

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

STATE OF RAJASTHAN VS. DEVKINANDAN AND ANR.

SB Criminal Appeal No. 139 of 2005 under Section 378 (i) & (iii) Cr.P.C. against the order dated November 23, 2001 of the Additional Sessions Judge (Fast Track) No.2 Bundi in Sessions Case No. 146 of 2001 by the accused respondents Devkinandan was acquitted of the charge under sections 363, 366 and 376 IPC and accused respondent Om Prakash under section 363 and 366 IPC and accused respondents Ram Dayal and Badri Bai for the offence undersections 363/34 and 366/34 IPC.

Date of Order : April 30, 2009

**PRESENT**

**HON' BLE MR. JUSTICE MAHESH CHANDRA SHARMA**

Mr. Piyush Kumar, Public Prosecutor for the appellant State of Rajasthan.

Mr. Harendra Singh for the accused respondent.

**BY THE COURT :**

State of Rajasthan has preferred leave to appeal against the order dated November 23, 2001 of the Additional Sessions Judge (Fast Track) No.2 Bundi in Sessions Case No. 146 of 2001 by the accused respondent Devkinandan was acquitted of the charge under sections 363, 366 and 376 IPC and accused respondent Om Prakash under section 363 and 366 IPC and accused respondents Ram Dayal and Badri

Bai for the offence under sections 363/34 and 366/34 IPC, against all the accused respondents but this court by order dated Feb.16, 2005 refused leave against accused Badri Bai and Ramdayal and allowed leave to appeal against accused respondents Devkinandan and Om Prakash. The leave to appeal was registered as appeal only against accused respondents Devkinandan and Om Prakash.

2. Brief facts of the case are that complainant Laxminarain lodged a report on May 26, 1999 at 11.45 p.m. at Police Station Sadar Bundi that his daughter Mamta aged 15 years was abducted by the accused respondents and taken away her on a Motor Cycle. After investigation the police arrested the accused respondents and challan was filed against them for the offence under sections 363, 366 and 376 against accused respondent Devkinandan and for offence under sections 363 and 366 against accused respondents Om Prakash, Ram Dayal, and Badri bai. The case was committed to the court of

Sessions and thereafter transferred to the Court of Additional Sessions Judge (Fast Track ) No.2 Bundi. The trial court framed charge against the accused Devki nandan for the offence under sections 363, 366 and 376 IPC and against accused Ram Dayal and Badri bai for the offence under sections 363/34 and 366/34 IPC and against accused respondent Om Prakash, for the offence under sections 363 and 366 IPC. The accused respondents denied to have committed any offence and claimed to be tried. The prosecution in support of its case examined 10 witnesses and statement of accused respondents under section 313 Cr.P.C. was recorded. The trial court after hearing both the sides acquitted the accused respondent Devki nandan of the charge under sections 363, 366 and 376 IPC and accused respondent Om Prakash under section 363 and 366 IPC and accused respondents Ram Dayal and Badri Bai for the offence under sections 363/34 and 366/34 IPC. Now this appeal against the accused respondents Devki nandan and Om Prakash.

3. The Learned Public Prosecutor contended that the trial court has not appreciated the prosecution witnesses in a proper manner. The prosecution witnesses in clear terms stated that the accused respondents abducted Mamta and committed rape on her but in spite of that the trial court acquitted the accused respondents. Thus the judgment of the trial court should be set aside and the accused respondents should be convicted for the offence charged against them.

4. On the other hand, Mr. Harendra Singh, Learned counsel appearing for the accused respondents, contended that the trial court has considered each and every aspect of the case and nothing remains more to be considered by this court in appeal. The trial court rightly given the benefit of doubt looking to the facts and circumstances of the case.

5. I have heard the Learned counsel for the parties and gone through the entire

record. The judgment passed by the court below is perfectly according to law and there is no illegality or infirmity in the same. I am in agreement with the findings arrived at by the trial court. The doctor examined by the prosecution categorically stated that the age of the prosecutrix is 16 years and there is no injury on any part of her body and the vaginal swab was not contained any blood or sperm and he stated that no rape was committed on her. Since there was no injury on her body it proved that she has gone with the accused respondents on her own. The trial court rightly acquitted the accused respondents of the charge levelled against them. The court's attention was drawn on the judgment of the Hon'ble Supreme Court in **Umrao Vs. State of Harayana & Ors.** SC 2006 Vol.10 Page 136 in which their Lordships of the Supreme Court has observed in para 26 that "it is now well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below."

6. For these reasons the appeal filed by the State of Rajasthan is dismissed after confirming the judgment dated November 23, 2001 passed by the Additional Sessions (Fast Track) No. 2 Bundi .

(Mahesh Chandra Sharma) J.

OPPareek/