

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

JUDGMENT

State of Raj . Vs. Devi charan & Anr.

S. B. CR. APPEAL NO. 207/1998.

DATE OF JUDGMENT : - 31st July, 2008.

P R E S E N T

HON' BLE MR. JUSTICE MAHESH BHAGWATI

Mr B. K. Sharma, Public Prosecutor, for State.
Mr Anil Jain, for accused respondents.

BY THE COURT

Challenge in this appeal is to the judgment dated 25th February, 1997 whereby the learned Addl. Sessions Judge, Dholpur has acquitted the accused respondent Devicharan in the offences under Ss. 366, 368 and 376 and accused Siyaram in the offences under Ss. 366 and 376 of IPC.

2. The nub of the prosecution story as unfolded by PW/8 the prosecutrix in her Parchabayan Ex. P/2 is as under:

That the prosecutrix is a resident of Raja Pet Distt. Amravati, Maharashtra. Her father's name is Anjab Rao and her mother is Subhadra. Out of 5 brothers and two sisters, she is the youngest. Four years prior to November, 1986, she married to one Ram Chandra Deshmukh resident of Amravati. She had no

child. Her husband is a drunkard and used to harass and torture her. So she left her house. It has been stated that having left her in-laws house, she started residing with her mother at Paratwada Distt. Amravati. It has been alleged that about 6-7 days before 3.11.1986, she was getting the crop of Jowar reaped from the labourers. At about 4-5 P.M., the accused Devicharan Driver stopped his truck on wayside of the road and came to her well for taking bath. The prosecutrix asked him not to take bath there as there were so many ladies working nearby. Thereafter, the accused Devicharan indicated her to come near and asked her to locate some well where he could take bath as many days he had not taken the bath for so many days. The prosecutrix boarded the truck of Devicharan and Devicharan took her towards Bhopal. The prosecutrix asked the accused Devicharan to stop the truck after 2 Kms. but instead of alighting her, he took her to Bhopal. From Bhopal, the accused brought her to his own house at Badi Distt. Dholpur. It is further alleged that the accused Devicharan went to Delhi to unload the luggage of truck. He came back after three-four days. During this period, his brother Siyaram forcibly ravished her everyday. He not only raped upon her once in a day but used to ravish her three times every day without her consent. When the accused

Devi charan came back, he also ravished her against her will. The accused persons wrongfully confined her in the house for 6-7 days. When she came to know that they were going to sell her in 20,000/- Rs., she quietly called one girl of the age of about 15 years and asked her to inform the police about it. The police having received this information, came to the house of Devi charan, recovered the prosecutrix Mst. Meena, recorded her Parchabayan Ex. P/2 whereupon F.I.R., Ex. P/5 was lodged and investigation commenced.

3. During the course of investigation, the Investigating Officer recorded the statement of the witnesses acquainted with the facts and circumstances of the case, arrested the accused respondent Devi charan and Siyaram vide Memo Ex. P/7 and Ex. P/8 respectively, seized the Peticot of prosecutrix vide Ex. P/3, necessary memos were also drawn and after usual investigation, filed the charge sheet in the Court.

4. The accused respondent Devi charan was charged in the offences under Ss. 366, 368 and 376 and accused Siyaram in the offences under Ss. 366 and 376 of IPC who denied guilt and claimed trial. In order to

further its version, the prosecution has examined as many as 13 witnesses. In the explanation furnished under Section 313 of Cr.P.C., both the accused claimed innocence. On completion of trial, the accused were acquitted in the offences as indicated hereinabove.

5. Heard the submissions advanced by Learned Public Prosecutor appearing for the State, Learned counsel for the accused respondents and with their assistance scanned the impugned judgment of the lower court along with the relevant material available on record.

6. The Learned Public Prosecutor appearing for the State has contended that the prosecution case rests upon the sole evidence of the prosecutrix and there is no reason to disbelieve her statements. He has further contended that to prove the offence of rape, the solitary statements of prosecutrix is sufficient if and no corroboration is required if her statements are found trustworthy. He has cited the decision of this Court rendered in the case of *Akbar & ors. Vs. State of Raj., RCC 1995 Page-415* in support thereof.

7. Per contra, the learned counsel for the accused respondents has submitted that the statements of the prosecutrix are not at all trustworthy. The prosecutrix voluntarily accompanied the accused Devicharan and there is no evidence to this effect that she was abducted with an intent that she would be forced or seduced to illicit intercourse. The judgment of the lower Court is just and proper and it requires no interference as such, the appeal deserves to be dismissed.

8. The only crucial question springing for consideration in this appeal is that as to whether the accused abducted Mst. Meena with an intent that she will be forced or seduced to intercourse and after her abduction, both the accused respondents committed rape upon her without her consent and against her will ?

9. Firstly, the private parts of the prosecutrix Meena were found normal. The Doctor examined not only her private parts and genitals but other parts of the body also but no injury has been found on any part of the body. Thus the medical examination report does not support the statements of the prosecutrix so far as the injury part is concerned. Secondly, the

mother of prosecutrix PW/9 Subhadra has not supported the prosecution case. On the contrary, in her cross-examination she has stated that her daughter Meena was skittish and of easy virtues.

10. Though the corroboration of the statements of prosecutrix is not sine qua non in the case of a rape if her evidence is trust worthy but if the evidence of the prosecutrix is found to be tainted and coloured, then the corroboration of rape is required for the conviction of the accused. In the absence of a woman's consent, the essential feature of actus reus is rape which is totally wanting in the instant case.

11. The Learned Sessions Judge has critically examined and properly appreciated the evidence of the prosecution witnesses. The statements of the prosecutrix neither stand corroborated by any other witness nor by any circumstantial evidence. The evidence of prosecutrix does not inspire any confidence and in the facts and circumstances of the case her evidence is not found to be reliable. The Learned trial Court has incorporated many contradictions in his judgment which have emerged in the

statement of witnesses.

12. The prosecution has miserably failed to establish the charge of abduction against Devicharan and the charge of rape against both Devicharan and Siyaram. The impugned judgment, to my mind, is perfectly just, cogent and well-merited. I am in unison with the finding of acquittal arrived at by the learned trial Court and it calls for no interference.

13. For these reasons, the criminal appeal filed by the State is found to be totally devoid of merits and thus, stands dismissed.

(MAHESH BHAGWATI), J

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