

Harkesh Vs. State of Rajasthan

Harkesh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/772740

Court : Rajasthan

Decided On : Jul-20-2008

Reported in : RLW2009(3)Raj2371

Judge : Shiv Kumar Sharma and; Mahesh Bhagwati, JJ.

Appellant : Harkesh

Respondent : State of Rajasthan

Judgement :

Shiv Kumar Sharma, J.

1. Prosecutrix (name withheld by us), a girl of five years was raped. This was the gravamen of the charge put against the appellant, who was put to trial before learned Judge Woman Atrocities and Dowry Cases and Additional Sessions Judge, Jaipur City Jaipur, and convicted and sentenced vide judgment dated March 25, 2003 as under:

Under Section 376 IPC:

To suffer imprisonment for life and fine of Rs. 10,000/-, in default to 5 further suffer rigorous imprisonment for three years.

Under Section 323 IPC:

To suffer rigorous imprisonment for six months and fine of Rs. 1000/-, in default to further suffer simple imprisonment for two months.

The substantive sentences were ordered to run concurrently.

2. The incident occurred on April 25, 2002 and case against the appellant was registered on the written report handed over by Ram Karan (PW.1) at Police Station Narena District Jaipur. The Investigating Officer got the prosecutrix medically examined, recorded the statements of witnesses, 15 arrested the appellant, drew necessary memos and on completion of investigation filed the charge sheet. In due course the case came up for trial before the learned Judge Woman Atrocities and Dowry Cases and Additional Sessions Judge Jaipur City Jaipur. Charges under Sections 323 and 376 IPC were framed. The appellant denied the charges and claimed trial. The 20 prosecution in support of its case examined as many as 24 witnesses. In the explanation under Section 313 Cr PC, the appellant claimed innocence. Three witnesses were examined in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned Counsel for the appellant did not assail the finding of conviction. The only submission of learned Counsel is that in the facts and circumstances of the case the imposition of sentence to suffer imprisonment for life is too harsh.

4. The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases 'for special and adequate reasons' sentence of less than 10 years' RI can also be awarded. (Vide Dinesh @ Buddha v. State of Rajasthan 2006 Cr.L.R. (SC) 209).

5. It is well settled that measure of punishment in a case of rape depends upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Their Lordships of the Supreme Court in Pramod Mehto v. State of Bihar : AIR 1989 SC 1475 indicated that where there are no special circumstances to call for the imposition of maximum sentence of imprisonment for life, the ends of justice would be met by awarding minimum sentence of ten years rigorous imprisonment as it is by itself a severe punishment.

6. In Dinesh @ Buddha v. State of Rajasthan (supra) where 8 years old girl was ravished, the Apex Court awarded minimum sentence of 10 years and fine of Rs. 2000/- in default to further suffer simple imprisonment for one year.

7. In the instant case the age of the appellant on the date of the incident, according to arrest memo Ex. P. 9, was 25 years. There are no extenuating or mitigating circumstances available on record which may justify imposition of any sentence less than the prescribed maximum sentence. Thus imposition of ten years rigorous imprisonment and fine which by itself is a severe punishment, on the appellant, would meet the ends of justice.

8. For the reasons aforementioned, we partly allow the appeal and while maintaining the conviction of appellant under Sections 376 and 323 IPC, we reduce his sentence from imprisonment for life to rigorous imprisonment for ten years and fine of Rs. 15,000/- in default to further suffer one year rigorous imprisonment. Out of the fine recovered, a sum of Rs. 10,000/- shall be paid to the victim.

The impugned judgment of learned trial court stands modified as indicated above.