undress the victim and tore her trouser. She was in the water. Accused was tearing off her clothes including salwaar. In the meanwhile, Chandan Singh (PW3) came there and accused Ramesh Ram ran away, no sooner he saw Chandan Singh. The accused wanted to commit rape with her. He had already opened the chain of his pant. The matter was reported to Patwari, Lamgarha. PW1 proved her report Ex.Ka-19. She also said that she was taken to the hospital, where she was medically examined. Patwari interrogated her.

8) In the cross-examination PW1 said that at that time she was studying in class 8th. Complaint was got written by one Narayan Singh. The accused could not commit the rape with her, but he attempted to rape her. Accused was co-villager of the victim. Patwari took her torn clothes in his possession.

9) There was no infirmity in the statement of PW1. She gave her evidence in a natural way. She narrated before the court whatever happened to her. The evidence tendered by PW1 was believable. She said in no uncertain terms, that the accused outraged her modesty and attempted to sexually assault her, but could not succeed because PW3 Chandan Singh came in the meantime. The evidence tendered by PW1 (Parwati Kapkoti) was acceptable.

10) Learned amicus curiae, during the course of arguments, pointed out the one and the only contradiction in the cross-examination of PW1, which contradiction is a minor contradiction. Learned amicus curiae pointed out that the colour of salwaar (trouser) was said to be rosy in the statement of PW1, but the colour of salwaar was shown to be black in the recovery memo. The same has hardly any contradiction worth taking note of. The wearing apparels which the victim was wearing at the time of the incident were produced before the investigating officer, in respect of which a recovery memo was prepared.

11) Injuries sustained by the injured/victim were proved by PW4 Dr. Usha Upreti, who said that on 18.08.2005, Dr. V.K. Shukla was posted as Emergency Medical Officer, who wrote Ex.Ka-10 and Ex.Ka-11. When she (victim) was examined on

18.08.2005 at 2.50 p.m, the following injuries were found on the person of the victim:

1. Abrasion 3 in no. in area of 3x2 c.m. in the inner border of left scapula.
2. Abrasion 2.5x0.5 c.m. in lateral side of right breast 1.5c.m., away from right nipple.
3. Abrasion 7x5 c.m. multiple, in lateral side of left breast and 6c.m. below the axilla.
4. Contusion 3.5 c.m.x2 c.m. above outer right eye brow, brownish in colour.

It was opined that injury no. 1, 2 and 3 were caused by rough object or surface. Nature of injuries was simple. Injury no. 4 was caused by hard and blunt object. Duration was less than two days.

12) Accused Ramesh Ram was also examined on 18.08.2005 at 10.25 A.M. He sustained following injuries during the course of incident:

1. Contusion below both eyes measuring about 3x1^{1/2} c.m.
2. Compliant of pain on left side chest.
3. Mouth bite, middle finger tip left hand.
4. Nail on the neck.

All injuries were found to be simple in nature and caused by hard and blunt object.

13) As regards the injuries sustained by the victim, PW4 Dr. Usha Upreti (who was also examined as PW6), said that the victim alone could tell as to how she sustained injuries. If somebody caught hold of victim, and victim resisted, then such injuries were possible.

14) The testimony of PW1 was thus corroborated by the medical evidence.

15) PW3 Chandan Singh said that about 5-6 years ago, he had gone to fetch timber from the jungle. It was around 12.00 hours. PW3 Chandan Singh heard the cries of PW1. On hearing her cries for help, PW3 went to that direction from where the sound of cries was coming. PW3 saw Ramesh Ram (accused) running away. PW3 also saw Parwati (victim). She was without clothes in her lower part of the body. Her trouser was in her hand. A woman, who was working in the forest, took victim to her house.

16) Learned amicus curiae pointed out yet another minor contradiction in the cross-examination of PW3, (who said that he did not took Parwati to her home) and PW1, (who said that she was taken to home by PW3). The fact remains that the incident took place with the victim. Whether she was taken to the village by the womenfolk or PW3 Chandan Singh was immaterial. Prosecution story cannot be doubted on the basis of such minor contradiction.

17) PW2 Ramoli Devi (mother of the victim) said in her cross-examination that her daughter was brought to home by 4-5 women of the village. When the victim came to her home, her clothes were torn. PW2 inquired about the incident from PW1 (Parwati). She told her mother that Ramesh Ram attempted to sexually assault her. PW5 Hayat Giri Goswami was the Investigating Officer of the case and proved prosecution documents, including the chargesheet.

18) Prosecution case was proved on the strength of testimony of PW1, supported by PW3 and duly corroborated by the medical evidence. The victim sustained injury on her person, which suggested that she tried to save herself from the clutches of the accused. There were contusions on the body of the prosecutrix. Her clothes were torn, which established the fact that the accused Ramesh Ram wanted to sexually assault her and outrage her modesty. Accused also sustained injuries when the victim tried to resist sexual assault on her. The set of injuries sustained by the victim and the accused compound the miseries of the appellant in this case. An unmarried girl, aged about 18 years, cannot put her chastity at stake by implicating anybody falsely.

19) Learned court below has elaborately dealt with each and every aspect of the evidence tendered before him. Learned trial court has also referred to a ruling of

the Honble Bombay High Court, in which the Honble Court upheld the conviction of the accused under Section 376/511 of I.P.C. In the instant case, the accused pounced upon the victim, fell upon her, tore her trouser, pressed her breast and in the meantime opened the chain of his pant in an attempt to sexually assault her. The victim sustained injuries in the course of offering resistance. The accused too sustained injuries in the process. Prosecution was successful in proving the guilt under Sections 376/511 of I.P.C against the accused beyond reasonable doubt. There is no infirmity in the judgment rendered by the Court below. He was rightly sentenced to undergo rigorous imprisonment for two years, and fine of Rs.1,000/-. The sentence awarded to the accused by the Court below cannot be said to be inadequate. This Court is unable to take a view contrary to what was taken by the Court below. The appeals fails and is liable to be dismissed.

20) The criminal appeal is dismissed. The judgment and order, as also the conviction and sentence under appeal, are upheld and affirmed. Accused/convict Ramesh Ram is on bail. His bail is cancelled. The appellant is directed to surrender before the Court below to serve out the sentence as was awarded by the trial court and thus affirmed by this Court.

21) Let a copy of this judgment along with Lower Court Record be sent back to the Court below for causing surrender of the convict Ramesh Ram and sending him to prison for serving out the sentence.

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