

Moola Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-23-1999

Reported in : 2000CriLJ2506; 1999WLC(Raj)UC480

Judge : Mohd. Yamin, J.

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

Appeal No. : Criminal Appeal No. 679 of 1998

Appellant : Moola Ram

Respondent : State of Rajasthan

Advocate for Def. : R.S. Rathore, Public Prosecutor

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

Disposition : Appeal allowed

Judgement :

ORDER

Mohd. Yamin, J.

1. Learned Additional Sessions Judge No. 2, Bikaner by his judgment dated 17-11-1998 convicted the accused-appellant under Section 376, IPC and sentenced him to 7 years' simple imprisonment with a fine of Rs. 1,000/- and in default to

undergo six months' simple imprisonment. By this appeal accused-appellant has assailed his conviction.

2. The case of the prosecution is that prosecutrix PW-3 Jasoda along with her father PW-1 Shivilal came to police station Kolayat on 17-4-1997 and reported that on 16-4-1997 her father Shivilal and her mother PW-2 Chuki along with her younger brothers had gone to the temple of Bheruji. Jasoda and her younger sister Santu were the only inhabitants in the house. There was a shop of grocery adjacent to house which was being carried on by her father and which was also being looked after by her in absence of her father. At about 1.00 p.m. on 16-4-1997 accused-appellant came there in absence of her younger sister Santu who had gone to the neighbouring ladies. Accused-appellant asked Jasoda for certain items which she started to weigh. The accused-appellant entered into the shop, closed its door from inside, threw Jasoda on the ground, overturned her lehanga, opened his pant and then committed rape. Jasoda started weeping as soon as accused-appellant put his male organ in her vagina. She had started bleeding per vagina and her lehanga had stains of blood. Accused-appellant went away after committing rape. When her aunty Smt. Sharda came back from the village, Jasoda narrated her the story and when her parents returned at 5.00 p.m. they were also told about the incident. Moola Ram then went to search out the accused but he was not available and then the matter was reported to the police. During investigation Jasoda was examined for age as well as for sexual intercourse. Site was inspected by the Investigating Officer, statements of witnesses were recorded and ultimately challan was submitted. The accused-appellant was tried for offence under Section 376, IPC by the learned Additional Sessions Judge who convicted and sentenced as stated above.

3. Learned counsel for the appellant submitted that the age of the prosecutrix was more than 16 years and that her father and mother have not supported the story. He also submitted that the report of the doctors that the age of the girl was below 16 years and that the sexual intercourse was committed with her, should not be believed. He submitted that the accused-appellant has been falsely implicated and deserves acquittal.

4. On the other hand, learned P.P. has tried to support the judgment of the learned Additional Sessions Judge.

5. The first question in this case is as to what was the age of the prosecutrix at the time of offence i.e. 16-4-1997?

6. PW-3 Jasoda has stated that she was 16 years of age and she is supported by her mother PW-2 Smt. Chuki and PW-1 Shivilal. But PW-14 Dr. Mahesh Khadgawat, Medical Jurist, has come to an opinion that Jasoda was aged about 12 years. Her ossification test was done by PW-12 Dr. M.C. Baberwal who opined that the age of the prosecutrix was about 12 years on the basis of ossification test. But he did admit that there was always a margin of 2-3 years. So according to the medical examination the age of the girl in any case could not exceed 15 years. But when the parents of the girl themselves have stated that the girl was 16 years of age and the prosecutrix herself says so, the benefit of doubt should go to the accused-appellant.

7. The next question is whether any sexual intercourse was done with Mst. Jasoda by the accused-appellant? Jasoda PW-3 has stated that the accused did not do anything with her. She was declared hostile but even then nothing could be abstracted against the accused-appellant during her cross-examination on behalf of the State. She has maintained in the cross-examination that the accused-appellant did not commit sexual intercourse with her. She at point blank refused the story and the allegations that she had narrated the story to her parents. PW-1 Shivilal and PW-2 Smt. Chuki say that no rape was committed by the accused-appellant with Jasoda who is their daughter. Shivilal has denied even the compromise which is alleged to have been made between the parties after the incident. He has denied that Sharda ever told him and his wife that the accused-appellant has committed rape with Jasoda. Sharda is the wife of younger brother of Shivilal and has been examined as PW-10 by the prosecution. She has stated that at about 1.00 p.m. she went to the house of PW-2 Smt. Chuki and saw the accused running. Even if she is believed, story of rape is not proved. The prosecution had alleged that it was Jasoda who told her the story but the witness has denied this fact in the cross-examination.

8. In view of above discussion the prosecution was unsuccessful in proving its case. Finding of the learned Additional Sessions Judge that the accused-appellant committed rape with Jasoda, cannot be sustained. Consequently, the appeal should be allowed.

9. The appeal is allowed. Accused-appellant is acquitted from the charge under Section 376, IPC. He is in custody and shall be released immediately, if not required in any other case.

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