

Krishan Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-2007

Reported in : 2007(2)WLN433

Judge : Chatra Ram Jat, J.

Appeal No. : S.B. Criminal (Jail) Appeal No. 395/2002

Appellant : Krishan Kumar

Respondent : State of Rajasthan

Judgement :

Chatra Ram Jat, J.

1. This appeal is directed against the judgment and order dt. 18.04.2002 passed by the learned Additional Sessions Judge (Fast Track) Ratangarh, district Churu, in Sessions Case No. 15/2002 (20/2001) he convicted the accused appellant for offence under Section 376 IPC and sentenced for 10 years rigorous imprisonment and a fine of Rs. 1000/- in default of payment of fine to under go further rigorous imprisonment for one year.

2. Prosecution case is as under:

On 27.4.2001 at about 4 P.M. Complainant Chandu/Chunnu Ram resident of Bliubas Rampura lodged oral report at Police Station Bhanipura that his grand

daughter Santo D/o Balbeer, his uncles brother Ramkumar's daughter Saroj and Tiku Ram's daughter Ganga took their sheep and goats for grazing in southern side of village forest. One person called all these girls and disclosed his name Krishan. He came there for searching camel. Krishan told them to put off their clothes and girls refused then he tried to caught them but they ran away but he forcibly caught Santo, she cried. Krishan put off her salwar and committed sexual intercourse. Both girls frightened and returned to village and narrated story. Thereupon Rameshwar, Gopal, Bhera Ram, Hanuman, Ranjeet and Om Prakash etc went towards place of incident in Jeep of Bhanwara Saran. Santo was lying field under Keliya and was weeping and bleeding on her cloths. They lifted girl Santo and sent her to village and they went in search of culprit and when they reached at dhani of Gopala Ram then and on asking he said that one person after drinking water went ahead and he disclosed his name Krishan Jyani resident of Kulchar. On further chasing, one person was found running near village Jetsar ke Rodi. They caught him and take him in jeep and on asking he disclosed his name Krishan Jayani and admitted that he had committed rape on his grand daughter Santo. Then they brought to the police station and Santo was sent for hospital at Sardarshahar. On this oral report, F.I.R. No. 36 dt. 27.04.2001 at police station Manipura was lodged under Section 376 IPC and started investigation.

3. After completion of investigation, police filed challan against the accused appellant before the Judicial Magistrate, Sardarshahar, who committed the case to the Court of Sessions Judge, Churu who transferred the Sessions Case No. 15/2002 (20/2001) the Court of Additional Sessions Judge (Fast Track) Ratangarh, Churu, for trial of the case. After hearing the accused appellant on charge, learned Judge framed charge for offence under Section 376 IPC which were read over to accused persons. He denied the same and claimed trial. During trial, prosecution examined P.W. 1 to P.W. 12 i.e. in all twelve witnesses and produced documents exhibited. Thereafter statement of accused under Section 313 Cr.P.C. was recorded in which accused appellant claimed innocence and also stated that he has been falsely implicated due enmity and his uncle's son Pema Ram wants to grab his land. No defence evidence was produced by the accused. After considering the evidence of the parties documentary as well as oral, the learned Additional Sessions Judge Fast Track, Ratangarh, Churu convicted and sentenced

the accused appellant as stated here-in-before, so this appeal.

4. Mr. K.R. Bhati, learned Amicus Curiae for the appellant stated that so far as findings of learned trial Court for conviction under Section 376 IPC against the appellant is concerned, looking to the prosecution evidence, he is not contesting and challenging the conviction of the appellant. Learned Counsel contended that so far as age of the prosecutrix is concerned, the evidence of doctor Shankar Lal P.W. 10 is important and material and as per evidence of said medical officer, looking to the number of teeth and growth and development of body of prosecutrix, she was about 12 years and as per Medical Jurisprudence two years margin on upper side is taken then age of prosecutrix may be even 14 years in this case. As per provisions of Section 376(2)(f) IPC where prosecutrix is under 12 years of age and in this case also prosecutrix is not below 12 years age thus condition of rigorous imprisonment for a term which shall not be less than 10 years is not applicable in this case. Learned Counsel states that this incident relates to dt. 12.04.2001 and as per explanatory statement of accused under Section 313 Cr.P.C. the appellant was 29 years of age and he is in prison. Thus looking to age of accused appellant, a leniency in sentence may be considered and awarded sentence of 10 years may be reduced to 7 years as per rulings reported in 2004 Cri.L.R. 3270 Kallem Shankar Reddy v. State of A.P. 2000 (Supp.) Cr.L.R. (Raj.) 683 Bharat Singh v. State of Rajasthan and S.B.Cr. Jail Appeal No. 26/2004 Bhanji v. State of Rajasthan decided on 2nd October, 2005.

5. Per contra, learned Public Prosecutor supported the impugned findings and urged that the appellant was rightly convicted and sentenced.

6. I have gone through the submissions and with the assistance of learned Counsel scanned the record. On perusal of the record the evidence of prosecutrix P.W. 1 Santo and eye-witnesses P.W. 2 Ganga and Medical Officer P.W. 10 Dr. Shankar Lal and also corroborating evidence of P.W. 3 Chandu, P.W. 5 Gopal, and recovery of driving license of the appellant, and the appellant being able to perform sexual inter-course as per evidence of Dr. K.K. Mishra, it is established beyond reasonable doubt that appellant accused had committed sexual intercourse with prosecutrix and thus finding given by the learned trial Court for the

conviction is just and proper and for that there is having no challenge by the Amicus Curiae for the appellant. Hence, conviction should be upheld.

7. Looking to the fact of the age of the prosecutrix, the prosecutrix is being 12-14 years of age and taking into consideration the entire facts and circumstances of the case, and going through authorities and submissions of the learned Amicus Curiae, I deem it proper to reduce the sentence of accused appellant under Section 376 IPC, from 10 years to 7 years and maintain rest of the judgment and order passed by the Additional Sessions Judge Fast track, Ratangarh, Churu in Sessions Case No. 15/2002 (20/2001) State v. Krishan Kumar S/o Mana Ram Jat R/o Kulchasar District Hanumangarh.

8. In the result, the appeal is partly allowed and while maintaining the conviction of accused appellant under Section 376 IPC, his sentence is reduced from 10 years to 7 years. The rest of impugned judgment of conviction and order of sentence, including the order of fine passed by the learned trial Court, is maintained.

9. Accordingly, the appeal stands disposed of, as indicated above.

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