

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAI PUR BENCH, JAI PUR

JUDGMENT

SHANKAR LAL VS. STATE OF RAJASTHAN.

S. B. Cr. Appeal No. 1236 of 2004 under Section 374 (2) Cr. P. C. against the judgment and order dated November 4, 2004 of Judge, Women atrocities and Dowry Cases, Jaipur City Jaipur whereby the accused appellant was convicted and sentenced under section 376 IPC for 10 years and fine of Rs. 2,000/-, in default of payment of fine to further undergo six months rigorous imprisonment.

Date of Order : April 30 , 2009

PRESENT

HON' BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. B. S. Chauhan, for the appellant
Mr. Pradeep Shrimal , Public Prosecutor.

BY THE COURT :

The accused appellant has filed this appeal against the judgment and order dated November 4, 2004 of Judge, Women Atrocities and Dowry Cases, Jaipur City Jaipur whereby he was convicted and sentenced under section 376 IPC for 10 years and fine of Rs. 2,000/-, in default of payment of fine to further undergo six months rigorous imprisonment.

2. Brief facts of the case are that on July 27, 2003 complainant Gyan Chand submitted a written report before the Police Station Kotputli against the accused appellant Shankar Lal with the averments that he took away his niece (Jyoti) aged 3 years in a School and forcibly committed rape upon her. Upon hearing hue and cry, Surji and Pooran came there and saw the accused appellant committing rape upon Jyoti. On the basis of the said report FIR No. 455 of 2003 for the offence under section 376 IPC was registered and investigation was started. During investigation the appellant was arrested. After conclusion of the investigation the police filed challan against the accused appellant before the Additional Chief Judicial Magistrate, Kotputli and in due course same was committed for trial to the court of Women Atrocities and Dowry Cases, Jaipur for trial and disposal. The trial court framed charge against the accused appellant for the offence under section 376 IPC and same was explained to the accused appellant for which he denied, pleaded innocence and claimed for trial. The prosecution in support of its case examined as many as 9 witnesses and some documents got exhibited. After prosecution evidence the

accused appellant was examined under section 313 Cr.P.C. in which he denied the story of the prosecution. He specifically stated that Surji (PW.4) wanted to have some illicit relations with him and when she was talking with him her brother in law has seen him, as such they inflicted self some injuries to Jyoti and falsely implicated him. He also examined DW.1 and DW.2 in his defence. The trial court after recording the evidence of the parties and hearing arguments of both the sides, convicted and sentenced the accused appellant for the offence under section 376 IPC as mentioned above vide judgment dated November 4, 2004. Against this order, the present appeal has been filed by the appellant.

3. Mr. B.S. Chauhan, learned counsel for the accused appellant submitted that there are several infirmities and contradictions in the statements of the prosecution witnesses and therefore no reliance can be placed upon the testimony of such witnesses. The conviction based on such evidence is not sustainable. The witnesses of the prosecution have suppressed the genesis of the occurrence and have changed their statements at various places. The

prosecution witnesses can not be treated as credible and reliable witnesses. Surji PW.4 wanted to have some illicit relation with the appellant and when she was talking with him, she was seen by her brother in law and due to this sole reason the appellant has been falsely implicated. No blood stains were recovered from the site of occurrence and this shows that no such incident took place and the appellant has been falsely implicated in the case. The findings arrived at by the trial court while convicting the accused appellant is absolutely perverse to the facts and material available on record. Perusal of the judgment would reveal that the trial court neither properly considered nor critically examined the statements of prosecution witnesses and in a general and routine manner has discussed the same and after taking into consideration the few words from their statements, has passed the impugned judgment of conviction. Statement of the accused under section 313 Cr.P.C. was not recorded in accordance with law, as all incriminating circumstances were not put to the appellant and sufficient opportunity of defence is not afforded to him. The learned counsel for the appellant placed reliance on State of

Chhatigarh vs. Derha 2004(2) WLC (SC) Criminal page 7, Chhigan Lal vs. State of Rajasthan (2007 (2) RCC 629), Mahesh Singh vs. State of Rajasthan (1988 RCC 198, , Rajesh Kumar vs. State of Rajasthan (2002) I RCC 365, Ashok Kumar @ Ashok vs. State of Rajasthan 1998 (2) RCC 411, Mahesh Chand vs. State of Rajasthan (1998 Cr.L.R. (Raj.) 162 and Ramveer vs. State of Rajasthan (2007 (2) RCC 697.

4. The Learned Public Prosecutor on the other hand opposed the submissions of learned counsel for the appellants and stated that the court below after considering all the evidence, documents and record passed the order of conviction, and rightly sentenced the accused appellant. This impugned judgment of the trial court is just and proper and no interference is required to be called for in the impugned judgment.

5. I have heard the learned counsel for the parties and gone through the entire record and judgment of the trial court.

6. The appellant Shanker Lal raped Jyoti aged 3 years on July 27, 2003 at 4.00 p.m. and report

about this incident was lodged by Gyanchand son of Budhram brother of father of Jyoti. The incident took place at School Near Kanwar Nagar, and the report was lodged at Police Station Kotputli. For reaching to Police Station and writing report, time of three hours cannot be said to be fatal to the prosecution case. The name of the appellant Shanker Lal was shown specifically in the report and when Surji and Puran tried to catch him the appellant ran away from the place of incident. In the Karyawahi Police, the SHO noticed that blood was coming from the private parts of Jyoti and there was abrasion on cheek of Jyoti. The appellant was arrested on July 27, 2003 at 11.00 p.m. The prosecutrix Jyoti was taken to BDM Hospital Kotputli where she was examined by the doctor on July 27, 2003 at 9.00 p.m. On external examination following injuries were found :

- (1) Bruise 2x2 cm. On right cheek
- (2) Bruise 2x1 cm. On left cheek.

Injuries on Genitals -

Stains over external genitals - Blood stain present

Injuries (1) Abrasion 1x1/2 cm. On right side of Vulva

(2) Abrasion 1x1/2 cm. On left side of Vulva

(3) Lacerated wound 1x1/2 cm. x 1 ½ cm. On posterior of vagina.

Hymen lacerated posteriorly cut. Bleeding present

In the opinion of Medical Board the mentioned findings are suggestive of forceful penetration of object in introits of Kumari Jyoti.

The appellant Shanker Lal was medically examined by the doctor of BDM Hospital Kotputli on July 28, 2003 at 12.00 noon. Doctor found that there is bruise 1x1 ½ cm. on ventral aspect of Glans penis. Doctors opined that there is nothing suggestive that Shanker Lal s/o Kailash is incapable to perform sexual intercourse.

The prosecution in support of its case examined 9 witnesses. PW.1 Lalchand attested his signatures on Ex. P.1 seizure memo of underwear of Kumari Jyoti. PW.2 Guljari stated in his examination in chief that he was present at the place of occurrence at 4.00 p.m. when his Bhabhi Surji was standing there having in his lap her daughter. Her niece was bleeding at that time from her private parts. His Bhabhi informed him that son of Kailash Patiwal raped her niece. PW.3 Gyanchand who lodged the report stated about the whole incident and also attested his signatures A to B on FIR Ex. P.3. PW.4 Surji in clear terms stated that when she

was doing work in her field at about 4.30 p.m. she heard noise from school. She immediately rushed to school and found accused appellant Shanker Lal in naked position over Jyoti and raping her. At that time Jyoti was bleeding from her private parts. She tried to catch the accused appellant but he escaped. She immediately called Pooran her brother in law and other persons.

PW.5 Pooran stated in his examination in chief that Eight and Nine months before at 4.30 p.m. while he was passing to her residence in Dhani near Kanwar Nagar he was called by Surji. At that time Surji caught Shanker accused appellant, but he escaped. At that time Jyoti was bleeding from her private part. Surji stated to him that Shanker Lal accused raped Jyoti. Police prepared Naksa Moka Ex. P.4 and he signed C to D over it.

PW.6 Dr. Beerbal Yadav, who examined the prosecutix and the accused appellant Shanker Lal proved the medical reports examining both of them. PW.7 Naresh also narrated the incident in his examination in chief. PW.8 Banna Lal Head Constable attested that the sealed packets were

kept in Malkhana and the same were sent to the FSL in sealed condition. PW.9 Yadram, SI, stated about the investigation done by him.

Statement of the accused under section 313 Cr.P.C. was recorded in accordance with law, all incriminating circumstances were put to the appellant and sufficient opportunity was given to him to defend his case.

I have also examined the statements of the defence witnesses produced by the accused appellant. The defence witnesses DW.1 Shyam Lal and DW.2 Lalchand given statements to the effect that as if Jyoti was not daughter of Suwalal. The statements of defence witnesses given in this manner cannot be said to be trustworthy.

It is clear from the ocular evidence of PW.4 Surji and PW.5 Puran, eye witnesses about rape supported by other witnesses and further corroborated by the medical reports of the accused appellant and Kumari Jyoti, which were also attested by the doctor of the Medical Board in his statement before the court, the case of the prosecution is proved beyond reasonable doubt that the accused appellant raped Jyoti aged 3 years on July 27, 2003 at 4.00 p.m. Minor discrepancies in the statements by the

prosecution witnesses is human error that cannot be considered in such types of heinous offences. The trial court in its judgment categorically discussed each and every point pointing towards the commission of offence by the accused appellant under section 376 IPC. I am in agreement with the findings of the trial court. On the question of sentence I am also agree with the findings recorded by the trial court. Thus the judgment of conviction and sentence passed by the trial court stands confirmed. The judgments cited by the learned counsel for the appellant in the facts and circumstances of the case are not applicable in the instant case.

7. For these reasons the judgment of the trial court is confirmed. The appeal filed by the appellant stands dismissed. The appellant is in jail he shall serve out the remaining sentence as ordered by the trial court.

(Mahesh Chandra Sharma) J.

OPPareek/