

Muneer Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-07-1991

Reported in : 1991(1)WLN231

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Appeal No. 393 of 1988

Appellant : Muneer

Respondent : The State of Rajasthan

Judgement :

B.R Arora, J.

1. This appeal is directed against the judgment dated September 1, 1988, passed by the Additional Sessions Judge No. 2, Jodhpur, convicting and sentencing the appellant under Sections 363, 366 and 376, I.P.C.

2. The appellant Muneer was tried by the learned Additional Sessions Judge No. 2, Jodhpur, for offences under Sections 363, 366 and 376, I.P.C. The case of the prosecution, in nut shell, is that on March 17, 1976, accused Muneer abducted Kumari Sarla, aged about 13 years, with intent to marry her without her will from the house of Smt. Sheela-sister of PW 1 Kumri Sarla. From Jodhpur, Kumari Sarla was taken to Jaipur and from Jaipur, she was taken to Lucknow. At Lucknow, they

stayed at the residence of the sister of Muneer accused and where Muneer committed rape with her against her wish for ten to eleven days and on each night, Muneer did sexual intercourse with Kumari Sarla three times. The report of the abduction was lodged by PW 3 Laxman-father of Kumari Sarla-on March 19, 1986 at the Police Station, Sadar, Jodhpur. After the institution of the First Information Report, the case was registered against the accused Muneer under Sections 363 and 366, I.P.C. and on information received by the police party, Kumari Sarla was recovered at Locknow from the house of the sister of Muneer on March 30,1986. The accused Muneer was, also, arrested on the same day at Lucknow at the house of his sister. The statement of Kumari Sarla was recorded and thereafter Section 376, I.P.C. was, also, introduced. The police, after necessary investigation, presented the challan against accused Muneer and the accused-appellant Muneer was tried for offence under Sections 363, 366 and 376, I.P.C. The learned Additional Sessions Judge, after trial, found the accused Muneer guilty for all these offences and sentenced him to undergo seven years' rigorous imprisonment and a fine of Rs. 100/-, and in default of payment of fine to further undergo ten days simple imprisonment under Section 376, I.P.C. The Additional Sessions Judge, also, sentenced the appellant under Sections 363 and 366, I.P.C. for three years rigorous imprisonment and a fine of Rs. 100/-, and in default of payment of fine to further undergo ten days simple imprisonment on each counts. All the three sentences were directed to run concurrently. It is against this judgment, convicting and sentencing the accused-appellant that the accused Muneer has preferred this appeal.

3. I have heard the learned Counsel for the accused-appellant and the learned Public Prosecutor.

4. It is contended by the learned Counsel for the appellant that the incident took place on March 17, 1986, while the First Information Report was lodged on March 19, 1986. This delay in lodged the report itself raises a suspicion in the prosecution story and the appellant deserves to be acquitted. It is next contended that the witnesses produced by the prosecution are not reliable witnesses and they have falsely implicated the accused- appellant. Even from the reading of the statement of PW 1 Kumari Sarla, it is clear that she was a consenting party and as

she was major and being a consenting party, no offence has been committed by the appellant. Lastly, it was contended that the sentence passed by the learned lower Court is too harsh and the appellant is in early twenties of age and is not a previous convict and he is in jail for the last more than four years and ten months and is repenting upon his act and wants an opportunity to reformd himself. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned lower Court.

5. I have considered the rival submissions.

6. The first ground of attack, made by the learned Counsel for the appellant, is that the First Information Report lodged in this case, is a delayed one and no sufficient explanation has been given by the prosecution for this delay in lodging the report and the appellant is, therefore, entitled to acquittal. It is not in dispute that Kumari Sarla was abducted in the night intervening between 17th and 18th March, 1986, when she had left the house of her sister Smt. Sheela on the pretext that she was going to ease herself, but it has come on record that when she did not return for sometime, the husband of Smt. Sheela went to his father-in-law's house and informed Laxman. Thereafter they searched for Sarla and when they came to know from some persons that the accused had taken-away Kumari Sarla, then they lodged the First Information Report. Even otherwise, also, in such cases, when a girl has been abducted, the family members normally try to search the girl first so that the prestige of the family in the community may not be damaged and, therefore, the delay in lodging the First Information Report has been properly explained.

7. The next ground of attack by the learned Counsel for the appellant is that Kumari Sarla was a consenting party and she is a major one and as she had gone herself with the appellant, no offence under Sections 363, 366 and 376, I.P.C. has been made-out. It is, no doubt, true that from a bare reading of the statement of PW 1 Sarla and the conduct of Sarla it is clear that she was a consenting party and without her consent, accused could not have taken her from Jodhpur to Jaipur and from Jaipur to Lucknow. She remained at Lucknow and the accused had sexual intercourse with her for about ten to eleven days. She was free at the

Railway Station, Jodhpur, in the train between Jodhpur to Jaipur-and also at Jaipur itself and then from Jaipur to Lucknow, but she did not inform any other person about the same. But the consent of a minor girl is no consent and the offence under Sections 363, 366 and 376, I.P.C. is made out against the appellant. From the evidence of PW 1 Kumari Sarla, PW 2 Smt. Mohini mother of Ku. Sarla, PW 3 Laxman father of Kumari Sarla, PW 5 Smt. Sheela sister of Kumari Sarla, PW 17 Nirmala, Headmistress, Guru Nanak National School, Jodhpur, it is clear that the age of Kumari Sarla, at the relevant time, was about thirteen years. PW 1 Kumari Sarla, in her statement, has stated that she was thirteen years of age at the time when she was abducted by the accused. PW 2 Smt. Mohini, on the date when she was examined, has stated the age of the girl Kumari Sarla as fourteen years, i.e., at the time of incident she was thirteen years of age. PW 3 Laxman-father of Kumari Sarla, has stated that the age of Kumari Sarla is thirteen years. According to PW 5 Smt. Sheela, the age of her sister Kumari Sarla was 12 to 13 years at the time of the incident. PW 17 Nirmal Suri, the Headmistress, Guru Nanak National School, Jodhpur, has stated that in the Admission Form, the date of birth of Kumari Sarla (Sakuntla alias Sarla) has been mentioned as 11-4-1973. From the statement of these witnesses, it is proved that the age of Kumari Sarla, at the relevant time, was about thirteen years. Though PW 9 Dr. B.P. Gupta has given the approximate age of Kumari Sarla as sixteen years and according to him this may vary six months on either side. It is, no doubt, true that no definite opinion, on the medical basis, can be formed regarding the age because it is an approximate age varying for two years on either side. Thus, in my opinion, the prosecution has been able to prove that the age of Kumari Sarla was about thirteen years at the time when she was abducted by the accused with intent to have sexual intercourse with her or to marry her. The consent of the minor girl aged about thirteen years, thus, is no consequence. The learned lower Court has properly appreciated the evidence on record and has rightly convicted the accused-appellant Muneer.

8. I have gone through the evidence produced by the prosecution and the complete record of the case and in my opinion, the prosecution has proved the case against the appellant beyond at reasonable doubt.

9. The next contention raised by the learned Counsel for the appellant is that the sentence, passed by the learned lower Court, is harsh and in support of his case, the learned Counsel for the appellant has placed reliance over: Shiv Ram v. The State of Rajasthan [1988 Cr. L.R. (Raj) 729] and Bajrang Singh v. The State of Rajasthan 1989 Cr. L.R. (Raj) 425. In the case of Shiv Ram, the accused was nineteen years of age and there was no previous conviction to his credit and looking to the possibility of becoming a hardened criminal, a sentence for long period of seven years was reduced to five years. In the case of Bajrang Singh, the accused was nineteen years of age and was not a previous convict and in that case, also, the sentence was reduced from ten years to five years. The Supreme Court, in the case of Phool Singh v. The State of Haryana 1980 SC 249, while considering the question how much sentence is to be awarded, observed that as the accused was twenty-two years of age and is not a habitual offender, the sentence awarded to him under Section 376, I.P.C. was reduced from four years to two years and while reducing the sentence, the Supreme Court observed:

Sentence efficacy in cases of lust-loaded criminality cannot simplistically be by awarding of long incarceration, for, often that remedy aggravates the malady. Punative therapeutics must be more enlightened within the blind strategy of prison severity where all that happened is sex starvation, brutalisation, criminal companionship, versatile vices though bio-environmental pollution, dehumanised cell dwell under zoological condition and emergence, at the time of release of an embittered enemy of society and its value with an indelible stigma has convicted stamped on him a potentially good person successfully possessed into a hardened delinquent thanks to penal illiteracy of the prison system. The Court must restore the man.

10. In the present case, the accused is aged about 25 years and is not a previous convict. He is fully repented and wants an opportunity to reform himself. His antecedents are not bad. He is the first offender and I, therefore, think it proper to reduce the sentence awarded to the appellant because the further confinement will be of no good to the society, but it will result in an injury to the miserable family of the accused and keeping him in jail will not, in any way, reform the accused. The accused is behind the bars since March 30, 1986, and about four years and ten

months have elapsed. If the remission is included, he has undergone more than five years imprisonment. In this, view of the matter, I reduce the sentence awarded to the accused-appellant Muneer to that already undergone by him.

11. In the result, the appeal filed by appellant Muneer is partly allowed. The conviction under Sections 363, 366 and 376 I.P.C., passed by the learned Additional Sessions Judge No. 2, Jodhpur, are, however, maintained, but the substantive sentences passed by the learned Additional Sessions Judge No. 2, Jodhpur, are reduced to that already undergone by him. The accused is in jail and he shall be released forth-with if not required in any other case.

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