

Ramesh Vs. State of U.P.

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Court : Uttaranchal

Decided On : Apr-20-2010

Judge : Nirmal Yadav, J.

Appellant : Ramesh

Respondent : State of U.P.

Disposition : Appeal allowed

Judgement :

Nirmal Yadav, J.

1. This appeal is directed against the judgment and order dated 24.12.1999 passed by the learned Additional Sessions Judge, Udham Singh Nagar in Sessions Trail No. 73 of 1998 whereby the accused-appellant has been convicted for the offences punishable under Sections 366 and 376 of the Indian Penal Code, 1860 (for short I.P.C.) and sentenced to undergo rigorous imprisonment for eight years under Section 366 as well as under Section 376 of the I.P.C. and fine of Rs. 4,000/-. In default of payment of fine, he has further been ordered to undergo one year rigorous imprisonment of each offence. Both the sentences have been ordered to run concurrently. Accused-appellant has, however, been acquitted of the charge punishable under Section 363 of the I.P.C.

2. Brief facts of the case are that on 14.10.1997 at about four O'clock in the evening accused-Ramesh enticed away victim No. 1. While leaving her house, victim No. 1 carried Rs. 500/- in cash and one gold earring weighing one tola and one silver chain weighing ten tola with her. [Name of the victim has not been mentioned to prevent social victimization or ostracism of the victim of the sexual offence for which Section 228-A of the I.P.C. has been enacted. It is advisable for the courts below not to indicate the name of the victim of sexual offences in their judgments.] Besides Ramesh, another accused Arjun also enticed away another girl (hereinafter referred as to victim No. 2). Victim No. 2 had taken Rs. 800/- in cash, one pair of gold earring and one silver pandal with her. Lakhan Singh, father of victim No. 1, submitted written application dated 14.10.1997 (Ex. Ka-3) to Station House Officer, Police Station, Bazpur, U.S. Nagar on 16.10.1997 at about 8:15 a.m. According to the complainant, both the victims were seen going with the abovementioned-accused persons but out of fear none dared to protest as the accused were carrying deadly weapons with them. They were threatening that in case any one of them took action against them they would be killed. The complainant also apprehended danger to his life. On the basis of the application Ex. Ka-3, chick F.I.R. (Ex. Ka-6) was registered. The investigation was conducted by Sub Inspector P.C. Mathpal. Both the victims were arrested on 17.10.1997, the General Diary in this respect is Ex. Ka-8. They were medicolegally examined by Dr. B. Verma. The report of medical examination of victim No. 1 is Ex. Ka-5 and that of victim No. 2 is Ex. Ka-4.

3. The statements of the witnesses were recorded. On completion of the investigation, the challan was presented. During the course of trial accused-Arjun absented himself and therefore, his case was separated from accused-Ramesh. Since the case of accusedArjun was separated, the evidence only with regard to accusedRamesh and victim No. 1 shall be discussed. Accused-Ramesh was sent for trial to the Sessions court where he was charge sheeted under Sections 363, 366 and 376 of the I.P.C. to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution produced Dr. G.S. Joshi, the Radiologist (PW-1). He examined victim No. 1. and as per the Radiological examination her age was found to be about 18 years. Lakhan Singh (PW-2) is the

father of the victim No. 1, who reiterated the version given in the F.I.R. According to him, his daughter was enticed away by accused-Ramesh. He further stated that he was informed by father of Ramesh that his son had taken away the complainant's daughter. He further deposed that there were six persons in all, who had concealed themselves in sugarcane field where his daughter was cutting the grass. Some other children were also present at the spot. The other children came back home and informed that victim No. 1 and victim No. 2 had been caught by six persons, who were armed with knives and countrymade pistols. PW-3 is victim No. 1 herself. She disclosed her age just 15 years at the time of the occurrence. According to her, she and victim No. 2 were cutting grass in the sugarcane field. She further stated that they were six persons in the sugarcane field and they were armed with weapons. They placed cloth on her face, due to which she could not make a noise. They also threatened her with a countrymade pistol. She further stated that all those persons had covered their faces therefore she could not recognize them. They took her away to some unknown place and kept her there for two days. She further stated that four of them left the place while two remained with them. On the second day she was brought to the police station. She further stated that accused-Ramesh committed rape upon her against her wishes and accused-Arjun committed rape upon victim No. 2.

5. PW-4 is victim No. 2. She also stated that they were taken away by six persons who were armed with weapons. Out of six persons four persons left the place and two remained with them and they were kept in a house. She further stated that accused-Ramesh who committed rape upon victim No. 1 is present in the court while the other accused is not present in the court.

6. Dr. B. Verma (PW-5) medicolegally examined victim No. 1 on 17.10.1997. On examination she did not find any fresh injury on the external or internal part of the body of the victim. Hymen was found to having old tear and two fingers could be easily admitted into vagina. Vaginal smear was sent for chemical examination. According to doctor's opinion victim was habitual to sexual intercourse. Head Constable Mohan Singh (PW-6) registered the chick F.I.R. on the basis of application-dated 14.10.1997 submitted by Lakhan Singh (PW-2). Sub Inspector P.C. Mathpal (PW-7) is the Investigating Officer. He arrested both the accused

along with the victims from the station. The accused had tried to slip away but they were apprehended, however, the victims did not raise any alarm after seeing the police. It was stated that many persons were present at the station but they did not join investigation even on the asking of the police.

7. I have heard Mr. S.C. Bhatt, learned amicus curiae for the appellant and Mr. Nandan Arya, learned A.G.A. for the State and perused the material available on record.

8. Learned amicus curiae for the appellant submitted that the prosecution story is totally misconceived and appears to be concocted. He pointed out that as per statement of victim No. 1 and Lakhan Singh (PW-2), there were six persons who had kidnapped both the victims under the threat of deadly weapons, however, the case was registered against only two accused, namely, Ramesh and Arjun. He further stated that the police did not make any effort to apprehend the other four persons who were alleged to have accompanied these two accused.

9. It is further argued that even statement of Lakhan Singh (PW-2) suffers from various contradictions and discrepancies. While appearing before the court, this witness stated that he did not know accused-Ramesh but again stated that he knew him. He further submitted that according to Lakhan Singh (PW-2), his daughter came back after six to eight days wherein there is ample evidence on record that girls were recovered after two days. He further pointed out that as per his application Ex. Ka-3, victim had taken Rs. 500/- in cash. and one gold earring weighing one tola and one silver chain weighing ten tola with her whereas while appearing before the court Lakhan Singh stated that his daughter had taken Rs. 1000/- in cash and two bangles and one pair of earring. He further stated that father of Ramesh informed him, that his son had taken away the complainant's daughter.

10. Learned amicus curiae further argued that even the testimony of victim, who appeared as PW-3 is not reliable. It suffers from material contradiction. Initially she stated that she did not know accused-Ramesh but in another breath she deposed that she knew accused-Ramesh. He further submitted that as per the statement of Dr. B. Verma (PW-5), the victim was habitual to sexual intercourse. Hymen was

having old tear and two fingers could easily admit into vagina and no internal and external injury was found on the body of victim. These facts clearly show that the victim was habitual to intercourse and she was a consenting party.

11. He further argued that as per the report of Radiologist the victim is 18 years of age and there is no other evidence on record to prove that victim was minor at the time of the occurrence. It is therefore, argued that the victim accompanied the accused out of her freewill. She did not even raise any alarm on seeing the police when accused were arrested and victims recovered from their custody.

12. As far as conviction under Section 366 of the I.P.C. is concerned, I find that the evidence of victim No. 1 in this behalf is not at all conclusive. Her statement does not indicate that the appellant had kidnapped her with the intention to marry against her will or that she was forced to have illicit intercourse. These two vital ingredients for upholding offence under Section 366 of the I.P.C. are not proved. She nowhere states that the appellant had ever asked her to marry or that under such impression she was forced to have sexual intercourse with him. There is no evidence on record that the victim was minor at the time of the occurrence.

13. Mere statement of her father that she was fifteen and half or sixteen years of age at the time of occurrence is not substantiated by any cogent or documentary evidence. Statement of her father Lakhan Singh (PW-2) as well as victim is contradictory on most of the material facts. Lakhan Singh (PW-2) states that father of accused-Ramesh told him that his son had kidnapped his daughter. In examination-in-chief, he states that there were six persons armed with knives and countrymade pistols had taken away his daughter and he did not know the names of those persons. His statement is also contradictory with regard to articles carried away by the prosecutrix as in the F.I.R. he states that the prosecutrix had carried Rs. 500/- in cash, one gold earring weighing one tola and one silver chain weighing ten tola, whereas while deposing before that court he stated that she had taken away Rs. 100/-, 200/- and 500/-. She also carried two bangles and one pair of earring. Statement of Lakhan Singh does not appear to be reliable, as no weapons are alleged to have been recovered from the possession of the appellant nor the other four persons were even apprehended.

14. In these circumstances, the prosecution has miserably failed to prove its case under Section 366 of the I.P.C. against the appellant, therefore, the conviction under Section 366 of the I.P.C. against the appellant cannot be sustained.

15. Now coming to the conviction of the appellant under Section 376 of the I.P.C., the court below accepted the testimony of the prosecutrix to be truthful to the effect that the appellant had forcibly committed rape upon her under the threat of countrymade pistol. However, this Court is not agreeable with the finding of the learned trial court. Admittedly no arms have been recovered from the possession of the accused. According to the victim, she had been kidnapped by six armed persons. However, only the present appellant and another accused-Arjun were arrested. There is no evidence on record to substantiate that four other persons were also involved in taking away the victim.

16. According to the victim, she had been taken away and kept in a house for two days where only accused appellant as well as the other co-accused was present and other four persons had left the place. She was kept in a house for two days and accused appellant would commit sexual intercourse against her wishes. Her statement is full of discrepancies and contradictions. In her examination-in-chief initially she states that she does not know accused-Ramesh but in the next breath she admits that she knows accused-Ramesh. According to her, the accused would threaten her with the countrymade pistol. No such weapon had been recovered from the accused, when he was apprehended by the police. The statement of prosecutrix is not supported by the medical evidence or any other cogent evidence. According to the doctor, there was no internal or external injury on the body of the victim. She was habitual to sexual intercourse. There was old tear in the hymen and two fingers could easily be admitted in the vagina. It is also on record that the victim did not raise any alarm when they were spotted alongwith accused by the police. They were apprehended at the bus station where many persons were present.

17. The medical evidence, entire conduct of the victim and material contradiction in the statement of the victim and her father Lakhan Singh (PW-2) goes to negate the case of the prosecution that the victim was kidnapped and was subjected to

forcible sexual intercourse by the appellant.

18. For the foregoing reasons, the appeal is allowed. Conviction and sentence of the appellant for the offence punishable under Sections 366 and 376 of the I.P.C. are set aside. Accused-Ramesh is on bail, his bail bond is cancelled and his sureties are discharged.

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