

Hadman Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : Feb-27-2015

Appellant : Hadman Ram

Respondent : State

Judgement :

{1} IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
<><><> :Judgment: Hadman Ram versus The State of Raj.

S.B.Criminal Appeal No.388 of 2009 Smt.

Devli versus The State of Raj.

S.B.Criminal Appeal No.467 of 2009 under Section 374(2) of Cr.P.C.against the judgment and order dated 15.05.2009 passed by the learned Additional Sessions Judge (Fast Track).No.2, Jodhpur in Sessions Case No.17/2008 whereby the appellants were convicted and sentenced for the offences under Sections 376, 342 and 376/114 IPC.

<><><> Date of Judgment ::: February 27, 2015 Present Hon'ble Mr.Justice Banwari Lal Sharma Mr.DS Udawat].Mr.KR Bhati]., for the appellants.

Mr.LR Upadhyay, Public Prosecutor.

By the Court: Since both the appeals have been preferred against the same impugned judgment of conviction and order of sentence, therefore, both these appeals were {2} heard together and are decided by this common judgment.

The appellants have preferred these appeals under Section 374(2) Cr.P.C. against the judgment and order dated 15.05.2009 passed by the learned Additional Sessions Judge (Fast Track).No.2, Jodhpur in Sessions Case No.17/2008 whereby the appellants were convicted and sentenced for the offences under Sections 376, 342 and 376/114 IPC.

The brief facts of the case are that on 31.05.2008, complainant Aaichuki Devi presented herself before the SHO, P.S.Bilara and submitted a written report alleging inter alia that on 30.05.2008, at about 3.00 p.m., when she was going to market for purchasing kerosene, appellant-accused Smt.

Devli W/o late Shri Mohan Ram Chowkidar was standing outside her home and when she saw her, Smt.

Devli called her on tea on which she went to her house and after taking tea, appellant-accused Smt.

Devli told her to have {3} darshan of her husband's photograph in a room.

She went to have darshan of the photograph of her late husband and when she entered into the room, appellant-accused Smt.

Devli bolted the door from outside and appellant-accused Hadman Ram, who was there in the room, caught her from behind and committed rape on her.

After about half an hour, appellant-accused Smt.

Devli opened the door and she came out Smt.

Devli asked to forgive her.

Thereafter, she returned to her home and told the incident to her sister-in-law () and when her husband came in the evening, she told about the incident but since

there was no mean of transport from village to the police station at that time, the complaint was lodged on 31.05.2008.

On the basis of this information, an FIR was registered at P.S.Bilara and investigation commenced.

After completion of investigation, charge- sheet was filed in the court of Additional Chief Judicial Magistrate, Bilara on 17.09.2008 for the offences under Sections 342 and 376/114 IPC against the appellant- accused Smt.

Devli and since the appellant-accused {4} Hadman was absconding, therefore, charge-sheet against him was filed under Section 299 Cr.P.C.for the offence under Section 376 IPC.

Since appellant-accused Hadman was absconding, therefore, the learned Additional Chief Judicial Magistrate ordered to initiate separate proceedings under Sections 82-83 Cr.P.C.against him and since the case was exclusively triable by the Court of Sessions, therefore, the case was committed to the court of learned Sessions Judge, Jodhpur wherefrom the case was transferred to the court of learned Additional Sessions Judge (Fast Track).No.2, Jodhpur on 10.12.2008.

The police filed supplementary charge-sheet against the appellant- accused Hadman Ram for the offence under Section 376 IPC in the court of learned Additional Chief Judicial Magistrate, Bilara and the case was since triable by the court of Sessions, therefore, the same was committed to the court of the learned Sessions Judge, Jodhpur wherefrom the case was transferred to the court of learned Additional Sessions Judge (Fast Track).No.2, Jodhpur on 21.11.2008.

{5} To substantiate the charges, the prosecution examined as many as 11 witnesses and exhibited documents.

The appellants-accused were, thereafter, examined under Section 313 Cr.P.C., wherein they denied the prosecution case and stated that they have been implicated falsely due to enmity and examined Hemaram (DW-1) and Dhaglaram (DW-2) in defence.

The learned trial court, after trial, vide impugned judgment of conviction and order dated 15.05.2009, convicted and sentenced the appellants- accused as aforesaid.

Hence, this appeal.

I have heard Mr.DS Udawat and Mr.KR Bhati, learned counsels for the appellants-accused and Mr.LR Upadhyay, learned Public Prosecutor and perused the available record.

Mr.DS Udawat, learned counsel for the appellant-accused Hadman submitted that there was enmity between him the husband of the prosecutrix {6} and, therefore, he has been implicated falsely.

It was also submitted by him that the FIR was lodged after a delay of one day and no satisfactory explanation was offered for the said delay.

In the alternative, it was prayed that as on 31.07.2014, the appellant-accused Hadman Ram has suffered the sentence for 5 years 8 months and 16 days and if this court does not deem it proper to interfere with the finding of conviction of the learned trial court, then in that case, his sentence may be reduced to already undergone.

He has placed reliance upon the judgments delivered in Prem Chand & Anr.

versus State of Haryana [1989 Cr.L.R.(SC) 247]., Raj Kumar @ Raju Yadav @ Raj Kumar Yadav versus State of Bihar [2006(2) WLC (SC) Criminal 538]., Ram Singh versus State of Rajasthan [2007(1) Cr.L.R.(Raj.) 544]., Mastan @ Mohan versus State of Rajasthan [2007(1) Cr.L.R.(Raj.) 700]., Dinesh @ Dinesh Kumar @ Suresh versus State of Rajasthan [2011(1) Cr.L.R.(Raj.) 192].and Madan Lal versus State of Rajasthan [2011(2) Cr.L.R.(Raj.) 1072].{7} Mr.KR Bhati, learned counsel for the appellant-accused Smt.

Develi has submitted that he does not want press conviction.

However, it was submitted that the appellant-accused Smt.

Devli remained in custody for about 8 months, therefore, her sentence may be reduced to already undergone.

Per contra, the learned Public Prosecutor supported the impugned judgment and order and submitted that looking to the facts and circumstances of the case, the sentence should not be reduced and prayed that the appeals may be dismissed.

I have considered the rival submissions made at the Bar and perused the impugned judgment and order and available record.

From the perusal of the prosecution evidence, it reveals that the prosecutrix herself was examined as PW-1 and she clearly stated that when she entered in the room at the house of appellant-accused {8} Smt.

Devli, the door was bolted from outside and she was caught from behind by the appellant-accused Hadman Ram and he threw her on the floor and committed rape on her and since she was thrown on the floor, she suffered injuries on her arm and left hip and she also complained of pain on the hip.

Dr.

Asha Khandelwal (PW-2).in her statement, clearly deposed that there was injury on his arm and on the left hip, which could have been caused by throwing her on the floor.

The defence witnesses have also failed to establish previous enmity due to which the appellant- accused were falsely implicated.

The learned trial court, after considering the prosecution evidence and material available on record, has rightly recorded the finding of guilt against the appellants and convicted them, which does not warrant any interference by this court.

{9} Now comes the question regarding the sentence.

In the case of Raj Kumar @ Raju Yadav @ Raj Kumar Yadav (supra).the Hon'ble Supreme Court though reduced the sentence to already undergone on the ground that the doctor did not find any confirmatory evidence of rape on victim.

Similarly, in the case of Prem Chand (supra).the Hon'ble Supreme Court while considering the fact that there was no mark of violence on any part of body of the prosecutrix and that she used to frequent sexual intercourse, reduced the sentence from 10 years to 5 years.In the case of Madan Lal (supra).a Division Bench of this Court also reduced the sentence to already undergone on the ground that no marks of violence were found on the body of the prosecutrix.

Similar was the view of a Coordinate Bench of this court in the case of Mastan @ Mohan (supra).wherein also the sentence was reduced to already undergone on the ground that no injury was found on genitals of the prosecutrix.

{10} In the case in hand, injuries were found on the back and left hip of the prosecutrix and the same were caused due to throwing her on the floor by the appellant-accused Hadman Ram and this was corroborated by Dr.

Asha Khandelwal (PW-2).The prosecution was also successful in proving the fact that the prosecutrix was called by the appellant-accused Smt.

Devli at her home and she was sent by the appellant-accused Smt.

Devli in the room and the room was bolted by her wherein rape was committed by the appellant-accused Hadman Ram.

The learned trial court, while considering the over-all facts and circumstances of the case, has rightly awarded the sentences against both the appellants-accused, which also does not warrant any interference by this court.

In view of the above, I do not find any merit in both these appeals, which are hereby dismissed.

The appellant-accused Smt.

Devli is on bail.

Her bail bonds are cancelled.

The learned trial court is {11} directed to take steps to sent her in State custody to serve the remaining sentence.

Record of the learned trial court be sent back with a copy of this judgment.

[Banwari Lal Sharma],,J.

/skm/

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