

Birja Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-11-1986

Reported in : 1986WLN(UC)256

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Appeal No. 424 of 1982

Appellant : Birja

Respondent : State of Rajasthan

Judgement :

Kishore Singh Lodha, J.

1. The appellant Birja has been convicted under Section 376 IPC and sentenced to seven years' R.I. and a fine of Rs. 1,000/-and in default, six months further R.I. by the learned Additional Sessions Judge No. 1, Hanumangarh by his judgment dated 30-10-1982. He has, therefore, come up in appeal.

2. The learned Counsel for the appellant has candidly stated before me that he would not challenge the conviction of the appellant but urged that in the circumstances of the case, the sentence awarded to the appellant, according to him, is excessive and harsh and, therefore, he only prays that it may be suitably reduced.

3. In view of this submission of the learned Counsel for the appellant, I need not state the facts of the case at any length. Suffice it to say that the case of the prosecution is that the accused caught hold of Smt. Bimla w/o Ramswaroop aged between 15 to 20 years while she was returning from the field, on the way and had forcible intercourse with her against her wish and without her consent. The incident took place on 5-4-1982 in the evening at about 5.30 p.m. A report of this incident was lodged by her on 6-4-1982 at about 6.30 p.m. She was also medically examined on 6-4-1982 and some injuries were found on her person.

4. The learned Additional Sessions Judge had after trial, convicted and sentenced the appellant as aforesaid. The contention of the learned Counsel, that the sentence awarded to the appellant in the circumstances of this case is excessive, appears to be not without substance. The prosecutrix Smt. Bimla has stated her age to be between 15 and 20 and the doctor has found her to be about 17-1/2. The medical evidence always leaves a margin of about two years on either side. The accused appellant has given his age as nineteen. The doctor who had examined the accused, had also estimated his age to be about 20 years although the learned Additional Sessions Judge has estimated it at thirty. In the arrest memo, his age has been mentioned as twenty and, therefore, it can safely be concluded that the accused is a young boy of about 20 years. The offence does not appear to have raised any great anxiety in the family of the prosecutrix's husband as even in the Panchayat as stated by her husband, who has admitted that when in the night, he narrated the incident to his uncles, they told him that it was nothing to worry about and that they would do whatever was necessary in the morning. Similarly, he further states that on the next day, the Panchayat was called and in the Panchayat, the Panchas expressed that they were not impressed with his story and advised him to go to the police. It was then that the report was lodged. The accused is not a previous convict. The act of rape does not appear to be brutal and in these circumstances, I am of the opinion that the sentence of seven years R.I. is a little too harsh. In almost a similar case, the Hon'ble Supreme Court has taken a lenient view as would be clear from the authority reported in *Phul Singh v. State of Haryana* : 1980 CriLJ 8 . In that case, a four years' sentence was reduced to two years' R.I. as the accused was in his early twenties and was not a habitual offender, signs of repentance were seen and the families of the

accused and the victim were also ready to take a lenient view.

5. The learned Public Prosecutor has, of course, urged that now the sentence under Section 376 IPC has been made stringent by the amendment by Act No. 43 of 1983 and, therefore, the accused need not be shown any leniency but in the facts and circumstances of the case, I am of the opinion that this contention should not be accepted. In the first place, the amended provisions are not applicable to the present case as the incident is dated 5-4-1982 and the amendment came in much later. In the second place, the amended provisions also do empower the Court to pass a lesser sentence for adequate and special reasons and, therefore, the question of sentence does require the exercise of discretion. Looking to all these circumstances, I am of the opinion that the substantive sentence awarded to the appellant may be reduced to five years and the sentence of fine to Rs. 500/-.

6. I, therefore, partly accept this appeal and while maintaining the conviction of the appellant, reduce the substantive sentence awarded to him to five years R.I. and the sentence of fine to Rs. 500/-, in default of payment of fine, he will suffer three months R.I.