

Patta Vs. State of Rajasthan

Patta Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/765517

Court : Rajasthan

Decided On : May-04-1999

Reported in : 2000CriLJ1650

Judge : N.N. Mathur, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Cri. Appeal No. 134/83

Appellant : Patta

Respondent : State of Rajasthan

Advocate for Def. : Panney Singh, P.P.

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 25-3-1983 passed by the Sessions Judge, Balotra convicting the appellant of offence under Section 376, I.P.C. and sentencing to 4 years R.I. and to pay of fine of Rs. 500/-. In the default of payment to further undergo six months R.I.

2. P.W. 3 Basta Ram submitted a typed F.I.R. at Police Station, Balotra on 18-3-1982 stating that his daughter was married and he had brought her to his village Meva Nagar. On account of the illness of his mother, he had gone to village Buriwara. On 18-3-1982 when he returned to Meva Nagar, his daughter informed him that on 17-3-1982, she had gone to forest for collecting firesticks along with Mst. Reshmi (PW 5) and Mst. Palki (PW 9). While they were collecting the firesticks, accused Patta arrived there. He caught and threw her on the ground and committed rape on her. She made a hue and cry, which attracted Reshmi and Panki. They immediately came to the spot, however, seeing Patta on her, out of fear, they ran away. On this information, police registered a case for offence under Section 376, I.P.C. and proceeded with the investigation. On the next day, Mst. Kamla was examined by Dr. Banshi Lal Choudhary (PW 1). He found impressions of teeth on the face and also number of scratches on the body. He also noticed abrasions on vagina. The accused was also examined on the same day vide Ex. P/2, Dr. Hismat Lal Khiyani (PW 2) expressed that the accused was capable of performing intercourse with any lady. After usual investigation, the police laid a charge sheet against the accused.

3. The appellant was charged for offence under Section 376, I.P.C. He denied the guilt and claimed trial. The prosecution in support of the case examined 9 witnesses and produced certain documents. The learned Judge relying on the testimony of the prosecutrix Mst. Kamla (PW 4) and the other evidence found the prosecution case proved. Accordingly, he convicted him for offence under Section 376, I.P.C. and sentenced him as stated above.

4. Assailing the judgment of conviction, it is contended by Mr. Garg, the learned counsel appearing for the appellant that the version given in the FIR has been completely given go-by during the trial. It is submitted that as per the FIR, while prosecutrix Mst. Kamla was collecting the firesticks accused arrived there; he caught her and threw her on the ground and committed rape. The prosecutrix made a cry, which attracted Reshmi and Pani. These two witnesses having seen the accused fallen on the prosecutrix, out of fear, ran away. However, in the Court, it is stated that the accused arrived at the spot; he snatched the Kulhari from Mst. Reshmi and asked them to go away. They also stated that Mst. Kamla was thrown

on the ground. Mr. Garg further submits that a careful reading of the statement of the witnesses show that it was not a case of forcible intercourse.

5. On the other hand, Mr. Panney Singh, the learned Public Prosecutor says that a minor contradiction in the prosecution case deserves to be overlooked in view of the statement of Mst. Kamla, wherein she has categorically stated that rape was being committed on her. She has also stated that the accused indulged in sexual intercourse without her consent. The learned Public Prosecutor submits that there is a positive medical evidence to show that there was sign of violence of the body of the prosecutrix, which clearly suggests that it is a case of forcible sexual intercourse.

6. I have considered the rival contentions and perused the record. Mst. Kamla (PW 4) has stated that she had gone towards the mountain side along with Mst. Panki and Mst. Reshmi for collecting the firesticks. While she was collecting the firesticks, accused arrived there; he snatched away Kulhari from the hand of Mst. Panki and asked her and Mst. Reshmi to run away from there. Mst. Panki and Mst. Reshmi leaving the firesticks ran away towards the Meva Nagar. She was left alone. Thereafter, the accused committed rape on her. She also stated that she made a cry, but the accused did not leave her. In the evening, her father arrived there, to whom she disclosed the incident. Next day, she went along with her father to the Police Station. In the cross examination, she admitted that she was known to the accused for last 4-5 years. She also stated that the accused was also engaged in the job of cutting stones. She also stated that she did not sustain any injury on the body. She further stated that the accused had taken bite on her cheek.

7. Basti Ram (PW 3) is the father of the prosecutrix. He has stated that on his return to the village Meva Nagar, he was told by his daughter Kamla and other villagers that she had gone along with Reshmi and Panki to the mountain side, where the accused Pata committed rape on her. Thereafter, he went to Balotra along with other villagers. He got the application drafted from a petition writer. In the cross-examination, he admitted that after lodging the FIR, he had met Advocate Ram Singh.

8. Mst. Reshmi (PW 5) has stated that she had gone along with Mst. Kamli and Mst. Panki towards the forest side. While they were collecting the stickwoods on the upper side of the mountain, the accused Patia arrived there. He took Kulhari from the hand of Panki and went near Mst. Kamla. He saw accused Patia sitting on Mst. Kamla. Seeing them, she and Mst. Panki ran away. She also stated that when accused set on Mst. Kamla, she wept. She narrated the entire incident to the mother of Mst. Kamla. Mst. Kamla, thereafter returned to the home after much time.

9. Mst. Panki (PW 9) has also stated almost in the same line.

10. Dr. Badri Lal (PW 1) has stated that he had examined prosecutrix Mst. Kamla on 19-3-1982. He found one bite mark on the cheek of the prosecutrix. He also noticed some scratches on the legs. In the cross-examination, he admitted that such scratches can be on account of a girl moving in the forest for collecting the firesticks.

11. On careful scrutiny of the evidence the medical evidence does not indicate any sign on the back of the prosecutrix. Certain scratches on the front side of the legs cannot be considered as a mark of resistance. The statement of Mst. Reshmi does not indicate that there was any sort of resistance by Mst. Kamla. On a close scrutiny of the statement of Mst. Reshmi and Smt. Panki indicate that there was tacit consent of Smt. Kamla. There is a delay of two days in medical examination of Mst. Kamla, Badri Lal, father of the prosecutrix instead of straightaway going to the Police Station, has gone to the petition-writer and also consulted some other persons. It appears that he has given colour to the actual version of the incident. The age of the prosecutrix is around 19 years. The age of the accused is shown to be 20 years. On careful consideration of the entire evidence as indicated, I am of the view that prosecutrix has failed to establish beyond reasonable doubt that accused indulged in sexual intercourse with Mst. Shanti against her will.

12. Consequently, this appeal is allowed. The judgment dated 25-3-1983 convicting the appellant of offence under Section 376, I.P.C. is set aside. The appellant is acquitted of offence under Section 376, I.P.C. He is on bail. The bail bond stands cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com