

Aladeen Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jun-07-1978

Reported in : 1978WLN(UC)546

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Criminal Jail Appeal No. 241 of 1978

Appellant : Aladeen

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

M.L. Shrimal, J.

1. This jail appeal filed by accused Aladeen son of Gani is directed against the judgment dated June 30, 1976 of the learned Additional Sessions Judge No. 2, Jaipur City where by he convicted and sentenced the accused-appellant as under:

Aladeen: under Section 366 IPC 2 years' Rule I. and fine of Rs. 500/-,

Under Section 376 IPC 3 years' Rule I. and fine of Rs. 1000/.

The substantive sentences of imprisonment were ordered to run concurrently.

2. The facts giving rise to this appeal are that Miss Sushila came to Jaipur with her mother and stayed with her maternal uncle. On January 29, 1976 she went to answer the call of nature While returning back accused met her on the way and asked her to accompany him under the pretext that her father was ill. On his insistence the girl agreed to accompany him and sat on his bicycle He took her to his house and thereafter committed rape upon her against her wishes. On search by the relatives of the prosecutrix, she was recovered from the house of the accused. She was clinically examined by Dr M.R. Goyal on January 30, 1976. On ossification test her age was ascertained to be above 14 years and below 16 year. The police after usual investigation submitted a challan against the accused-appellant under Sections 376, 366 and 363 IPC in the Court of Additional Munsif and Judicial Magistrate No. 1. Jaipur City He was ultimately tried by the learned Additional Sessions Judge No. 2, Jaipur City. The accused pleaded not guilty to the charge and the prosecution examined ten witnesses in support of their case, out of whom PW. 5 Sushila is the prosecutrix. PW. 4 Lal Chard and PW. 8 Bharaikumar were examined to prove kidnapping of Sushila by the accused-appellant. PW 6 Dr. M.R. Goyal was examined to prove the age of the prosecutrix as well as the result of clinical examination made by him on January 30, 1976. PW. 10 Sujansingh is the investigating officer of this case. He has also proved recovery of the prosecutrix from the house of the accused. His statement stands corroborated by the statement of PW. 3 Ram Chandra, who is the attesting witness of recovery memo Ex. P/3 The accused denied his complicity in the crime, but did not examine any witness in his defence.

3. Learned Additional Sessions Judge placing reliance on the statement of the prosecutrix, conoborated by the evidence of her recovery from the house of the accused, the first information report as well as the medical evidence held the accused-appellant guilty and sentenced him as mentioned above.

4. Learned Counsel appearing on behalf of the appellant has read over to me the statement of PW. 5 Sushila and has also tried to point out some contradictions appearing in her statement. Inspite of searching cross-examination nothing has appeared in his statement on the basis of which the veracity of her evidence can be doubted. She is an innocent girl less than 16 years of age. There is no reason

why she should make such a false allegations against the accused. The accused in his statement under Section 313 Cr.P.C. has failed to explain as to how she happened to be in his house at the time of her recovery by the police. Her statement also finds corroboration from the statements of PW. 4 Lal Chand and PW. 8 Bharat Kumar as well as medical evidence. The trial court had the opportunity to watch the demeanour of the witnesses in the witness box. The learned Judge considered it safe to place reliance on their evidence and I find no reason to reverse the finding of fact arrived at by the lower court.

5. The net result of the above discussion is that the conviction of the accused-appellant under Section 366 and 376 IPC is upheld.

6. Now remains the question of sentence. The accused is a boy of 18 years. He is in jail since January 30, 1976. Keeping in view the current penological reformative trend, the age of the accused and the fact that the accused is not an earning member and his continued detention in jail is likely to affect his future career adversely, I reduce the sentence awarded to the accused-appellant under Section 376 IPC from three years' rigorous imprisonment and a fine of Rs. 1000/- to two years' rigorous imprisonment and a fine of Rs. 100/-. In default of the payment of fine he shall further undergo 15 days' rigorous imprisonment. The sentence awarded to him under 366 IPC is also reduced from two years' rigorous imprisonment and a fine of Rs. 500/- to two years' rigorous imprisonment and a fine Rs. 100/-. In default of the payment of fine, he shall further undergo 15 days' rigorous imprisonment. The substantive sentences of imprisonment awarded to the accused-appellant are ordered to run concurrently. However, in lieu of non-payment of fine he will have to undergo rigorous imprisonment for 15 days under each count.

7. It is, however, made clear that the accused appellant shall be entitled to the benefit of Section 428 Cr.P.C. and the period of detention undergone by him during investigation, inquiry or trial shall be set off against the term of sentence awarded by this Court.

8. With the above modification in the term of sentence, the appeal stands dismissed.

