A STATE OF RAJASTHAN

v.

RAM NARAIN AND ORS.

JANUARY 23, 1996

B [K. RAMASWAMY, S. SAGHIR AHMED AND G.B. PATTANAIK, JJ.]

Penal Code. 1860 :

C *Sections 342, 361, 366, 376—Minor girl—Wrongful confinement and rape—Trial—All three accused convicted and sentenced—High Court reducing their sentence to the period undergone—On appeal, held victim being minor, question of consent does not arise—Rape by first accused proved—Also not falsely implicating the accused as the victim alleged rape by first accused alone—Judgment of High Court set aside—Conviction of first accused* D *upheld—Sentenced to five years' r.i. u/s. 376 and fine of Rs. 2,000 to be paid to the victim—All three accused sentence to five years' imprisonment under S. 366 and one year under S. 342.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 189 of 1996.

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From the Judgment and Order dated 18.12.91 of the Rajasthan High Court in S.B. Crl. A. No. 351 of 1984.

K.S. Bhati for the Appellant.

F Sushil Kumar Jain for the Respondent.

The following Order of the Court was delivered :

Leave granted.

G Heard learned counsel on both side.

It is rather curious that the learned judge while confirming the conviction of the three respondents, viz., Ram Narain, Bajrang Lal and Manja Ram, for offences under Sections 376, 366 and 342, Indian Penal Code ["IPC", for short] in respect of Ram Narain under Sections 366 and H 342, IPC in respect of respondent Nos. 2 and 3, reduced their sentence to

the period already undergone, viz., one and a half months. Notice was issued by this Court against the reduction of the sentence by the High Court.

The facts are that on August 14, 1983 when victim Anoop Devi aged between 15 and 17 years was coming from the house of her uncle to her parents' house, these accused enticed her to believe that all the women-folk had assembled at the outskirts of the village to go to Circus and induced her to accompany them. Innocently believing their statement, she accompanied them to the outskirts but did not find women-folk there. She was taken at knife point to another village by name Siroha and from there to Jaipur in a truck. In Jaipur, she was wrongfully confined in a house. From Jaipur, she was taken to Murtipura where first accused-respondent had sexual intercourse with her. She was wrongfully confined in that house. From there she was brought back to her village and was confined in the house of the first accused. On coming to know of it, the father of the victim [PW 3] made a complaint to the police and the police recovered her from the house of the first accused.

At the trial, five witnesses, viz., the victim [PW 1], her mother and father (PWs 2 and 3) and neighbours (PWs 4 and 5) were examined. The Sessions Judge after appreciating the evidence and believing the evidence of PW 1, the victim, her mother and father [PWs 2 and 3] and neighbours [PWs 4 and 5], convicted the first accused for offence under Sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and also imposed fine of Rs. 200. Equally, the second and third accused were convicted under Sections 366 and 342, IPC and sentenced to undergo imprisonment for five years and one year respectively. All the sentences were directed to run concurrently. The accused-respondents carried the matter in appeal and the learned Judge had held that the evidence on record was sufficient to prove that the prosecution has established its case without any room for doubt. However, he reduced the sentence and allowed the appeal. He observed that the age of first accused, viz., 18 years, and the sentence of one and a half months which he had already undergone, would be sufficient to meet the ends of justice. Accordingly, the learned Judge held that justice would be met in case the sentence was reduced to the period already undergone by them.

Shri Sushil Kumar Jain, the learned counsel for the respondents

A contended that looking at the evidence of the victim herself, the High Court was justified in reducing the sentence. She is a consenting party and without independent corroboration, her evidence would be suspect and could not be relied upon. The offence had taken place on April 14, 1983 and the report was lodged by the father of the victim on May 13, 1983, i.e., B one month after the incident. It is unlikely that had she not been the consenting party, report would have been lodged immediately after abduction. PW 3 having allowed the daughter to remain in the company of the first accused for one month and parents having taking no action, the conduct would indicate against the prosecution and that the respondents C had no intention to commit any offence and the victim (PW 1) is a consenting party. We fail to appreciate the stand of the victim which is proved from the evidence of the doctor [PW 5] that she is minor aged between 15 and 17 years. She is an innocent village girl. From her evidence, we find intrinsic truth, and her to be a truthful witness. No corroboration D to her evidence is needed. The Court is required in each case to consider whether the evidence of the prosecution inspires confidence for acceptance. Each case has to be considered in its own setting, facts and circumstances. In fact, had PW 1 an intention to falsely implicate all the accused, nothing prevented her to state that the second and third accused also had intercourse with her. The learned Sessions Judge was greatly E impressed by her frankness when she attributed the act of sexual intercourse only to the first accused and none else. When she was induced to accompany them to a Circus along with women-folk she came to the outskirts of the village and when she found none, she was frightened at knife point at her throat and from the outskirts of the village the three F accused took her to different places. It would be difficult for an innocent girl to resist three persons who took her from place to place and she could not have attempted to escape from their clutches nor could she give any report to anybody. Naturally, under the circumstances she had reconciled herself and given up to her fate and remained in their wrongful custody for G more than one month. Her evidence clearly indicates that she was wrongfully confined at different places. Even after she was brought to the native place she was also wrongfully confined in the house of first accused. Thus the evidence brings home the guilt of offences under Sections 364, 361 and also wrongful confinement under Section 342. As regards offence under H Section 376, her evidence is sufficient. That apart, we also get corrobora-

tion from the medical evidence and the circumstantial evidence, viz., the underwear of the first accused and peticot of the victim establish the sexual intercourse the first accused had with the victim. The victim being a minor, the question of her consent does not arise and, therefore, the contention of Shri Sushil Kumar Jain that she was a consenting party is absolutely unbelievable and untenable. Obviously, under the circumstances, she had reconciled herself and to her fate and the first accused had sexual intercourse and the offence under Section 376, IPC as against him is proved.

The question is : whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half month ? We think that the High Court has committed grave error of law in reducing the sentence. Therefore, the judgment of the High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under Section 376. Equally, all the three accused are convicted under Section 366 to undergo sentence of five years under Section 366 and one year under Section 342, IPC. In addition the first accused is directed to pay a fine of Rs. 2,000 and if the same is paid, it is directed to be paid to the minor victim. In default, he should undergo rigorous imprisonment for 3 months. The second and third respondent-accused are directed to pay a fine of Rs. 1,000 each in addition to the conviction under Section 366. In default, they should undergo rigorous imprisonment for one month. All sentences would run concurrently. The fine, if paid, is directed to be paid to the victim.

The appeal is accordingly allowed.

G.N. Appeal allowed.