

Satish Vs. State

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Court : Delhi

Decided On : Sep-25-2013

Judge : S. P. Garg

Appellant : Satish

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

25. h September, 2013 + CRL.A.372/2000 SATISH Appellant Through : Mr.Anurag Jain, Advocate. VERSUS STATE Respondent Through : Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. The present appeal is directed against a judgment dated 11.02.2000 of learned Additional Sessions Judge in Sessions Case No.5/1998 arising out of FIR No.446/1997 registered at Police Station Narela by which Satish (the appellant) was held guilty for committing offence punishable under Section 377 IPC. By an order dated 21.02.2000, he was sentenced to undergo RI for seven years.

2. Allegations against the appellant were that on 18.10.1997 at about 03.40 P.M. he committed unnatural intercourse with Arun Kumar aged four years on the back side of Govt. Sr.Secondary Model School, Bawana near Canal Bhawana. Police machinery was set in motion when DD No.14 (Ex.PW6/A) was recorded at Police

Post Bawana on getting information about the incident. The Investigating Officer lodged First Information Report after recording complainant-Rajesh's statement (Ex.PW3/A). The victim was medically examined. Statements of the witnesses conversant with the facts were recorded. The accused was arrested. After completion of investigation, the accused was charged for committing offence under Section 367/377 IPC. examined 11 witnesses to prove its case. appellant pleaded false implication. The prosecution In his 313 statement, the By the impugned judgment, the appellant was acquitted of the charge under Section 367 IPC.

3. During the course of arguments appellants counsel, on instructions from the appellant (present in court), stated at Bar that Satish has opted not to challenge the findings of the Trial Court under Section 377 IPC and accepts it voluntarily. He, however, prayed to take lenient view and to release the accused for the period already spent by him in custody. The appellant offered to pay compensation to the victim.

4. Since the appellant has opted not to challenge the conviction voluntarily under Section 377 IPC and there is overwhelming evidence on record in the statement of PW-3 (Rajesh) and PW-5 (Smt.Geeta) coupled with medical evidence, conviction under Section 377 stands affirmed. The appellant was sentenced to undergo RI for seven years. Nominal roll dated 04.09.2002 reveals that he has already undergone 03 years, 01 month and 27 days incarceration as on 31.08.2002. He also earned remission for eight months. The substantive sentence was suspended vide order dated 26.11.2002. Nominal roll further reveals that the appellant has clean antecedents and is not involved in any other criminal case. His overall jail conduct is satisfactory. The appellant was aged about 18 years on the date of incident. At the time of moving application for suspension of sentence (Crl.M.A.No.2109/2002) he claimed his date of birth as 25th October, 1979 and produced photocopy (Annexure A) of School Leaving Certificate. However, he did not claim juvenility and did not ask to conduct inquiry regarding his exact date of birth. He also did not place on record the date reflected in the school first attended by him. The fact remains that the appellant was aged about 18 years at the time of incident. He has offered to pay reasonable compensation to the victim. Though the

offence committed is grievous and reflects sexual perversity, taking into consideration all these mitigating circumstances, the sentence order requires modification. The appellant has suffered agony of trial/appeal for about 16 years. After his release on bail, no involvement in similar activity has surfaced. The learned Additional Public Prosecutor has no objection to take a lenient view and to modify the sentence order. Considering all these facts and circumstances of the case, the sentence order is modified and the appellant is sentenced to undergo the period already spent by him in this case which is more than four years. The appellant shall pay Rs.50,000/- as compensation to the victim and for this purpose, he shall deposit a demand draft in the name of victim-Arun Kumar with the Trial Court within fifteen days. The Trial Court shall issue notice to the victim for release of compensation.

5. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE September 25, 2013 sa

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