

**State Vs. Prithvi Singh**

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**Court :** Rajasthan

**Decided On :** Mar-27-2001

**Reported in :** 2001CriLJ2770; 2002WLC(Raj)UC90

**Judge :** Sunil Kumar Garg, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 313, 323, 341 and 354; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Criminal Appeal No. 48 of 1992

**Appellant :** State

**Respondent :** Prithvi Singh

**Advocate for Def. :** Chaitanya Gehlot, Adv.

**Advocate for Pet/Ap. :** R. Purohit, P.P.

**Disposition :** Appeal dismissed

**Judgement :**

**Sunil Kumar Garg, J.**

1. This appeal has been filed by the State of Rajasthan against the judgment and order dated 4-9-91 passed by the learned Munsif and Judicial Magistrate, Degana in Criminal Case No. 120/85 by which the learned Magistrate acquitted the

accused-respondent Prithvi Singh of the offences under Sections 354, 341 and 323 I.P.C.

2. This appeal arises in the following circumstances :

(i) On 13-8-85 at about 10 p.m. P.W. 1 Smt. Ganga Devi lodged a written report Ex. P/1 in the Police Station, Degana stating that in the evening of 12-8-1985 at about 7.30 p.m. when she was returning from Gawai Well, after clearing face and hands, the accused-respondent Prithvi Singh was taking bath and thereafter he at once came before her and tried to molest her and he tore up his cloths including her Choli and told that either she should have sex with him, otherwise he would kill her. It is further stated in the report that upon this she made hue and cry and on hearing her cry, P.W. 4 Dhan Raj and P.W. 6 Nanuram came there and on seeking them, the accused respondent Prithvi Singh ran away from the place of occurrence.

(ii) On this report, police registered a case and chalked out FIR Ex. P/2 and during investigation, medical examination of P.W. 1, Smt. Ganga Devi was got conducted by P.W. 5 Dr. Kailash Chand and her injury report is Ex. P/4 which shows that there was bruises and swelling on the right side of forehead of P.W.I Smt. Ganga Devi. Through Ex. P/5 'Choli', 'Odhna' and one Chappal which were left by the accused respondent Prithvi Singh while running away, were also seized by the Police on 14-8-85.

3. After usual investigation, challan was filed in the Court. The learned Magistrate read over the contents of offences under Sections 354, 341 and 323, I.P.C. on 30-10-85 to the accused-respondent Prithvi Singh who denied the charges and claimed trial.

4. During trial, seven witnesses were produced on behalf of the prosecution and statement of accused was recorded under Section 313, Cr.P.C., but he did not choose to lead any defence.

5. After conclusion of the trial, the learned Magistrate acquitted the respondent Prithvi Singh for offences under Sections 354, 341 and 323, I.P.C. inter alia

holding.

(i) that Motbir witnesses to the Fard Ex. P/5 by which police seized 'Choli', 'Odhna' and Chappal, P.W. 2 Narayan Ram and P.W. 3 Loda Ram have been declared hostile and the IO has not been produced and thus, this aspect of prosecution case has not been proved by the prosecution.

(ii) that the incident took place on 12-8-85 and report was lodged on 13-8-85 in the evening and since P.W. 1 Smt. Ganga Devi has stated that talks of compromise were going on and, therefore, report was not lodged earlier, this fact also shows that the incident as alleged by the prosecution has not taken place.

(iii) that P.W. 1 Smt. Ganga Devi has not been able to show that what was written in the report and she did not know what the report Ex. P/1 contained.

(iv) that out of the two witnesses which have been mentioned in Ex. P/1 P.W. 6 Nanu Ram has been declared hostile and thus, the case of the prosecution does not get corroboration from this point of view also.

(v) that so far as injury of P.W. 1 Smt. Ganga Devi is concerned, P.W. 5 Dr. Kailash Chand has opined that it might be self-inflicted injury and from this point of view also, the learned trial Magistrate came to the conclusion that it does not support the prosecution case.

6. Aggrieved from the said judgment dated 4-9-91 this State appeal has been filed and it has been argued on behalf of the State:

(i) that the learned Magistrate should have believed the statement of P.W. 1 Smt. Ganga Devi as her statement inspires confidence.

(ii) that the fact that talks were going on for compromise is no ground for acquittal.

(iii) that recovery of chappal and bra etc. are sufficient proof for holding the accused respondent guilty for the charges levelled against him. Hence, the appeal be allowed and respondent Prithvi Singh be convicted.

7. On the other hand, learned counsel for the accused-respondent Prithvi Singh has submitted that the learned trial Magistrate has given cogent reasons in acquitting the accused-respondent Prithvi and it does not call for interference by this Court.

8. In my opinion, the judgment of the learned trial Magistrate dated 4-9-91 by which he acquitted the accused-respondent Prithvi Singh of offences under Sections 354, 341 and 323, I.P.C. is based on correct appreciation of evidence and does not require interference by this Court in this appeal.

9. It may be stated that statement of P.W. 1 Smt. Ganga Devi was not rightly believed by the learned trial Magistrate and because of the following reasons, her statement cannot be believed :

(i) In this case IO has not been produced and recovery Fard of bra and 'Odhna' Ex. P/5 has not been held to be proved as both the Motbir witnesses to this Fard P.W. 2 Narayan Ram and P.W. 3 Loda Ram have been declared hostile.

(ii) So far as injury on the head of P.W. I, Smt. Ganga Devi is concerned, from this no corroboration to the statement of P.W. 1 Smt. Ganga Devi can be gathered and in the report Ex. P/1 there is no mention of the fact that she received any such type of injury. Apart from this P.W.I, Smt. Ganga Devi has stated in her statement in the Court that on her head, injury was of stone and she has further stated that on breast and on shoulder, she received abrasions, but such type of injuries are not found in the medical report.

(iii) That the fact that talks for compromise were going on also goes to show that hidden story might be different one and not as which has come out from her statement. From this point of view also, statement of P.W. 1 Smt. Ganga Devi is doubtful.

(iv) As per report Ex. P/1, two witnesses P.W. 4 Dhanraj and P.W. 6 Nanu Ram came there and out of the two, independent witness P.W. 6 Nanu Ram has been declared hostile and so far as P.W. 4 is concerned, he has admitted in his cross-examination that P.W. 1 Smt. Ganga Devi is wife of his nephew. Thus, he is an

interested witness and in absence of independent witness, his statement is also doubtful.

(v) P.W. 4 Dhanraj has further stated that she did not see any injury on the person of P.W. 1 Smt. Ganga Devi while P.W. 1 Smt. Ganga Devi says otherwise. From this point of view, statement of P.W. 1 Smt. Ganga Devi is doubtful.

(vi) P.W. 1 Smt. Ganga Devi has stated that she received injury by stone while accused put her on the ground, but in the cross-examination she had stated that the accused caused that injury by lathi. Thus this is also a material contradiction on the point of injury.

For the reasons mentioned above, statement of P.W. 1 does not inspire confidence and I see no reason to dissent from the findings arrived at by the learned trial Magistrate by which the accused respondent Prithvi Singh was acquitted of the offences under Sections 354, 341 and 323, I.P.C. Hence, this appeal is liable to be dismissed.

Accordingly, the present appeal is dismissed after confirming the judgment and order dated 4-9-91 passed by learned Munsif and Judicial Magistrate, Degana in Criminal Case No. 120/85.

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