

**Ram Pratap Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Feb-07-2001

**Reported in :** 2002CriLJ1430; 2000(4)WLC384

**Judge :** N.P. Gupta, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 354, 376, 451, 452 and 511

**Appeal No. :** SB CrI. A. No. 690 of 2000

**Appellant :** Ram Pratap

**Respondent :** State of Rajasthan

**Advocate for Def. :** Aneesh Bhurat, Adv.

**Advocate for Pet/Ap. :** Kulwant Singh, Adv.

**Judgement :**

**N.P. Gupta, J.**

1. The matter comes up for consideration of application for suspension of sentence. However, since the record has been received, with consent of learned counsel appearing I have heard the appeal finally on merit itself.

2. The learned trial Court by the impugned judgment has convicted the appellant for the offence under Section 376/511 and Section 452, IPO and has sentenced to

an imprisonment of three years and six months on the first count along with a fine of Rs. 500/- and to an imprisonment of two years with fine of Rs. 200/- on the second count.

3. The prosecution story briefly put is that on 15-9-96, a first report was lodged at Police Station Tibbi to the effect, that on 13-9-96, the informant had gone out to another village and his wife had gone to the field for picking Cotton, at which time his daughter Gora was all alone in the house. At that time about 12-00 Noon, the appellant tress passed into the house and caught hold of the victim Gora, attempted to commit rape on her, in whcih process, her wearing apparels were torn, it was on the victim raising a hue and cry, which attracted Bhader and Swaraj. Looking these persons arriving, the appellant is said to have taken to heels. On this report, FIR No. 251/96 was registered for the aforesaid offences and after conducting investigation, charge sheet was filed.

4. The prosecution has examined the victim herself, Gora, PW-2 father Nandlal, PW-3 Shivraj Singh (described as Swaraj in the first report), PW-4 Satpal, PW-5 Bhadar, PW-6 Manohari, PW-7 Jaisingh. Other formal documents have also been prepared and exhibited during trial.

5. A bare reading of the statement of these witnesses mentioned above, as has been recapitulated by the learned trial Court, not only shows that the girl has tried to improve upon the story as originally given out, the brother of the victim, being Satpal PW-4, has gone even to the extent of deposing that the victim told him that she had been raped, which is not even the prosecution case. Be that as it may, the reliable part of the story of the victim only appears to be that when she was all alone in the house, the appellant tress passed into the house, misbehaved with her by making her lie down on the Cot and on her raising hue and cry the witness PW-3 and PW-5 appear to have come, though the witness PW-5 has disowned the prosecution story and has therefore, been declared hostile.

6. On close scrutiny of the evidence. I am not inclined to believe the story to the effect of the petitioner having torn the apparels of the victim, or to have broken the string of her Salwar, or to have attempted to commit any rape. Admittedly nothing was done by the appellant qua himself in the process of even preparation to

commit any rape like even starting undressing himself or anything of that sort. Not only this, no torn apparels etc. have been produced by the prosecution on record, nor have they even been seized by the investigation which might lend some corroboration to the prosecution story.

7. Yet another circumstance which is of some relevance and requiring to be noticed is that the victim and the appellant are next door neighbours, the appellant was 21 years of age while the victim was 16 years of age, the mother of the victim, PW-6 Manohari, has clearly admitted that the appellant was practically reared up in her company, obviously because of neighbourhood. In such circumstances, the possibilities are not ruled out about some temptation having been entertained by the appellant for merry making with the victim looking to the corresponding age of the two persons. It is a different story that mere acquaintance or living in the neighbourhood cannot entitle the appellant for such an activity. But then this is a material circumstance in conjunction with the above mentioned circumstances and infirmities of the prosecution, to consider as to what offence is made out.

8. In this view of the matter, from the reliable part of the prosecution evidence, in my view, the offence does not travel beyond Section 354, IPC.

9. So far as the conviction under Section 452 is concerned, the learned trial Court has convicted the appellant under Section 452 without expressly dilating upon the ingredients of Section 452. From the aforesaid discussion it does transpire that, the act of the appellant does amount to house trespass. But then since it does not appear to have been committed having made requisite preparation as contemplated by Section 452, the conviction under Section 452 cannot be sustained, but at the same time, since the trespass was not for any pious purpose, but for committing an offence which has been found to be one under Section 354, IPC, ought one know that he might have committed the offence under Section 376, IPC as well, the act does clearly tantamount to an offence punishable under Section 451, IPC.

10. The appeal is accordingly partly allowed, the conviction of the appellant for the offence under Section 376/511 and Section 452, IPC are set aside and instead he is convicted for the offences under Section 354 and 451, IPC and is sentenced to

simple imprisonment for a period of six months with a fine of Rs. 2500/- on each count and in default of payment of fine to undergo further simple imprisonment for a period of three months on each count. Out of the fine when recovered, a sum of Rs. 4000/- shall be paid to the victim PW-1 by way of compensation.

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