

Ramu Vs. State of Rajasthan

Ramu Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/769657

Court : Rajasthan

Decided On : Sep-18-1986

Reported in : 1986WLN(UC)582

Judge : Jas Raj Chopra, J.

Appeal No. : S.B. Criminal Appeal No. 337 of 1978

Appellant : Ramu

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Jas Raj Chopra, J.

1. This an appeal against the judgment of the learned Session Judge, Sri Ganganagar dated 21-9-178 whereby the learned lower court has held the accused-appellant Ramu guilty of the offence under Section 376 IPC and has sentenced him to four years' ligorous imprisonment.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are that prosecutrix Mst. Vidhya is the daughter of PW 5 Jagraj. It is alleged that on 22-12-1977, at about 10 or 10:30 a.m. She was going to her field from her Dhani situated in 1-E Chhoti. Earlier, they were living at village Fusewala but for

the past about three years, they have shifted to village 1-E Chhoti and they were cultivating the field of Gopaldas Vishandass. It is alleged that when she was going from her village to her field, situated near the railway line of Sri Ganganagar, accused Ramu came there. He lifted her to his field and there, he fell her down, put off her Salwar and his own underwear and committed rape on her. She raised hue and cry, which attracted attention of her mother PW 4 Nikko who was also going to her field. PW 4 Nikko saw the accused committing rape on Mst. Vidhya and therefore, she started abusing accused Ramu. On her abuses, accused Ramu fled away along with his underwear. Mst. Nikko then brought Mst. Vidhya to her house. She cleansed her body as also her clothes and they waited for the arrival of PW 5 Jagraj who has gone to Raisinghnagar. PW 5 Jagraj arrived at about 4 p.m. Nikko and Mst. Vidhya then informed him about this forcible rape with Mst. Vidhya committed by the accused. Jagraj then went to take advice of his field who advised him to lodge a written report of the incident in the Police. On this PW 5 Jagraj accompanied by PW 4 Vidhya went to P.S. Sadar, Sri Ganganagar and there the FIR (Ex. P. 12) was lodged. The Police inspected the site and prepared a site-plan Ex. 13 and the site inspection memo Ex. P 13A. The accused was arrested vide arrest memo Ex. P. 14. The medical examination report of Mst. Vidhya has been marked Ex. P8. The report about the vaginal smear has been marked Ex. P9 and the supplementary report regarding sexual intercourse with Mst. Vidhya has been marked Ex. P.10. The clinical examination report of accused Ramu regarding age and has been marked Ex.P. 11 whereas the radiological examination reports of Mst. Vidhya and accused Ramu have been marked E.P1 and Ex.P.2 respectively and the X-ray plates have been marked Ex. P. 3 to Ex. P. 7.

3. After usual investigation, the case against the accused was challenged in the court of learned Munsif and Judicial Magistrate, Sri Canga Nagar, from where, it was committed for trial to the court of learned Sessions Judge, Sri Ganganagar, who charged the accused with the offence under Section 376 IPC.

4. The accused did not plead guilty to the charge and claimed trial where upon the prosecution examined in all 6 witnesses in support of its case. The statement of the accused was recorded under Section 313 Cr.PC. He examined two witnesses

in his defence. After hearing the parties, the learned lower court decided the case as aforesaid and hence, the accused has come up in appeal.

5. I have heard Mr. B.R. Arora, learned Counsel for the accused-appellant and Dr. S.S. Bhandawat, learned Public Prosecutor for the State. I have also meticulously gone through the record of the case.

6. Mr. B.R. Arora, learned Counsel for the accused appellant has submitted that in this case, the age of the accused is about 16 to 17 years and age of the prosecutrix also is about 16 years. He submitted that PW 1 Dr. K.M. Taneja has recorded the age of Mst. Vidhya ranging between 15 to 16 years on the basis of the radiological examination but he has further stated that in this estimation of age, there can be a variation of about one year this way or that way and on the basis of this evidence of PW 1 Dr. K.M. Taneja, it can safely be said that Mst. Vidhya is not definitely below 16 years. Mst Vidhya could be below 16 years and she could also be above 16 years as per the testimony of PW 1 PW 1 Dr. K.M. Tanja PW 2 Dr. R.K. Gupta has also estimated her age between 15 to 16 years. In matters of age based on clinical and radiological tests, the variation of one year is quite possible and, therefore, I am in complete agreement with Mr. B.R. Arora, learned Counsel for the accused-appellant that the age of Mst. Vidhya could be above 16 years and, therefore, it can safely be held that she is not definitely below 16 years.

7. So far as penetration is concerned, PW 2 Dr. R.K. Gupta has stated that he found that the vagina admits only one finger, Her hymen was lacerated and was bleeding. There was a laceration of the size of 1/2' x 1/8' on the left side of labia minora. There was another laceration of the size of 1/2' x 1/4' on the posterior commissure (inside portion of vagina). Although the Doctor has stated that no definite opinion could be given about the rape because of the absence of spermatozoa but the very fact that the vagina admits of only one finger and there is a laceration of the labia majora as well as inside the wall of the vagina coupled with the fact that the hymen was also lacerated, amply prove the fact that there was a cohabitation with this girl The Doctor has stated that these injuries have not come by any hard blunt foreign body only but these injuries have been the result of penetration of hard blunt but smooth object like penis during erection PW 3 Mst. Vidhya and PW 4

Mst. Nikko both have stated that the accused has committed rape with Mst. Vidhya.

8. Now this has to be seen whether this is a case of rape or inter-course with consent. From the medical testimony coupled with the testimony of these two witnesses; viz, Mst. Vidhya and Mst. Nikko, this much is clear that there has been a penetration of the penis into the vagina of Mst. Vidhya.

9. Mr. B.R. Arora, learned Counsel for the accused-appellant laid great stress on the fact that actually it appears to be a case of intercourse with consent. In this respect, the most important witness, whose testimony has a great bearing on the point at issue, is that of PW 3 Mst, Vidhya. PW 3 Mst. Vidhya has stated that at about 10 a.m. on 22-12-1977, she started from her house for going to her field. She was told by her mother that she will also follow her after putting a lock on the main gate of the house. She has admitted that when she was going towards her field, she was followed by her mother. The occurrence has taken place near the railway line. It is alleged that she was lifted by the accused from the track of the railway station and then she was taken to the field of the accused, which is at a distance of about 76 Pawandas from the place from where she was lifted. Mr. B.R. Arora, learned Counsel for the accused appellant submitted that the accused and the girl both are of the same age and therefore, it was difficult for the accused to have lifted the girl of the same age to that distance (76 Pawandas). He further submitted that Mst. Vidhya has stated that she raised no cries at all. She was taken to the field of the accused and in the way, she also moved her legs continuously but her Champals did not fall down. On the basis of this assertion of this witness, Mr. B.R, Arora, learned Counsel for the accused-appellant has tried to build up an argument that it appears to be a case of consent. According to Mr Arora, the girl and the boy being of the equal age, the girl could have resisted the attempt of the accused to carry her to the place of occurrence by raising cries or she should have offered strong physical resistance to the ward his attempt to carry her away. The place from where she was lifted is a populated place and according to her admission, her mother was also following her. It was not possible that her mouth could be so gagged so that she was not in a position to raise any cries while being carried by lifting by a boy of her own age to a distance of 76

Pawandas. If she was throwing her legs, then of course her Champals could not have remained on her feet. The very fact that the Champals did not fall down shows that she did not offer any resistance.

10. PW 3 Mst. Vidhya has then stated that after taking her to the field near the bushes of Irandiya, she was felled on the ground. If she was actually thrown on the ground, which, as per the admission of PW 6 Hanuman Dass, was definitely a hard ground, she should have received certain injuries on account of that fall but no such injuries were found on her body by PW 2 Dr. R.K. Gupta. Mst. Vidhya has then stated that the accused removed her Salwar and put it on a tree and then put off his under wear and then committed rape with her. If the accused forcibly put off the Salwar from her body and then he put it on the tree and later he put off his underwear, she could have run from the place of the occurrence in the meanwhile to save herself from the clutches of the accused but she did not do so. She very well knew that her mother was fast following her and, therefore, when the accused was busy in putting off his underwear, she atleast could have raised hue and cry and her mother could have arrived at the spot and saved her. Mr. Arora, therefore, submitted that looking to these facts and circumstances of this case, it actually appears to be a case of consent. In this respect, he also invited my attention to the fact that the Doctor has stated that he did not find any injuries on any part of her body except her vagina. If she was raped forcibly on the rough ground then she must have received certain injuries on her back, hips and legs etc. as she was absolutely naked below her waiste but no such injuries were found on her body. Moreover, it is alleged that Mst. Vidhya was found bleeding when she was examined by the Doctor then some blood drops ought to have been found on the place of the occurrence. No such blood drops were found on the spot by the Investigating Officer PW 6 Hanumandass has stated that when he inspected the spot 2-3 branches of Irandiya tree were also found there. If that was so, then, of course, they could also cause some injuries to the girl but no such injuries were found.

11. Dr. S.S. Bhandawat, learned Public Prosecutor appearing for the State has submitted that the statement of Mst. Vidhya is absolutely forthright. She has narrated the incident as it happened with her. Moreover, the incident has been

seen by her mother also. Mr. Bhandawat submitted that the evidence of Mst. Vidhya and her mother Mst. Nikko stands fully corroborated by the testimony of the Medical Officer and, therefore, the learned lower court was perfectly justified in holding the accused guilty of the offence under Section 376 IPC.

12. I have given my most earnest consideration to the submissions made at the bar.

13. To me, it appears to be a case of consent. The very fact that the girl did not raise any hue and cry when she was taken away from the railway line to the field of the accused which is at a distance of 76 Pawandas shows that she was not resisting the attempt of the accused. She very well knew that her mother was fast following her. This was another good reason for her to offer resistance to the accused in carrying her away and to release herself from his hold because she was assured of the help of her mother. It is worth-mention that it is difficult to carry a girl of one's own age on a railway track, one has to be very careful lest one may fall down and that diverts his attention and the girl could have taken advantage of this fact to get her-self released from his hold. Moreover, if her mother was at some distance from her, she could have observed the carrying of the girl by the accused from the railway line which is in straight line and could have raised hue and cry. 76 Pawandas is not such a long distance from which the person carrying another lady forcibly may not be observed. Moreover, the fact the accused had leisurely put off his clothes as also of the girl and then put them on a tree and even in that intervening period, no attempt was made either to run away from the spot or to raise a hue and cry shows that it is a case of consent. The accused and the girl are almost of equal age and so, if she was forcibly raped, she could have pushed the accused and she could have bitten him with her teeth. The Doctor has stated that she is not a weekly nourished girl and if any resistance has been offered during the commission of the rape on such a hard ground, it could certainly have caused some injuries on the body of the girl. The injuries that have been received by the girl are the result of an intercourse. The intercourse may be with consent or without but if the injuries are the result of the intercourse, they do not throw any light on the fact whether intercourse was with consent or without consent. Only the existence of injuries on the other part of the body could have

thrown some light whether sexual intercourse was with consent or without consent. In this view of the matter and looking to the fact that the age of the girl is not definitely below 16 years, I feel inclined to held that the learned lower court erred in convicting the accused of the offence under Section 376 IPC. The accused deserves the benefit of doubt and consequently acquittal from the offence under Section 376 IPC.

14. In the result, I accept this appeal set aside the conviction and sentence of accused Ramu recorded against him by the learned lower court under Section 376 IPC and acquit him of the above said offence. He is already on bail. He need not surrender to his bail bonds.

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