Devi Lal Vs. State of Rajasthan

Devi Lal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/772857

Court : Rajasthan

Decided On : May-23-2001

Reported in : 2002(5)WLC213; 2001(4)WLN630

Judge : Sunil Kumar Garg, J.

Appeal No. : S.B. Criminal Appeal No. 112 of 1991

Appellant : Devi Lal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused appellant against the judgment and order dated 16.3.1991 passed by the learned Addl. Sessions Judge, Chittorgarh in Sessions Case No. 32/90 by which he convicted the accused appellant for the offence under Section 376/511 IPC and sentenced him to undergo rigorous imprisonment for three and half years and to pay fine of Rs. 500/-, in default of payment of fine, to further undergo three months RI.

2. It arises in the following circumstances:

On 25.1.1990 at about 9.00 PM, PW.5 Moddi (hereinafter referred to as the prosecutrix) accompanied by her father PW.4 Heeralal lodged an oral report Ex.P/8 in the Police Station, Beghu District Chittorgarh stating inter-alia that on the evening of that day, when she was returning from the well after taking vegetables to her house, on the way the house of the accused appellant was there and accused appellant was in his house and he called the prosecutrix PW.5 Moddi and on being asked, she went to the house of the accused appellant and when she tried to run away from his house, accused appellant caughthold her and put her on the bed and fell down on her and after opening his dhoti, accused appellant put his penis into her vagina, upon which, she cried, but he did not leave her and committed rape on her. Thereafter, prosecutrix PW.5 Moddi went to her house and told the whole incident to her father PW.4 Heeralal and then, PW.4 Heeralal alongwith prosecutrix PW.5 Moddi, PW.7 Jawaharmal and PW.8 Prithviraj came to report the matter.

This report was reduced into writing by PW.9 Bhanwarlal, SHO, Police Station Beghu and, thereafter, he chalked out regular FIR Ex.P/13 and started investigation.

During investigation, the prosecutrix PW.5 Moddi was got medically examined and medical evidence about age as well as about commission of rape is Ex.P/1. The accused appellant was arrested on 27.1.1990 through Ex.P/14.

After usual investigation, police submitted challan against the accused appellant for the offence under Section 376 IPC in the Court of Magistrate and from where the case was committed to the Court of Session.

On 12.6.1990, the learned Addl. Sessions Judge, Chittorgarh framed charge for the offence under Section 376 IPC against the accused appellant. The charge was read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined as many as 9 witnesses and got exhibited some documents. Thereafter, statement of the accused appellant under Section 313 Cr.P.C. was recorded. No evidence in

defence was adduced by the accused appellant.

After conclusion of trial, the learned Addl. Sessions Judge, Chittorgarh through his. judgment and order dated 16.3.1991 came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubts for the offence under Section 376 IPC against the accused appellants, but rather the prosecution has proved its case beyond all reasonable doubts for the offence under Section 376/511 IPC against the accused appellant and thus, he convicted and sentenced the accused appellant for the said offence in the manner as indicated above.

Aggrieved from the said judgment and order dated 16.3.1991 passed by the learned Addl. Sessions Judge, Chittorgarh, the accused appellant has preferred this appeal.

3. In this appeal, the following submissions have been raised by the learned Counsel for the accused appellant:

1. That since in the present case, the learned Addl. Sessions Judge has come to the conclusion that no case for the offence under Section 376 IPC is made out against the accused appellant, therefore, from the evidence on record, no case for the offence under Section 376/511 IPC is made out and the findings of the learned Addl. Sessions Judge as such are erroneous one and furthermore, since there is some erasion in the FIR, it also creates doubt as to the manner when it was lodged and from this point of view also, the accused appellant should be acquitted of the charge under Section 376/511 IPC, also.

2. That in case the Court comes to the conclusion that the offence under Section 376/511 IPC is proved, the accused appellant may be sentenced to the period already undergone by him.

3. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Addl. Sessions Judge, Chittorgarh.

4. I have heard the learned Counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

5. Before proceeding further, the medical evidence of this case should be discussed here and the same is found in the statement of PW-1 Dr. Madhu Bakshi as well as in the report Ex.P/1.

6. P.W.1 Dr. Madhu Bakshi has stated in her statement that on 26.1.1990 she examined the prosecutrix PW.5 Moddi for the purpose of ascertaining whether rape was committed with her or not as well as for determining her age and found the following symptoms:

1. That there were no marks of abrasion or laceration over breasts, thigh, face and other parts of body.

2. That on external genitals, laceration 1/2 cm x 1.5 cm over posterior fourchette of vaginal wall was there.

3. That hymen torned and lacerated, congested and clotted blood was present.

4. That on P.V. examination, tenderness on entering vagina with finger present, it does not admit even little finger.

5. That Built-normal.

6. That her breasts were not fully developed.

7. That few pubic hairs and auxiliary hairs were present.

8. That vagina admits little finger with difficulty and hymen torned.

9. That wrist joint AP and Lat. Plate No. 42 dated 26.1.1990 shows non-fusion of ephiphyris of lower end of radius and ulna with the shaft.

Thus, PW.1 Dr. Madhu Bakshi gave the following opinion:-

1. That there is evidence of entering penis into vagina i.e. intercourse is committed.

2. That the age of the girl prosecutrix PW.5 Moddi is below 17 years, i.e. she is minor.

3. That intercoure is done within 24 hours of examination.

7. From the above evidence, to say that prosecutrix PW.5 Moddi was having no injury on any part of her body is not correct and the argument of the learned Counsel for the accused appellant that since there was no injury on her person, therefore, no case of indecent assault would be found proved, is also incorrect one. PW.1 Dr. Madhu Bakshi has clearly stated that there was laceration in the vagina of the prosecutrix and there was injury on her hymen and her hymen was found torned and there was also clots of blood. All these factors are indicative that some forcible object touched her vagina.

8. So far as the age of the prosecutrix PW.5 Moddi is concerned, PW.1 Dr. Madhu Bakshi has come to the conclusion that prosecutrix was below 17 years of age. In my opinion, this finding of PW.1 Madhu Bakshi is wrong one. As she found that her breasts were not fully developed, pubic hair and auxillary hairs were also few and there was non-fusion, in these circumstances, in absence of any school certificate or birth certificate, prosecutrix PW.5 Moddi appears to be below 16 years of age on the date of examination, though PW.5 Moddi prosecutrix has herself stated her age as 13 years. Therefore, the finding of Dr. Madhu Bakshi, PW-1 that prosecutrix PW.5 Moddi was below 17 years of age appears to be not correct one, but rather it should be held that prosecutrix PW.5 Moddi was below the age of 16 years in any manner on the date of her examination i.e on 26.1.1990.

9. On point of rape, there is clear cut statement of PW.5 Moddi prosecutrix that the accused appellant caughthold her and put his penis into her vagina and from her vagina, blood oozed out and, thereafter, she went to her house and narrated the whole story to her father PW.4 Heeralal. The prosecutrix PW.5 Moddi has been cross-examination at length, but in cross-examination, she has admitted only one fact that the report was lodged on the next day of the incident, though report Ex.P/8 appears to have been lodged on the same day.

10. The statement of prosecutrix PW.5 Moddi is further corroborated from the statement of PW.4 Heeralal, who has clearly stated that prosecutrix PW.5 Moddi reported the whole matter to him stating that accused appellant committed rape

with her and he has also admitted in cross-examination that the report was lodged on the next day.

11. The prosecutrix PW.5 Moddi has further stated that when the report was lodged and whole story was narrated, PW.6 Ganesh was also present and PW.6 Ganesh has also corroborated the statement of PW.4 Heeralal and PW.5 Moddi on the point.

12. Thus, there is clear cut evidence in the present case that the accused appellant has committed rape with the prosecutrix PW.5 Moddi and the statement of the prosecutrix PW.5 Moddi further gets corroboration from the medical evidence that she was raped.

13. In these circumstances, the argument that it was a case of indecent assault at the most cannot be accepted as from the evidence on record, case of rape is fully established.

14. The argument that due to enmity, PW.4 Heeralal has lodged the false report against the accused appellant is not tenable as PW.4 Heeralal father of the prosecutrix would not subscribe to false story of rape on his daughter and thereby invite ignominy or in other words, would put at stake reputation of family and jeopardise the life of the daughter.

15. The argument that no semen was found on the vagina of the prosecutrix PW.5 Moddi also carries no weight, as according to Explanation 375 IPC, penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. To constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis with the labia major or the valuva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury either to the genital part of victim or to the male organ.

16. The actus reus is complete with penetration. Emission is not relevant. See The Queen v. Marsden (1821) 11 QBD 149.

17. The next argument of the learned Counsel for the appellant is that there is some erasion in the report Ex.P/8 and it appears that it was lodged on the next day i.e. on 26.1.1990 and not on 25.1.1990. It might be that the report would have been lodged on 26.1.1990 as the incident took place in the evening on 25.1.1990. However, it does not affect the case of the prosecution for the simple reason that if it is lodged on 26.1.1990, it would not be termed as delayed FIR. Apart from this, there is medical examination report Ex.P/1 and from the statement of PW.1 Dr. Madhu Bakshi, it is also clear that prosecutrix PW.5 Moddi was examined medically at 10.00 AM on 26.1.1990 meaning thereby report must have been lodged earlier to that time. Thus, if there is some erasion in the report Ex.P/8 on point of date, it would not at all affect the case of the prosecution.

18. Thus, looking to the entire evidence on record, it can easily be concluded that accused appellant has committed rape with the prosecutrix PW.5 Moddi and the statement of the prosecutrix PW.5 Moddi is fully corroborated by other evidence as well as from medical evidence. Thus, there is ample corroboration to the statement of the prosecutrix PW.5 Moddi, though corroboration as a rule is not required.

19. However, it is surprising that the learned Addl. Sessions Judge has convicted the accused appellant for the offence under Section 376/511 IPC instead of 376 IPC. and since there is no cross appeal of the State of Rajasthan, therefore, the findings of the learned Addl. Sessions Judge have to be confirmed with heavy heart and this appeal is liable to be dismissed.

20. From the record, it appears that accused appellant has remained in jail for nearabout 14 months and thus, the argument that he may be sentenced to the period already undergone by him is not to be appreciated, because of the simple reason that as already stated above, the case of the prosecution is well proved for the offence under Section 376 IPC and in these circumstances, lenient view has already been taken by the learned Addl. Sessions Judge by convicting the accused appellant for the offence under Section 376/511 IPC instead of 376 IPC and further lenient view in awarding sentence is not required.

For the reasons stated above, this appeal filed by the accused appellant Devilal fails and is hereby dismissed, after confirming the judgment and order dated 16.3.1991 passed by the learned Addl. Sessions Judge, Chittorgarh.