

Bholu Ram Vs. State

Bholu Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/900640

Court : Jammu and Kashmir

Decided On : Oct-17-2007

Reported in : 2007(3)JKJ273; 2008 (9) SCC 140

Judge : J.P. Singh, J.

Appellant : Bholu Ram

Respondent : State

Judgement :

J.P. Singh, J.

1. This criminal appeal is directed against learned Sessions Judge, Udhampur's judgment dated 21.1.2004, convicting appellant-Bholu under Section 376/511 RPC and sentencing him to five years rigorous imprisonment and a fine of Rs. 2000/-.

2. The prosecution case is that one Faqir Chand had left his house along with his minor daughter Kailasho on 19.3.2001, to get flour from a Water Mill. He went to a Flour Mill at Patangarh but could get only four kilograms of flour therefrom. He dispatched his minor daughter home along with the flour so procured and himself proceeded towards another water Mill for getting some more flour. Appellant Bholu was accompanying the minor daughter on her way home. The appellant is alleged to have dragged the minor towards the bushes and started removing her clothes. The minor raised noise when Munshi Ram came on spot and rescued the minor

girl. On the report of the mother of the victim, FIR No. 22/2001 was registered at Police Station, Chenani under Section 376/511 RPC.

3. Learned Sessions Judge, Udhampur, to whom the case had been committed for trial, found the appellant guilty under Section 376/511 RPC and sentenced him to five years rigorous imprisonment and a fine of Rs. 2000/-.

4. Mr. G.S. Thakur, learned Counsel appearing for the appellant, while not disputing the proof of its case by the prosecution raised a short submission that the learned Sessions Judge had erred in convicting and sentencing the appellant under Section 376/511 of the RPC because all that the prosecution story had hinted at was that the appellant had been accused of assaulting and using criminal force to the minor intending to outrage her modesty. He submitted that there was no evidence on records and nor was it the prosecution case that the appellant had done any such act which may be said to be his attempt to commit rape on the minor. According to the learned Counsel the allegation of removing clothes or Shalwar of the minor could not, by any stretch of reasoning be said to be an attempt of the appellant to commit sexual intercourse contrary to Section 376/511 RPC.

5. Learned State counsel, in view of the prosecution evidence, which does not in any way hinted at any attempt of the appellant to commit sexual intercourse, was unable to support the judgment of the learned Sessions Judge, convicting and sentencing the appellant for commission of offence under Section 376 read with Section 511 RPC.

6. I have considered the submission of learned Counsel for the appellant and gone through the prosecution evidence.

7. The prosecution, in the present case, has not led any evidence indicating any overt act by the appellant in using any part of his body so as to commit sexual intercourse with the minor. The act attributed by the minor to the appellant is of his dragging her to the bushes and removing her Shalwar. The minor victim is the only witness who had witnessed the occurrence. Believing her story, as it is, all that may be said to have been proved in the case is appellant's assaulting and using

criminal force on the minor in dragging her to the bushes and later removing her Shalwar, when she was rescued by the prosecution witness Munshi Ram.

8. This act of the appellant cannot attract the provisions of Sections 376/511 RPC. The act attributed to the accused and proved during the trial of the case would amount to his assaulting and using criminal force against the minor with intention to outrage her modesty.

8.1 The judgment of the learned Sessions Judge, convicting and sentencing the appellant under Sections 376/511 RPC cannot thus be sustained as it is. Setting aside appellant's conviction under Section 376/511 RPC and the sentence awarded to him by learned Sessions Judge, Udhampur, he is held guilty of having committed an offence punishable under Section 354 RPC. Convicting him under Section 354 RPC, he is sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 10,000/-. In default of payment of fine the appellant shall undergo further rigorous imprisonment for six months. The fine when realized shall be paid to Kailasho Devi D/o Faqir Chand R/o Raini Tehsil Ramnagar District Udhampur, the victim. The period during which the appellant remained in custody in the trial Court and in this Court shall be set off.

9. The appeal is accordingly disposed of. The records of the case shall be sent to learned Sessions Judge, Udhampur for follow up action.