

MojuddIn Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-22-2001

Reported in : 2001CriLJ2000; 2001WLC(Raj)UC403

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 366, 376 and 344; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 269 of 2000.

Appellant : Mojuddin

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : K.C. Samdariya, Adv.

Disposition : Appeal allowed

Judgement :

Sunil Kumar Garg, J.

1.This appeal has been filed by the accused appellant against the judgment dated 15-4-2000 and order of sentence dated 6-5-2000 passed by the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara in Sessions Case No. 278/97

by which he convicted the accused-appellant for the offence under Sections 366, 376 and 344, IPC and sentenced in the following manner :- The above substantive sentences were ordered to run concurrently.

Name of Convicted Sentence awarded accused under appellant section Mojuddin 366 IPC Three years RI and to pay fine of Rs. 1000/-. 376 IPC Ten years RI and to pay fine of Rs. 5000/-. 344 IPC One year RI and to pay fine of Rs. 1000/-,

2. The facts giving rise to this appeal, in short, are as follows :-

On 28-4-1997 at about 6.30 p.m., PW1 Gulab lodged a written report Ex. P/1 before the Police Station Ashind District Bhilwara stating inter alia that, his daughter PW6 Mst. Prem had left his house nearabout one month before and a report in that matter was also lodged by him on 12-4-1997 and, thereafter, police recovered PW6 Mst. Prem and handed over to him, but since 24-4-1997, PW6 Mst. Prem had again disappeared and he has come to know that accused-appellant has taken her.

On this report, police chalked out the regular FIR Ex. P/2 and started investigation.

After usual investigation, police recovered PW6 Mst. Prem and submitted challan against the accused-appellant in the Court of Magistrate and from where the case was committed to the Court of Session.

On 25-3-1998, the learned Additional Sessions Judge framed charges against the accused-appellant for the offence under Sections 366, 376 and 344, IPC. The charges were read over and explained to the accused-appellant, who pleaded not guilty and claimed trial.

During the course of trial, the prosecution examined as many as nine witnesses and got exhibited many documents. Thereafter, statement of the accused-appellant under Section 313, Cr. P.C. was recorded. No evidence was produced in defence.

After conclusion of trial, the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara vide judgment dated 15-4-2000 and order of sentence dated 6-5-

2000 convicted and sentenced the accused-appellant in the manner as stated above holding inter alia that the prosecution has proved its case beyond reasonable doubt against the accused-appellant for the offence under Sections 366, 376 and 344, IPC.

Aggrieved from the said judgment dated 15-4-2000 and order of sentence dated 6-5-2000 passed by the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara, this appeal has been filed by the accused-appellant.

3. In this appeal, the only argument which has been raised by the learned counsel for the accused-appellant, is that from the statements of PW1 Gulab, father of the prosecutrix, PW2 Sukhi, mother of the prosecutrix and from the statement of the prosecutrix PW6 Mst. Prem herself, no case of either rape or abduction is made out against the accused-appellant, but on the contrary it is established that the prosecutrix PW6 Mst. Prem has gone with the accused-appellant on her own will.

4. On the contrary, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara.

5. I have heard the learned counsel for the accused-appellant and the learned Public Prosecutor and gone through the record of the case.

6. To appreciate the above contention of the learned counsel for the accused-appellant, evidence in the present case has to be looked into.

7. So far as the age of the prosecutrix PW6 Mst. Prem is concerned, her medical examination report Ex. P/5 is on record, which shows that age of the prosecutrix PW6 Mst. Prem was found between 18 to 19 years by the doctor on 10-5-1997 and this point is not in dispute in this case.

8. PW1 Gulab is the father of the prosecutrix PW6 Mst. Prem, who lodged the report Ex. P/1 and in that report, it is also written that previous to the alleged incident, PW6 Mst. Prem had also gone with the accused-appellant. PW1 Gulab has admitted the following facts in his cross-examination :-

1. That report Ex. P/1 was lodged after 15-20 days when PW6 Mst. Prem left his house.
2. That PW6 Mst. Prem had earlier gone with accused-appellant and on coming back, she remained with him for 4-5 days and had again gone with the accused-appellant.
3. That PW6 Mst. Prem wanted to stay with accused-appellant, but he did not like this.
4. That age of PW6 Mst. Prem is nearabout 18-19 years.
9. Similar is the statement of PW2 Sukhi, mother of the prosecutrix.
10. PW6 Mst. Prem is the prosecutrix and she has admitted the following facts in her cross-examination :-
 1. That her correct age is 21 years.
 2. That she knows accused-appellant earlier to this incident.
 3. That accused-appellant used to do the work of masonry in her house and at that time, he had sexual intercourse with her in Bada.
 4. That she started loving accused-appellant.
 5. That after that accused-appellant took her to Bhilwara.
 6. That thereafter, she was kept at Laxmipura, but she did not inform anybody.
11. In my considered opinion, looking to the above evidence and the facts that PW6 Mst. Prem had earlier gone with the accused-appellant and after coming, thereafter, she has again gone with accused-appellant, she started living with accused-appellant; she had close intimacy with the accused-appellant; she has remained in the house for many days with the accused-appellant and she did not inform about this to anybody else, it cannot be said that accused-appellant has committed offence under Sections 366, 376 and 344, IPC and rather it appears that the prosecutrix PW6 Mst. Prem was consenting party in all activities with the

accused-appellant from the very beginning up to the end. There is not an iota of evidence suggesting that the accused-appellant has committed the offence of either abduction or rape. From the evidence on record, the only irresistible inference that can be drawn is that prosecutrix PW6 Mst. Prem was consenting party. Thus, the findings of the learned Additional Sessions Judge are liable to be set aside as they are perverse and erroneous one and not based on proper appreciation of evidence.

12. For the reasons stated above, the findings of the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara convicting the accused-appellant for the offence under Sections 366, 376 and 344, IPC cannot be sustained and are liable to be set aside and the accused-appellant is entitled to be acquitted of the said charges and his appeal is liable to be allowed.

Accordingly, the appeal of the accused-appellant Mojuddin is allowed and the impugned judgment dated 15-4-2000 and order of sentence dated 6-5-2000 passed by the learned Additional Sessions Judge (Women Atrocities Cases), Bhilwara are set aside and the accused-appellant is acquitted of the charges framed against him.

Since the accused-appellant Mojuddin is in jail, he be released forthwith, if not required in any other case.

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