

Kalu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-23-1986

Reported in : 1986WLN(UC)483

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Jail Appeal No. 131 of 1983

Appellant : Kalu

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

G.M. Lodha J,

1. Kalu has filed this appeal against the judgment of the Sessions Judge, Udaipur dated February 18, 1983, convicting him under Section 394 and 397, IPC and sentencing him to seven years rigorous imprisonment and a fine of Rs. 100; in default of payment of fine, to further undergo rigorous imprisonment of one month.

2. On January 31, 1982, in the evening, in village Charod, the field of Ghavdi was the scene of occurrence, where the girl Kanku was the victim of atrocities. She was badly beaten by sticks by the accused and was robbed of the ornaments which she was wearing at that time.

3. According to the medical evidence (Ex.PI), the girl Kanku received as many as 22 injuries. Dr. B.P. Gupta (P.2) has proved the said injuries when he examined her on February 2, 1982 (evening).

4. The conviction is based on the testimony of Mst. Kanku, corroborated by the medical evidence and further evidence of PW 5 Dault Singh, before whom extra judicial confession was made.

5. The prosecution has examined as many as 14 witnesses. Against this conviction, learned Counsel for the appellant has submitted that the only evidence relied on, is of Mst. Kanku; who is a child witness and, therefore no reliance can be placed on her. According to the medical evidence, Mst. Kanku is of about 12-13 years of age. PW 3 Dr. G.L. Yadav has stated that she is of 12-14 years of age.

6. It was also argued that there is no other reliable evidence and it would be unsafe to rely on the testimony of Mst. Kanku.

7. Learned Public Prosecutor has opposed the appeal.

8. I have carefully considered the rival contentions of the parties and also examined the record of the case.

9. Mst. Kanku is a girl of about 14 years of age and she understands the sanctity of speaking truth and she cannot be said to be in the category of child witness, who does not understand the sanctity of truthfulness or falsehood. Mst. Kanku's testimony is further corroborated by PW 29 Khumani Bai. The medical evidence of PW 2 Dr. B.P. Gupta and PW 12 Dr. Naveen Sharma also corroborates her testimony as they proved that 22 injuries were caused on her person, out of which injuries no. 6 and 22 were grievous injuries. Further, PW 5 Daulat Singh also corroborates her in as much as extra-judicial confession was made by the accused and he saw the accused coming in haste having blood-stained clothes at that time. The recovery made at the instance of Kalu, as per the information Ex. P 2, of ornaments of Mst. Kanku, further corroborates her testimony. PW 6 Premji and PW 10 Shankar have proved that the place where the recovery was made was in exclusive possession of the accused.

10. Learned Counsel lastly argued and prayed that liberal view in the matter of sentence to the accused may be taken and he may be released on the sentence already undergone by him, which is four years.

11. In my opinion, the present one is a case where a girl of 14 years was beaten mercilessly and 22 injuries were caused on her tarean with an object to rob her of the ornaments which she was wearing at that time.

12. Taking liberal view in the matter of sentence in such a case by reducing it from 7 years would result in misplaced leniency.

13. Consequently, the appeal fails and is here by dismissed.

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