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Court : Rajasthan

Decided On : Jul-17-1986

Reported in : 1986WLN(UC)637

Judge : Sobhag Mal Jain, J.

Appeal No. : S.B. Criminal Jail Appeal No. 380 of 1983

Appellant : Ratan Chand

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Sobhag Mal Jain, J.

1. This appeal by the accused has been filed through Jail against the judgment dated the 24th September, 1983, of the Additional Sessions Judge, Raisinghnagar, convicting and sentencing the appellant for the offence under Section 376 IPC to four year's rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to one years further rigorous imprisonment.

2. The victim of rape is Kumari Mangli girl of 10-12 years of age. The prosecution case, in brief, was that on Feb. 5, 1983, at about 5 00 p.m. Kum. Mangli accompanied by her cousia Sushila aged about 8 years had gone for grazing

cattle in the field of Sita Ram Bishnoi. Accused Ratan Chand alias Mahanga came there and caught hold of Kum, Mangli. He asked Sushila to run away from that place. After Sushila left the place, she accused committed sexual inter-course upon Kum. Mangli against her wishes. Kum. Mangli cried but the accused did not resist. Blood come from her private parts. She went to her house and told the entire incident to her mother Smt. Dulli. Thereafter, she narrated the incident to Dhura Ram her father. The First Information Report of the occurrence was lodged by Dhura Ram at police station, Anupgarh, February 6, 1983 at 2 p.m. on which a case under Section 376 IPC was registered and investigation started. The police went to the spot, prepared the inspection memo and took in possession the blood stained clothes of Kum. Mangli. Kum. Mangli was examined by Dr. S.P. Sharma, Medical Officer -in-charge, Primary Health Centre, Anupgarh, who found:

Dried seminal stains are present on the external genitals. There is fresh blood present on the external genitals. There is brushing of labia minora-Hymen is reaptured and posetrior commisure is torn. There is congestion around the vaginal orifice.

3. Dr. Sharma opined that rape had been committed upon the girl Kum. Mangli was also examined by Dr. S.K. Mukherji, a Radiologist, who opined that she was 10-12 years of age. The police arrested the accused on February 6, 1983. He had injuries on his body. He was sent to Dr. S.P. Sharma for examination, who found the following injuries on his body:

- (1) Abrasion 2 cm. x 1 cm. on right knee;
- (2) Abrasion 1/2 x 1/4 cm on left knee:
- (3) Abrasion 1/2 x 1/4 cm. on outer side of right forearm on the middle;
- (4) Abrasion 2 cm. x 1/2 cm. on the left forearm posteriorly in the middle.

His examination also revealed that semen was not present on his prepuce. According to the doctor, the accused was capable of committing sexual inter course.

4. After investigation, the police filed a charge-sheet against the accused in the Court of Munsif and Judicial Magistrate, Anupgarh, who committed him for trial to the Court of Sessions for the offence under Section 376 IPC.

5. The accused was tried by the Additional Sessions Judge, Raisinghnagar. He was charged for the offence under Section 376 IPC. He pleaded not guilty and claimed to be tried. The prosecution examined as many as 10 witnesses. In his statement under Section 313 Cr.PC. the accused denied the prosecution allegations and stated that he had been falsely implicated on account of animosity.

6. By the judgment dated the 24th September, 1983, the Additional Sessions Judge, Raisinghnagar, convicted and sentenced the accused-appellant for the offence under Section 376 IPC to 4 year's rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to one year's further rigorous imprisonment. Aggrieved by this, the appellant has filed the present appeal in this Court through jail. As accused was unrepresented, Shri Niranjana Gaur, was appointed as Amicus Curiae to argue the case on his behalf.

7. I have heard Shri Niranjana Gaur, Amicus Curiae for the accused and Shri B.C. Bhansali, Public Prosecutor for the State. I have gone through the judgment of the Additional Sessions Judge under appeal and have also perused the record of the case.

8. The case against the accused depends on the evidence of Kumari Mangli who is the victim of offence of rape. The learned Additional Sessions Judge has believed her evidence. The Additional Sessions Judge has also said that her evidence finds corroboration from the evidence of the Doctor, who found injuries on her private parts. The evidence of Kumari Mangli finds further corroboration by the evidence of her parents to whom she narrated the entire incident immediately after the occurrence. After going through the evidence of Kum. Mangli, I fully concur with the assessment of the Additional Sessions Judge that Kum. Mangli is a truthful witness. Dr. S.P. Sharma has given a definite opinion that rape was committed upon Kum. Mangli. Dried seminal stains were present on her external genitals. There was fresh blood and bruises present on her private parts like labia minora. Hymen was found ruptured. There is no dispute that she was 10-12 years

of age. Dr. S.K. Mukherji, a Radiologist, has given his opinion as a result of her X-ray examination that she was between the age of 10 and 12 years. No material has been brought on the record to suggest that Dhura Ram her father or Kum. Mangli herself had any reason what so ever to falsely implicate the accused. There is nothing in the statement of these witnesses, namely, Kumari Mangli, Dhura Ram and Dulli to suggest that they were telling falsehood. After going through their statements I do not find any reason to disbelieve their evidence. The evidence of Kum. Mangli itself is sufficient to hold that rape was committed upon her and it was the accused Ratan Chand alias Mahanga Ram who committed rape upon her. In this case, however, her testimony finds full support from the evidence of Dhura Ram and Dulli her parents to whom she disclosed immediately after the occurrence that the accused committed rape upon her. Her evidence is also supported by the evidence of the doctor, who found marks of rape upon the private parts of Kum. Mangli. The injuries found on the body of the accused also lend support to the prosecution case. The evidence is thus, sufficient to hold that the accused committed rape upon Kum. Mangli a girl of 10-12 years of age. The offence under Section 376 IPC is fully made out against him.

9. The result is, that the appeal fails and is hereby dismissed.