

Pratap Alias Ram Pratap Vs. State of Rajasthan

Pratap Alias Ram Pratap Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/772075

Court : Rajasthan

Decided On : Sep-27-2002

Reported in : 2003CriLJ2421; 2003(1)WLC675

Judge : A.C. Goyal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 478 of 2002

Appellant : Pratap Alias Ram Pratap

Respondent : State of Rajasthan

Advocate for Def. : Madhav Mitra, P.P.

Advocate for Pet/Ap. : R.R. Baisla, Adv.

Disposition : Appeal dismissed

Judgement :

A.C. Goyal, J.

1. This appeal is preferred against the judgment dated 20-5-2000 whereby the learned Additional Sessions Judge, Behror, district Alwar, convicted and sentenced the accused-appellant with seven years' rigorous imprisonment and fine of Rs. 1,000/-, in default to further undergo three months' imprisonment for an

offence under Section 376*, IPC in Sessions Case No. 5/99.

2. The prosecution case, in brief is that P.W. 2 Sh. Kanwar Singh submitted a written report Ex. P. 4 at Police Station Madhan, district Alwar at about 8.30 p.m. on 3-12-1998 with the averments that at about 8 p.m. on 2-12-1998 his daughter Ravita P.W. 1 had gone to the house of Sultan Yadav to attend the ceremony of songs. While returning to home at about 11 or 11.30 p.m. the accused-Pratap, son of Sultan Yadav caught hold of his daughter Ravita and took away her inside a thatched roof (Chhapper) and committed rape on her and also threatened her not to disclose this incident to anyone. His daughter, thereafter, came to her house. Next day morning she started weeping and on making inquiry, she narrated the entire incident. Formal FIR Ex. P-5 was registered under Section 376, IPC. After completion of the investigation charge-sheet came to be filed.

3. In due course the case came up for trial before the learned Additional Sessions Judge, Bheror who framed the charge under Section 376, IPC. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 15 witnesses. The accused was examined as provided under Section 313, Cr. P.C. He denied the entire prosecution evidence and stated that he was implicated on account of enmity. Three witnesses were examined in defence. Having heard final submissions, the learned trial Judge convicted and sentenced the accused-appellant as stated here-in-above.

4. Arguments of learned counsel for the appellant and learned Public Prosecutor were heard.

5. The first point for determination is the age of the victim P.W. 1 Ravita. Her statement before the trial Court was recorded on 22-3-1999. She stated her age to be 17 years and this incident, according to prosecution, took place on 2-12-1998. Thus, she was above 16 years of age at that time. The learned trial Judge in para 13 of the judgment came to this conclusion that the age of the prosecutrix was above 16 years at the time of this occurrence.

6. Now the crucial point for consideration is as to whether the appellant had sexual intercourse with the victim against her will?

7. P.W. 1 Ravita deposed before the trial Court that at about 10.30 p.m. on 2-12-1998, she had gone to the house of the accused. At that time, the accused came to her and told that she has been called by her father. She told the accused that her parents had gone to her maternal uncle's house. Thereafter, the accused came again to her and told that her parents were calling her and she should go immediately to her house and then she left for her house with the accused. On the way near thatched roof belonging to Mehar Chand D.W. 1, the accused caught hold of her, took her inside the Chhapper and undressed her and then committed rape on her. The accused threatened her also not to disclose this incident to anyone. Thereafter she came to her house and went to sleep. Next day morning at about 10-11 a.m., her parents came and she narrated this incident and thereafter she was taken to police station by her parents. She was medically examined. Her parents P.W. 2 Kanwar Singh and P.W. 3 Smt. Sumitra supported the oral testimony of her daughter. P.W. 11 Dr. Nishita Pandey examined the victim on 4-12-1998 and prepared medical report Ex. P. 1. She noted following injuries:--

1. Rt. hand-Forearm 5-1 mm x 1 mm size, Abrasions -- multiple abrasions on lateral aspect of forearm 4 cm x 0.1 cm size with reddish blackish blood clots.
2. Lt. Forearm abrasions 1 x 0.5 cm size on extensor surface of forearm.
3. Rt. leg 5 cm x 0.1 cm size, Abrasion linear reddish blackish blood clot.
4. Abrasions multiple in the inner side of lower lip.
5. Swelling on the upper lip whole with reddish bluish colour.
6. Pain in shoulder Rt. side, no external injury visible.

Gait of the victim was normal, Separation of thighs was not painful. Swelling was present on both side. Vulva and tender on digital examination painful. Size of vagina was two finger tight. Hymen was freshly lacerated and torn edges were pink in colour, ruptured on both sides with multiple tears, margins were sharp and tissue around them were swollen and tender. In the opinion of P.W. 11 doctor Pandey, according to physical findings sexual intercourse was conducted within 48 hrs. It was also opined that intercourse was conducted by force and this opinion,

according to her, is based upon the injuries. In cross-examination she categorically denied that hymen was already torn i.e. prior to 48 hrs. It was also stated by her that in her opinion, intercourse was conducted with the victim for the first time.

8. Learned counsel for the appellant raised twofold arguments. The first contention was that no such incident ever took place with the victim. He referred the statements of defence witnesses. It was also argued that the First Information Report was lodged with delay and according to the statement of the victim, the marriage of the appellant was going to take place after two days i.e. 4-12-1998 and thus the appellant would not commit any such offence and she did not raise any hue and cry. Learned Public Prosecutor while supporting the impugned judgment contended that there is no reason to disbelieve the oral testimony of the victim which is fully supported by the medical evidence.

9. I have considered the above submissions. This incident took place at about 11.30 p.m. on 2-12-1998 and according to prosecution case, the parents of the victim had gone out of the village and First Information Report was lodged at about 8.30 p.m. on the next day. Firstly there is no considerable delay in lodging the First Information Report and secondly looking to the nature of the crime delay stands explained. P.W. 2 Kanwar Singh stated before the Trial Court that when his, daughter disclosed this incident, he first consulted his family members and then discussed this matter with some other persons of the locality namely Kalu Ram, Amar Singh, Sultan, Om Prakash, Toda Ram and others and thereafter he submitted the report Ex. P-4. P.W. 6 Toda Ram, P.W. 8 Chandagi Ram and P.W. 9 Kalu Ram supported the oral testimony of Kanwar Singh that a meeting took place to consider this incident, although P.W. 8 Chandagi Ram and P.W. 9 Kalu Ram denied that any such incident was disclosed by P.W. 2 Kanwar Singh, but they admitted that they attended such meeting at the residence of PW. 2 Kanwar Singh. No doubt, the marriage of the appellant was fixed on 4-12-1998 and on account of this marriage the victim had gone to the house of the appellant to attend 'songs ceremony' but this argument cannot be accepted that since the marriage of the appellant was to be solemnized after two days, he would not commit any such offence. D.W. 2 Koyali and D.W. 3 Saroj stated before the trial Court that they were present in the house of the appellant at the time of songs

ceremony but the victim was not there. The presence of both these witnesses and others was admitted by the victim before the Trial Court but no such question was put to her that she did not go to the house of the appellant to attend the songs ceremony and thus merely on the statements of D.W. 2 Koyali and D.W. 3 Saroj, no such conclusion can be drawn that the victim did not go to the house of the appellant. According to the prosecution case, while the victim was returning her home, the appellant on the way caught hold of her, took her inside the hut belonging to D.W. 1 Mehar Chand and raped her. D.W. 1 Mehar Chand deposed before the trial Court that he always used to sleep in his hut and no such incident of rape ever took place in his hut. According to the site plan Ex. P. 2 a buffalo was tied in his hut during the night though there was a cot also and the residential house of D.W. 1 Mehar Chand was situated in front of this hut and this fact was admitted even by D.W. 1 Mehar Chand and thus the statement of D.W. 1 that he always used to sleep in his hut is found not reliable at all and no such suggestion was given to the victim during cross-examination. Learned counsel for the appellant also referred two applications submitted before the trial Court by the victim and contended that her oral testimony with regard to any such incident cannot be relied upon. The first application is dated 17-7-1999. According to this application, a compromise has taken place between the victim and the accused and the accused was falsely implicated on account of enmity with her father. Another application along with affidavit of the victim was submitted before the trial Judge after four days of the first application i.e. on 21-7-1999, wherein it was stated that her in-laws compelled her to submit first application on 17-7-1999 and the incident of rape with her is true. But on the basis of these applications, the contention of learned counsel for the appellant cannot be accepted that the statement of the victim is unreliable as her statement during the trial was recorded on 22-3-1999 and both the applications were submitted in July, 1999 and in the second application, it is specifically stated by her that first application was filed under compulsion of her in-laws. Thus, the first contention of learned counsel for the appellant cannot be accepted that no such incident ever took place.

10. The second submission of learned counsel for the appellant was that it was a case of consent as she did not raise any hue and cry and she knew this fact that her parents were away at the residence of her maternal uncle, even then she

returned her home with the appellant and she was above 16 years of age. Reliance is placed upon Mahaveer alias Krishna v. State of Rajasthan, 1996 Cri LR (Raj) 127. According to the facts of this case, the accused had no weapon with him at the time of occurrence and no injury was found on private parts, thighs, chest etc. and thus the story of putting resistance and struggle by the victim was found not reliable and the uncle-in-law of the victim reached the place of occurrence, therefore, to save her, the case of rape was made out. Similar view was taken by this Court in Inder Singh v. State of Rajasthan, 2001 Cri LR (Raj) 714 : (2002 Cri LJ 721) and in State of Rajasthan v. Jirua, 1986 Cri LR (Raj) 671. But in the instant case, the victim got a number of injuries on her body as well as her private parts and P.W. 11 Dr. Nishita Pandey categorically stated that it was a case of intercourse by force and a case of intercourse for the first time with the victim and this opinion was based upon the injuries found on her body as well as on her private parts. Thus, the oral testimony of the victim is fully corroborated by the medical evidence and there is no reasonable ground not to rely upon the statement of the victim. According to FSL report Ex. P. 11 also human semen was detected in Salwar, Jampher, Chaddi, vaginal washings and vaginal smear of the victim. The oral testimony of the victim cannot be disbelieved merely on the ground that she knew this fact that her parents were away from the house and even then she returned to her house along with the appellant, as she specifically stated before the trial Court that when the accused told her for the first time she declined but when he again told her that her parents were calling her she left for her house and there is nothing unnatural in her going to her house. Regarding hue and cry, she stated that the appellant put his hand on her mouth and when the appellant left that place she raised hue and cry but none came to that place. It has to be kept in mind that this incident took place at about 11:30 p.m. in the night and thus in view of the entire oral testimony of the victim she is found to be wholly reliable witness and in view of the medical evidence, the contention of learned counsel for the appellant has got no force that it appears to be a case of consent. Thus the learned trial Judge rightly came to this conclusion that the accused-appellant had sexual intercourse with the victim against her will.

11. Learned counsel next made a submission on the point of sentence. He submitted that the appellant was married just after this incident and he was

arrested on 6-12-1998 vide arrest memo Ex. P. 8 and since then he is in jail and, therefore, looking to this fact that the wife of the appellant is also suffering, this may be taken as an adequate and special reason to reduce the minimum sentence. Learned counsel placed reliance upon Shiv Ram v. State of Rajasthan, 1988 RCC 468, wherein the accused was sentenced to ten years' rigorous imprisonment under Section 376, IPC. But in appeal, this Court reduced the sentence to five years' rigorous imprisonment on the grounds that the accused was 19 years of age and was not habitual offender and no similar offence was committed by him and thus lenient view was taken. Another judgment relied upon by the learned counsel is State of Madhya Pradesh v. Sunder Lal, 1992 Cri LR (SC) 407 : 1992 Cri LJ 2519. According to this judgment, the incident of rape took place in December, 1979 and trial Court sentenced the accused to five years' rigorous imprisonment and the accused had served almost entire sentence. But in the year 1983 the provisions of Section 376, IPC were amended and a provision was made for minimum sentence with a proviso that the Court may, for adequate and special reasons, impose sentence of imprisonment for a term of less than seven years. In the instant case, there seems no adequate and special reason to reduce the minimum sentence prescribed under Section 376, IPC hence this prayer is not allowed.

Consequently this appeal is dismissed.