

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 19 OF 2004

BHANWAR LAL

Appellant (s)

VERSUS

STATE OF RAJASTHAN & ANR.

Respondent(s)

(With appln(s) for exemption from filing O.T.,stay)

Date: 28/04/2011 This Appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. Vinay Garg,Adv.(NP)

For Respondent(s)

Dr. Manish Singhvi,AAG.
Mr. Abhinav S.Raghuvanshi,Adv.
Mr. Milind Kumar,Adv.

Ms. Sandhya Goswami,Adv.(NP)

Mr. Surya Kant ,Adv.(NP)

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 19 OF 2004

BHANWAR LAL

.. APPELLANT(S)

vs.

STATE OF RAJASTHAN & ANR..

.. RESPONDENT(S)

O R D E R

This appeal has been filed by the complainant

Bhanwar Lal against the acquittal of Nand Kishore-

Respondent No.2 who had been convicted by the Trial Court

for an offence punishable under Section 376 of the IPC.

The prosecution story is that the PW.1-the prosecutrix, who was less than to 16 years of age had been enticed away by the accused on the 21st November, 1999. A first information was accordingly registered at the instance of Bhanwar Lal-the appellant. The prosecutrix was ultimately recovered and was subjected to a medical examination on the 8th December 1999, and no injury on her person or indication of commission of rape was found though her hymen was absent.

On the completion of the investigation the accused was charged and brought to trial and as already mentioned above was convicted under Section 376 etc. of the IPC by the Trial Court. The High Court on appeal has however reversed the judgment of the Trial Court on finding that

-2-

the case was one of consent and that the prosecutrix was more than 16 years of age as on the date of the alleged rape. The High Court re-examined the entire evidence and in particular that of the prosecutrix-PW.1, her father-PW.2-the appellant herein, Ishwar Lal-PW.3-the younger brother of the appellant and Smt. Kani-PW.5, the wife of Bheru Lal, brother of Bhanwar Lal. The High Court opined that though the aforesaid witnesses had attempted to show that the PW.1 was less than 16 years of age as on the date of the incident, this appeared to be a wrong assertion for the simple reason that the ration card which had been filed by PW.2 and several other documents on record indicated that she was definitely more than 16 years as on the date of the incident. The High Court also noticed that the Medical Board which had examined the prosecutrix had not examined her personally but had confined their opinion based on the Radiological examination that had been taken on the 19th December 1999, though said X-Ray plates had not been exhibited and it was not thus clear as to whether they

belonged to the prosecutrix. The High Court accordingly accepted the report of the Medical Board that the prosecutrix was between 14 and 16 years of age as on the date of the incident with a margin for error of 2 to 3 years on either side it had to be read that the prosecutrix was definitely more than 16 years of the age on the date of the incident.

-3-

We have considered the aforesaid evidence. We find that the findings recorded by the High Court are completely justified on the evidence. It is the conceded position before us that the case is one of consent and the only question was with regard to the age of the prosecutrix. We find absolutely no infirmity in the judgment of the High Court when it say that she was more than 16 years of age.

The appellant is not represented before us. The State of Rajsthan has however supported the case of the appellant and the matter has been argued by Dr. Manish Singhvi as if he were a counsel for the appellant.

In this view of the matter we find no merit in this appeal.

Dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

New Delhi,
April 28, 2011.