
(2010) 11 RAJ CK 0094
In the Rajasthan High Court
Case No : Criminal Revision No. 1645 of 2009

Digamber Singh

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2010) 11 RAJ CK 0094

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dated 12.10.2009 passed by the Additional Sessions Judge (Fast Track) No. 2, Bharatpur, whereby he has acquitted accused-respondent No. 2 for offence u/s 376/511 IPC.

2. The brief facts of the case are that on 30.01.2009 at about 7:00 PM a written report was lodged by Ram Singh at the Police Station, Sewar stating therein that while his niece was answering the call of nature in the field, the accused person, Ram Bharosi, caught hold of her and tried to commit rape. The prosecutrix cried; on hearing her cries, Khem Singh, Sumeran Singh and Hop Singh rushed to her rescue. On the basis of the written report, a FIR bearing No. 50/2009, for offence u/s 376/511 IPC, was registered. After investigation, challan was filed. In support of the prosecution case, five witnesses were examined, and five documents were exhibited. No witness was examined in defence. After hearing both the parties, the learned trial Court, vide order dated 12.10.2009, acquitted the accused person of the offences u/s 376/511 and 323 IPC. Hence, this revision before this Court.

3. The learned Counsel for the petitioner has vehemently contended that the prosecutrix was about fifteen years old. According to him, the learned Judge has committed error while concluding that the prosecutrix had consented to the alleged offence. According to him, the question of consent does not arise when the prosecutrix is a minor and the offence is of 376/511 IPC.

4. On the other hand, the learned Public Prosecutor has contended that according to the learned Judge, the prosecutrix had turned hostile and has not deposed before the Court that she was even touched by the accused person. Thus, there is no evidence to show that offence u/s 376/511 was ever committed. Hence, the learned Judge was certainly justified in acquitting respondent No. 2.

5. Heard the learned Counsel for the parties and perused the impugned order.

6. A bare perusal of the impugned judgment clearly reveals that the prosecutrix in her testimony had merely stated that on 30.11.2009 while she had gone to answer the call of nature, in the evening, the accused-respondent had walked in front of her. Seeing him, she had gotten up. When he went away, she again sat down. But seeing him the second time, she merely shouted. Hearing her, Khem Singh, Sumeran and Hop Singh rushed to her rescue and caught hold of the accused person. Since she did not support the prosecution case, she was declared as a hostile witness. Obviously, she is the star witness of the prosecution case. Once she has not supported the prosecution case, the prosecution case falls apart.

7. The learned Judge has also noticed that there were five important witnesses, but all of them have turned hostile. Thus, the learned Judge had no other option but to acquit the accused person as there was lack of evidence to prove the case of the prosecution beyond a reasonable doubt.

8. Hence, there is no merit in this revision; it is, hereby, dismissed.