

Jamal and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-02-1987

Reported in : 1987WLN(UC)241

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 378 of 1977

Appellant : Jamal and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. N.P. Gupta

Judgement :

Shyam Sunder Byas, J.

1. By this judgment dated September 8, 1977 the learned Additional Sessions Judge, Bhilwara convicted the accused Jamal under Section 365, IPC and the accused Soraj and Ladu under Section 365/109 IPC and sentenced each of them to one year's rigorous imprisonment with a fine of Rs. 500/- in default of the payment of fine to further undergo three months' like imprisonment. By the same judgment, accused Jamal was further convicted under Section 384, IPC and was sentenced to six months' rigorous imprisonment with a fine of Rs. 300/- in default of the payment of fine to further undergo three months' like imprisonment. His

sentences were directed to run concurrently. The accused have come-up in appeal and challenged their conviction.

2. Put briefly, the prosecution case is that PW 2 Smt. Roopa, a young married woman in her early twenties, was living with her parents in village Pander, district Bhilwara. The appellants are also residents of the same village. Smt. Roopa had come to her parents on the occasion of Raksha-bandhan. She is a twice married woman. She was first married with one Gopal of village Bihada. Thereafter she was given in Natra marriage in village Malikhera. On September 12, 1976, when she was going to fetch water, accused Soraj met her in the way and told her that if she wanted to go to her in-laws, he was prepared to render his services for that purpose. Smt. Roopa expressed her inability as her father and brothers were ill. After sometime, she went to the house of accused Ladu to take payment of the money he owed to her for the work she had done in his field. Accused Ladu and Soraj met her there. No money was paid to her by accused Ladu. She returned to her house. In the afternoon on the same day, she left the house to go out-side the village to ease herself. The cote (Nohra) of accused Jamal falls in the way. When she reached near the Nohra of accused Jamal, accused Jamal asked her to come to him. The other two accused were also there with him. When she reached there, accused Jamal told her that her father has again given her in some other Natra marriage. He further told her that in case she wanted to go to her in-laws, they were prepared to help her for that purpose. Smt. Roopa again expressed her inability to go to her in-laws as her father and brothers were ill. Thereafter accused Jamal confined her in a room and locked it. He also threatened her that in case she raised cries, she would be finished for ever. In the mid-night, accused Jamal came in the room and committed rape on her. He again threatened her that in case she raised cries, she would be stabbed to death. Before the crack of dawn the three accused took her out from the room. Accused Jamal also relieved her silver ornaments Dodiya. The appellants then asked her to accompany them While she was going with them, she found PW 1 Surajmal and PW 2 Srawan at the crossing of the roads. Smt. Roopa raised an alarm. The accused fled away. She narrated the incident to these two witnesses. PW 1 Surajmal went to Police Station, Pender and presented written report Ex P 1 at about 10.00 a.m. on September 13, 1976. The police registered a case and proceeded with

investigation, Smt. Roopa was got medically examined. The appellants were arrested and in consequence of the information furnished by accused Jamal, one knife and silver ornaments Doodiya were recovered. On the completion of investigation the police presented a challan against the three accused persons in the Court of the Munsif & Judicial Magistrate Jahajpur, who, in his turn, committed the case for trial to the Court of Sessions. The case came for trial before the learned Additional Sessions Judge. He framed charges under Sections 366, 376 and 384, IPC against accused Jarnal and under Section 366, IPC against the remaining two accused Soraj and Ladu, to which they pleaded not guilty and faced the trial. In support of its case, the prosecution examined six witnesses and filed some documents. In defence, the accused examined one witness. The defence taken by them was that one Banna Gujar filed a complaint against the Investigating Officer Mangi Lal (PW 6) and the Police Constable Mithulal for offences under Sections 323, 448 and 330 IPC. Accused Ladu, and, the father of accused Jamal namely Mangi Lal appeared as witnesses in that case. Annoyed with this, the Investigating Officer Mangi Lal engineered this false charge against them. On the conclusion of the trial, the learned Additional Sessions Judge found no substance in the defence version. On an analysis of the prosecution evidence, he held the charge under Section, 376, IPC not, proved. He, however, held the appellants guilty under Section 365 or 365/109 and, accused Jarnal further under Section 384, IPC. They were consequently convicted and sentenced as mentioned at the very out-side.

3. We have heard Mr. N.P. Gupta, learned Counsel for the appellants and the learned Public Prosecutor. We have also gone through the case file carefully.

4. When the appeal of the accused was admitted September 28, 1977, notice was issued to accused Jarnal as to why he should not be convicted also under Section 376 IPC and why the punishment awarded to him under Section 365, IPC be not enhanced.

5. We may say at once that accused Jamal cannot be convicted under Section 376, IPC now as his acquittal is final and the State has not preferred any appeal against his acquittal. Section 378, Cr.PC speaks of the appellant in case of acquittal.

It empowers the State and the Delhi Special Police Establishment to file petitions for leave to appeal in a High Court. Under Section 378 Cr.PC the right of appeal has been conferred only on the State Government or the Delhi Special Police Establishment. This Court suo moto cannot disturb an acquittal without an appeal against it from the proper authority. The learned Public Prosecutor could not bring any decision to our notice that this Court, without an appeal by the State, can disturb an acquittal. The notice issued to accused Jamal as to why he should not be convicted under Section 376, IPC of which he was acquitted by the Court below, should, therefore, be discharged.

6. It was rightly pointed out by Mr. Gupta that the fate of the case looms largely on the testimony of PW 2 Smt. Roopa. It was argued that she was a grown-up married woman in her early twenties. Her statement that she was raped by accused Jamal has been found false by the Court below. According to her statement, accused Soraj and Ladu did not invite her to come to the cote Nohra of accused Jamal. Their presence, even if it is admitted in the Nohra of accused Jamal, is not sufficient to show that they helped or abetted accused Jamal in committing the crime. It was further argued that no case of abduction is made out even against accused Jamal. He called her to his Nohra while she was going in the way. If thereafter she was confined in the room, this act may be punishable under Section 342, IPC but not under Section 365. We have given our anxious consideration to the submission of Mr. Gupta.

7. We have no hesitation to set aside the conviction of accused Soraj and Ladu. They were convicted under Section 365, IPC as the abettors with the aid of Section 109. Suffice it to say that Smt. Roopa (PW 2) did not state anything which may show that these two accused instigated, incited, encouraged or helped accused Jamal in any manner in detaining her in the room. It was accused Jamal according to Smt. Roopa, who confined her in the room and locked it from outside. It was again accused Jamal who threatened her at the point of a knife. There is nothing in the statement of Smt. Roopa that these two accused were participants in the crime committed by accused Jamal, if any. They are, therefore, entitled to acquittal.

8. The statement of PW 2 Smt. Roopa has many disturbing and disgusting features. Her medical examination was got conducted and the doctor, who conducted the medical examination, was cited as a witness in The calendar. But neither the injury report was produced nor was the doctor examined in evidence by the prosecution. Her story of having been raped by accused Jamal was found false by the Court below. She willingly went to the cote of accused Jamal only on a call while she was going to ease herself. All these things do not commend to reason. It appears that she willingly went to the Nohra of accused Jamal and when she refused to part with her virtue, she was confined in a room by accused Jamal. Since she went on her accord to the Nohra of accused Jamal, the offence of abduction is not made out against accused Jamal. The essential ingredients of an offence under Section 365 IPC is that of abduction. If no abduction is there, the offence under Section 365, IPC is not made out.

9. The statement of PW 2 Smt. Roopa that after she went to the Nohra of accused Jamal, she was confined in the room by him and the room was locked, does not appear to be false. It appears that when she declined to submit herself before accused Jamal, he confined her in the room. Her confinement was illegal and amounted to an offence under Section 342 IPC.

10. The story that Smt. Roopa was relieved of her silver ornaments by accused Jamal does not appear to be true. Accused Jamal was arrested on September 13, 1976, vide arrest memo Ex.P 9. Silver Dodiya's were then found in the pocket of his trousers he was wearing. We are unable to imagine that the accused Jamal would keep the stolen property in his pocket and would roam with them so freely. The Investigating Officer was, no doubt, annoyed with accused Jamal as in the complaint filed against him, his (accused Jamal's) father had appeared as a witness. The story of recovery of the silver ornaments, if judged in this background, does not appear to be true. Accused Jamal is, therefore, entitled to acquittal of the offence under Section 384, IPC.

11. Accused Jamal had been in detention for some days. The offence was committed long back in, 1976 and the appeal is, now, being disposed of in 1987. Looking to long lapse of time, it would not be proper to re-send him to jail.

12. In the result,

(1) the appeal of accused Soraj and Ladu is allowed. Their conviction and sentence under Section 365/109, IPC are set-aside and they are acquitted. They are already on bail and need not surrender. Their bail bonds shall stand cancelled; and

(2) the appeal of accused Jamal is partly allowed. His conviction and sentence under Section 365 and 384, IPC are set-aside. He is, however, convicted under section 342 IPC and is sentenced to the period of detention already undergone by him during investigation, inquiry, trial and thereafter. He is already on bail and need not surrender. His bail bonds shall, also, stand cancelled.

13. The appeal is accordingly disposed of.

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