

Malkhan Singh Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/484354

Court : Allahabad

Decided On : Mar-31-1995

Reported in : 1996CriLJ90

Judge : S.C. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Cri. App. No. 1410 of 1983

Appellant : Malkhan Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : B.P. Gupta, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Jain, J.

1. Malkhan Singh (hereinafter referred as the appellant) has challenged the judgment and order passed by Addl. Sessions Judge, Agra on 25-5-83 whereby he was convicted Under Section 354, IPC and sentenced to undergo R.I. for two

years.

2. The entire case of the prosecution hinges upon the testimony of the prosecutrix Km. Guddi aged about 18 years. In the F.I.R. lodged by her on 29-12-81 she categorically stated that she was raped by Malkhan Singh in his house while his wife remained sitting outside the door of the house. In her statement Under Section 164, Cr.P.C. before the Magistrate, she also stated that Malkhan Singh called her inside the house, shut the door of his house and did sexual intercourse with her; without her consent and wishes and when she raised cries, her mouth was shut and when she opened the door and came out, the wife of Malkhan Singh allowed Malkhan Singh to run away. On her medical examination, the lady Doctor opined that her age was about 18 years, her vagina could admit two fingers hymen was torn and it was an old tear, which was healed, there was no bleeding, vaginal discharge was normal. On the basis of the F.I.R. and her statement before the Magistrate, this appellant Malkhan Singh was tried along with co-accused Kanya Singh, co-accused Kanya Singh has been acquitted. During trial the prosecutrix Km. Guddi resiled her statement before the Magistrate and also the F.I.R. which was allegedly lodged by her, stated that actually sexual intercourse was not done by any one. Malkhan Singh only tried to commit rape on her but he did not do so. On the basis of her only statement, the learned Additional Sessions Judge found not guilty the accused Kanya Singh alias Karan Singh and acquitted her on the said charges but convicted Malkhan Singh Under Section 354, I.P.C. and sentenced him for two years R.I.

3. From perusal of the record, it is apparent that the entire case is based upon the sole testimony of prosecutrix. Prosecutrix was found partly reliable and partly unreliable by the Addl. Sessions Judge himself. There is no corroboration of the testimony of this prosecutrix who has stated something at one time and something at the other time. In such type of cases where neither the witnesses are wholly reliable and unreliable the court should scrutinize the statement of that witnesses very minutely and also insist upon corroboration, one should not be allowed to blow hot and cold in the same breath. Hon'ble Supreme Court in a case Vadivelu Thevar v. State of Madras, : 1957 CriLJ1000 , held that in such category of cases, the court has to be circumspect and has to look for corroboration in material

particulars by reliable testimony direct or circumstantial.

4. Statement of the prosecutrix suffers from many doubts. There is no corroboration of her statement. Even that lady constable Tahsil Begum to whom this lady is alleged to have narrated the version just after the incident, has not been examined, I do not find any corroboration in the statement of the prosecutrix even from the medical report. The fact which she stated before the court Malkhan Singh has not committed rape on her and that he only caught hold her by breast and shoulders is missing in the F.I.R. as well as in her statement Under Section 164, Cr.P.C. before the Magistrate. It is a new theory which she has taken up before the court and it is without corroboration and it is very difficult to rely upon this statement of the prosecutrix who has no sanctity for truth.

5. Under these circumstances, the appellant is entitled to benefit of doubt and therefore, I accept this appeal, set aside the judgment and order passed by the Addl. Sessions Judge convicting this appellant Malkhan Singh Under Section 354, I.P.C. and sentencing him to undergo R.I. for two years and acquit the accused on the said charge on the basis of benefit of doubt.

6. Appeal is allowed accordingly. The appellant is on bail. He need not surrender and the bail bonds are discharged.