

**Phool Singh Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/773195](http://sooperkanoon.com/773195)

**Court :** Rajasthan

**Decided On :** Dec-13-2001

**Reported in :** 2002(3)WLN635

**Judge :** O.P. Bishnoi, J.

**Appeal No. :** S.B. Criminal Appeal No. 104 of 1984

**Appellant :** Phool Singh

**Respondent :** State of Rajasthan

**Judgement :**

**O.P. Bishnoi, J.**

1. This is an appeal filed against the judgment dated 25.2.1984 by the learned Sessions Judge, Sikar whereby the accused appellant Phool Singh was found guilty Under Section 376 of the I.P.C. and was awarded 3 years rigorous imprisonment and a fine of Rs. 2000/- for the said offence. For non-payment of fine he was ordered to undergo six months rigorous imprisonment. Rs. 1500/- were ordered to be paid to the prosecutrix P.W.-4 Smt. Nathi after the amount of fine was deposited by the appellant.

2. The facts of the case are few and can be stated briefly.

3. On 4.4.1983 at 5.30 P.M. P.W.-5 Bhimaram (husband of the prosecutrix) went to police station Raghunathgarh and lodged a typed report Ex.P/6, according to which his wife Smt. Nathi was raped by the accused on 29.3.1983 at about 7-8 PM in the jungle of village 'Jerthi' where she had gone to ease herself. According to the report certain persons were playing football nearby who came on the spot. P.W.-3 Durgadatt, Rajendra, Keshavdev and others came to the rescue of the victim and got her freed from the accused. The report further stated that on 3.4.1983 the accused again entered the house of the complainant with a knife, upon which the sister-in-law and mother-in-law of the prosecutrix raised a hue and cry and the accused had to run away. P.W.-9 Richpal Singh and Hanut Singh were witnesses of the second incident. Bhimaram, as per the report used to live at Mumbai from where he reached his residence after receiving the telegram about the incident dated 29.3.1983 and was informed about two incidents and consequently the F.I.R. Ex.P.6 was lodged by him. A case Under Section 376 of the I.P.C. was registered and investigation was started. The challan was filed in the court of Additional Munsif and Judicial Magistrate, Sikar who committed the case to the Sessions Judge, Sikar where the trial took place. After the trial the accused was found guilty and convicted in the aforesaid manner. Consequently, this appeal has been filed by the accused.

4. I have heard the learned Public Prosecutor for the State and the learned Counsel for the appellant and I find that it is difficult to agree with the conclusions drawn by the learned trial court and the appeal requires to be accepted.

5. As pointed out earlier there is undue delay in the lodging of the F.I.R. The incident is said to have taken place between 7-8 PM on 29.3.1983 and the F.I.R. Ex.P/6 was lodged on 4.4.1983 at 5.30 PM. The learned Public Prosecutor has argued that the husband of the prosecutrix was working in Mumbai and a telegram was sent and the F.I.R. could be lodged after PW-5 Bhimaram returned from Mumbai on 3.4.1983. There is no reason to wait for the arrival of the husband and Smt. Nathi or his mother-in-law P.W.-6 Jamana could lodge the F.I.R, However, no attempt was made. Smt. Jamana has admitted in her cross-examination that PW-9 Richpal Singh is a close relation, but even he was not sent to the police station. She has stated in her examination-in-chief that the village people did not allow her

to lodge the F.I.R. No such allegation finds place in the F.I.R. Ex.P.-6. Bhimaram has stated on oath, that the telegram which he received in Mumbai was delivered by him to the S.H.O. of the Police Station in original. However, no such telegram has been filed in evidence which gives strength to the defence version that actually no telegram was sent and the story of telegram is a concoction just to explain the long delay.

6. There is no independent corroboration of the prosecution story and not even a single independent witness has been produced who might have supported the prosecution version. Apart from PW-4 Smt. Nathi, P.W.-5 Bhimaram, P.W.-6 Jamana, P.W.-7 Rukhmani and P.W.-8 Banwari have supported the prosecution story. Bhimaram is the husband, Jamana is the mother-in-law, Rukhmani is the sister-in-law, and Banwari is the brother-in-law of the prosecutrix. As per the prosecution story there was a football match nearby and lot many people were present. In the F.I.R. P.W.-3 Durgadatt, Rajendra and Kesardev have been named as eyewitnesses. P.W.-3 Durgadatt has denied the prosecution story and has turned hostile. Rajendra has not been examined. Kesardev's name does not find place in the list of witnesses. Needless to say when there is a large number of persons who allegedly witnessed the incident and not even a single independent witness supports the prosecution story the reliability becomes seriously suspect. According to the prosecution story the rape was committed on 29.3.1983 and on 3.4.1983 at about 9 PM the accused again entered the house of the prosecutrix and threatened her with knife. P.W.- 9 Richpal Singh and Hanut Singh are said to be the witnesses of the second incident. P.W.-9 Richpal Singh has turned hostile and has not supported the prosecution version. Hanut Singh's name does not find place in the list of witnesses and consequently, he has not been examined.

7. The medical evidence does not support the prosecution story. P.W.-2 Dr. M.P. Jain in his testimony has concluded that there were no injuries of any type of the person of Smt. Nathi and he found nothing, on the basis of which a conclusion could be drawn in support of the story of rape.

8. I find that the testimony of Smt. Nathi, Bhimaram, Smt. Jamana, Rukhmani and Banwari does not inspire any confidence. P.W.-4 Nathi has contradicted her earlier

statement. Ex.D.1 recorded Under Section 161 of the Cr.P.C. She has further stated that her husband on 3.4.1983 itself went to the police station to lodge the F.I.R. The F.I.R. as pointed out earlier, was lodged on 4.4.1983 in the evening. Her husband Bhimaram's testimony goes to show that on 3.4.1983 he did not leave his house and he left the house on 4.4.1983 at 8 AM. According to the F.I.R. Durgadatt and Kesardev were eye-witnesses and they came on the spot but P.W.-4 Nathi has denied that any of them was nearby or came to her during or after the incident. According to Dr. M.P. Jain Smt. Nathi was examined by him on 7.4.1983. For this delay the investigating officer P.W.-12 Madanlal has admitted that inspite of his request for Nathi's medical examination the prosecution side did not produce Smt. Nathi and consequently, her medical examination was delayed. P.W.-7 Rukhmani who was born and brought up in the village has stated that the village people and the father of the accused prevented them from going to the police station. She was asked to give the names of the village people but was not able to tell the name of a single person who prevented them from going to the police station.

9. P.W.-8 Banwari has deposed to the effect that during the second incident on 3.4.1983 his sister-in-law Smt. Nathi was raped by the accused, which admittedly, is not the case.

10. The result is that there is no material on record to bring home the charge against the appellant and the appeal is hereby accpeted. The judgment of the learned trial court dated 25.2.1984 is set aside and the accused is acquitted of the charge. The amount, of fine, if deposited shall be refunded to him.