

Rameshwar @ Ramu Vs. State

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Court : Rajasthan Jodhpur

Decided On : Mar-05-2014

Appellant : Rameshwar @ Ramu

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Rameshwar @ Ramu vs. State of Rajasthan D.B. Criminal Appeal No.595/2006 against the judgment dated 31.5.2006 passed by Additional Sessions Judge (Fast Track) No.1, Bikaner, in Sessions Case No.57/2006. Date of Judgment ::

5. h March, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE V.K.MATHUR Mr. Mridul Jain, for the appellant. Mr. Vishnu Kachhawaha, Public Prosecutor, for the State. Mr. S.G.Ojha, for the complainant. BY THE COURT : (PER HON'BLE GOVIND MATHUR,J.) By the judgment impugned dated 31.5.2006, learned Additional Sessions Judge (Fast Track) No.1, Bikaner, convicted the accused appellant for the offences punishable under Sections 376(2)(f), 366 and 450 Indian Penal Code and sentenced as under:- u/S.376(2)(f) IPC - Life term imprisonment with a fine of Rs.10,000/- and in default of payment of fine further to undergo six months simple imprisonment. -2- u/S.366 IPC - Seven years rigorous imprisonment with a fine of Rs.1000/- and in

default of payment of fine further to undergo two months simple imprisonment. u/S.450 IPC - Five years simple imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo one month's simple imprisonment. In brief, facts of the case are that a written report (Ex.P/5) was submitted at police station Sridungargarh on 21.4.2006 at 03:15 PM by complainant Shri 'S' (PW-2) (name not disclosed) with assertion that on 20.4.2006 he alongwith his other family members went to Rosawa to join marriage of his younger brother and returned therefrom in night at about 00:00 hours. His minor daughter and few other persons were sleeping in court yard. At about 02:30 AM he heard cry of his daughter. She was weeping and was having bite marks on her cheeks, her clothes were blood stained and blood was also oozing from her private parts. On asking, the girl stated that when she was sleeping Ramu Kaka came and carried her in his lap and took her to the primary school building and committed ill-deeds. On her crying loudly, he fled from the spot. On basis of the report given, a first information report was drawn and case was registered for the offences punishable under Sections 366-A, 376 and 450 Indian Penal Code. A police report as per provisions of Section 173 Code of Criminal Procedure was filed before the competent court charging the accused for the offences punishable under -3- Sections 366-A, 376(2)(f) and 450 Indian Penal Code. The case being sessions triable was committed to the court of Sessions and the Sessions court after hearing accused framed a charge against him for commission of offences punishable under Sections 366, 376(2)(f) and 450 Indian Penal Code. On denial of the charge trial commenced as desired. The prosecution supported its case with the aid of evidence adduced by seven witnesses (PW-1 to PW-7) and by getting 19 documents exhibited. An opportunity was given to the accused to explain the adverse and incriminating circumstances appearing in the prosecution evidence and while availing the same he termed the evidence as false with explanation that in the night concerned he was attending a marriage. In defence statements of three persons were recorded. The trial court examined the entire evidence available on record and recorded guilt of the accused. In appeal, the only argument advanced by learned counsel for the appellant is that the girl said to be subjected to rape is minor and, therefore, the statements given by her should have not been relied upon by the trial court without having adequate corroborating

evidence, which as per him, is not available in the instant matter. On the other hand, learned Public Prosecutor submits that a definite statement is given by a minor girl -4- who is of 10 years of age and i.e. adequately supported by the medical evidence and other ancillary evidence. Heard learned counsel for the appellant, learned Public Prosecutor and also examined the record in lucid. As already stated, the victim is a minor girl of 10 years. The incident in question occurred in early hours of 21.4.2006 and immediately thereafter the first information report was lodged at the police station concerned by father of the victim. The evidence was collected by the investigating agency as early as possible and a charge sheet too was filed before the competent court on 28.4.2006. During the course of investigation a statement of the victim was also recorded as per provisions of Section 164 Code of Criminal Procedure before the court of learned Judicial Magistrate No.2, Bikaner on 26.4.2006. The Judicial Magistrate on being satisfied that the victim minor girl was in position to make sensible statement, drew her statement. The victim stated that on 20.4.2006 she went to attend marriage of her uncle. When she was sleeping, accused came and took her to the nearby primary school and stated that he will took her in marriage of her uncle. He then committed ill-deeds. The victim girl also narrated the details of the ill-deeds committed, but the details of that are not required to be mentioned here. She was also medically examined during the course of investigation and an opinion was given about recent sexually act performed. Several injuries and marks of violence were also noticed on her body as under:- -5- Following injuries are reported on various parts of the body.

1. A bruise elliptical in shape interrupted at placed of 2.5 cm x 2.0 cm in size is present on right cheek.
2. Bruise elliptical in shape 2.5 cm x 2.0 cm in size is present on left cheek.
3. Bruise of 2 cm x 1 cm on the back of left elbow.
4. Bruise of .5 cm x .5 cm on the back of lower thoracic region.
5. Bruise of 1 cm x 1 cm on the sacral region.

. The victim girl appeared before the court go get her testimony examined on 19.5.2006 as PW-1. The trial court first asked certain usual questions to satisfy itself about competence of the witness in relation to understanding the questions and importance of the evidence. On being satisfied, her statement was recorded. The victim minor girl stated that on 20.4.2006 she went to join marriage of her uncle Kailash and returned therefrom in mid night. When she was sleeping in court yard, accused came and took her to the primary school. In campus of the primary school he forcibly committed ill-deeds resulting into injuries on back and other parts of body. She also mentioned about the bites given on her cheeks by the accused. As per the witness, injuries were caused to her private parts also and due to bleeding her pajama received -6- blood stains. The accused ran away from the site of occurrence as she cried loudly. The victim was subjected to a long cross examination, but she maintained her version as stated in Chief. The other important witness PW-2, father of the victim girl, stated that in the night he heard cry of his daughter and, thus, went out from room. He saw that the girl was weeping and on asking she detailed about the ill- deeds of the accused. The incident thereafter was reported to the police after having consultation with elders of the family. Dr. Manju Joshi (PW-6), while getting her testimony examined, stated that she found bite marks on the cheeks of the victim girl, several other injuries on parts of the body and also injury on private parts, during the course of medical examination. As per this witness, the girl was subjected to recent sexual act. The evidence discussed above in quite unambiguous terms indicates commission of rape on a minor girl. The only argument advanced by counsel for the appellant is that the girl being minor was not competent to adduce evidence properly, thus, she should have not been relied upon. We do not find any merit in the argument advanced. The trial court observed all the requirements -7- needed to satisfy itself about the competence of a child witness for adducing evidence. The trial court recorded statement of victim girl only after recording its such satisfaction. It is further important to note that the statements given by the victim minor girl are corroborated by adequate medical evidence and the evidence adduced by her father. A father of a minor girl in normal course would have not given such an evidence relating to her daughter. The evidence adduced by the victim girl, her father in addition to the medical evidence available, is sufficient to

arrive at the conclusion about involvement of the accused in the crime in question. The findings given by the trial court, thus, is having no infirmity that may warrant any change in appeal. The appeal being bereft of merit, is dismissed. The conviction recorded and sentence awarded by the trial court is affirmed. (V.K.MATHUR),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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