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Nisar Vs. State of Rajasthan Through Public Prosecutor

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Court : Rajasthan

Decided On : Mar-08-2006

Reported in : RLW2006(3)Raj1815; 2006(3)WLC562

Judge : Narendra Kumar Jain, J.

Acts : Indian Penal Code (IPC) - Sections 376 and 420; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : S.B. Criminal Jail Appeal No. 799 of 2003

Appellant : Nisar

Respondent : State of Rajasthan Through Public Prosecutor

Advocate for Def. : B.S. Chhaba, Public Prosecutor

Advocate for Pet/Ap. : Ram Mohan Sharma, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Narendra Kumar Jain, J.

1. By this Criminal Jail Appeal accused appellant Nisar son of Shri Ajmeri has challenged the judgment and order dated 6.6.2002 of the Additional District & Sessions Judge (Fast Track) No. 2, Dholpur, in Sessions Case No. 91/2001,

whereby he has been convicted under Section 376 IPC and sentenced to seven years imprisonment and fine of Rs. 2000/-; in default of payment of fine, to further undergo two months' simple imprisonment.

2. PW-2 Ram Dayal, the father-in-law of prosecutrix Smt. Gayatri (PW-4), lodged a First Information Report on 11.9.2000 at Police Station Bari, District Dholpur, about committing sexual intercourse by the accused appellant with Smt. Gayatri. On this FIR, the police registered a case under Section 376 and 420 IPC and started investigation. On completion of the investigation the police filed a charge-sheet against the accused appellant under Section 376 and 420 IPC in the court of Additional Chief Judicial Magistrate, Bardi, who committed the case for trial to the Court of District & Sessions Judge, Dholpur.

3. The Trial Court framed charge against the accused under Section 376, IPC. He denied the charge and claimed to be tried. The prosecution examined 10 witnesses and produced documents Exhibit P-1 to Exhibit P-11. Thereafter the statement of the accused was recorded under Section 313 Cr.P.C. wherein he stated that he has been falsely implicated in the case. No evidence was adduced in defence.

4. The learned Trial Court after hearing the arguments, convicted and sentenced the accused appellant vide impugned judgment as mentioned above.

5. The learned Counsel for the accused appellant contended that the Trial Court committed an illegality in convicting the accused appellant as the prosecution has failed to prove the case against the accused appellant beyond all reasonable doubts. He contended that the statement of the prosecutrix Smt. Gayatri (PW-4) is not corroborated with the medical evidence. He referred the document Exhibit P-5, the medical report of the prosecutrix Smt. Gayatri, wherein it was opined that there is no evidence of recent sexual intercourse. He also referred the statement of PW-8 Dr. S.D. Mangal, who proved Exhibit P-5, the medical report of the prosecutrix, and stated in the court that there was no evidence of recent sexual intercourse when he examined Smt. Gayatri. He also contended that there is contradiction in the statements of the prosecution witnesses. PW-2 Ram Dayal and PW-3 Ram Ladli have stated that 'petikot' of prosecutrix was of yellow colour whereas PW-4

Smt. Gayatri stated that it was of gray colour. He also contended that the Investigating Officer has not mentioned the time on the site plan Exhibit P-9 as well as Exhibit P-1, the seizure memo. He also contended that the FSL report has also not been tendered in evidence and it has not been proved by the statement of any prosecution witnesses.

6. The learned Public Prosecutor, on the other hand, contended that there is a statement of PW-4 Smt. Gayatri, the prosecutrix, about sexual intercourse with her by the accused appellant and her statement is corroborated by the statement of PW-2 Ram Dayal and PW-3 Ram Ladli. He contended that the statement of prosecutrix alone is sufficient to convict the accused appellant as her statement inspires confidence.

7. I have considered the submissions of the learned Counsel for both the parties and minutely scanned the impugned judgment and the record of the Trial Court.

8. PW-4 Smt. Gayatri, in her statement before the Court, stated that the accused has committed forcibly sexual intercourse with her. Her statement is corroborated by PW-2 Ram Dayal and PW-3 Ram Ladli also. It is correct that in Exhibit P-5, the medical report, and statement of PW-8 Dr. S.D. Mangal, it was opined that there is no evidence of recent sexual intercourse but Exhibit P-5 shows that there was external injury on the right thigh of the prosecutrix Smt. Gayatri (PW-4). Exhibit P-5 further shows that the word 'recent' has been used and it does not show that there was no sexual intercourse with her. The incident took place at 11.00 A.M., whereas she was medically examined after seven hours i.e., 6.00 P.M. She was 25 years of age. The prosecutrix (PW-4) and other witnesses state the manner in which incident took place. She was having stomach-pain and her father-in-law and Shiv Singh took her to accused for treatment and under the garb of treatment, the accused committed rape with her. It is a settled law that conviction of accused can be maintained only on sole testimony of prosecutrix provided her statement inspires confidence of the court and it is not necessary that her statement must be corroborated with the medical evidence.

9. The Hon'ble Apex Court in State of M.P. v. Dayal Sahu 2005 AIR SCW 4839, considered its various earlier decisions on the point and held as under:

12. A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of produce under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

10. I have considered the statement of the prosecutrix Smt. Gayatri (PW-4) and I do not find any reason to disbelieve her testimony. Her statement inspires the confidence of the court. It is also relevant to mention that vide Exhibit P-1 the underwear of the accused was seized and marked as 'B' on the sealed packet. The 'petikot' of prosecutrix Smt. Gayatri (PW-4) was also seized and the sealed packet was marked as 'A'. There is a note of the Investigating Officer on the document Exhibit P-1 and Exhibit P-8 that there are signs of semen on underwear as well as 'petikot'. Both packets were sent for chemical examination. The FSL report Exhibit C-1 dated 22.2.2002 clearly shows that human semen was detected in Exhibit No. 1 (from packet marked A) & 2 (from B). Therefore, from Exhibit P-1, Exhibit P-8, and Exhibit C-1, the statement of the prosecutrix Smt. Gayatri is corroborated. The learned Counsel for the appellant could not point out any such illegality or perversity in the finding of the Trial Court so as to interfere in it. The learned Trial Court has considered the oral and documentary evidence in detail and has rightly convicted and sentenced the accused appellant.

11. In the result, I do not find any merit in any of the contentions of the learned Counsel for the accused appellant and the appeal deserves dismissal.

12. The appeal is accordingly dismissed.

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