

Mool Chand Vs. State

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SooperKanoon Citation : sooperkanoon.com/1115594

Court : Allahabad

Decided On : Sep-07-2012

Judge : Imtiyaz Murtaza

Appeal No. : Criminal Appeal No. 1645 of 1982

Appellant : Mool Chand

Respondent : State

Judgement :

1. The above Criminal Appeals have been preferred by the appellants assailing the judgment and order of the court below dated 3.4.1982 rendered by X Addl Sessions Judge Etah in trial No 627 of 1978 whereby the appellant Mool Chand has been convicted for offences under section 363, 366A, 354 and 368 IPC and sentenced to undergo RI for 3 years, 4 years, six months and four years respectively. Appellant Reshma and Vivekanand have been convicted under section 366A and 368 IPC and each of them have been sentenced to undergo RI for 4 years and again for 4 years respectively. The prosecution case is that Km Anar Devi, a minor girl native of village Unchagaon within the circle of PS Sahawar district Etah who had been induced by appellant Mool Chand to accompany him on a false pretext of showing her Exhibition at Aligarh about 3 years back (from the date of recovery of the girl), was recovered from the possession of Vivekanand and Smt Reshma appellants from a house situated in Mohalla Ambakhar District Mathura and at the time of recovery appellants Reshma and Vivekanand were

also taken into custody and after recovery memo was prepared, a first information report was dictated by SI Hari Nandan Singh Incharge of police outpost Bangali Ghat on 29.12.76 to H.C Swarna Singh which was registered at PS Kotwali. After the arrest, the girl was escorted to PS Sahawar District Etah from PS Kotwali Distt Etah by Constable Nek Singh on 31.12.1976 and thereafter the girl was entrusted to the care of her mother Ganga Devi. At the time of recovery, the girl was said to be aged 12 years. The girl was medically examined on 1.1.1977 at 3 pm at District Hospital Etah. At the time of her examination, she was opined to be less than 16 years.

2. The investigation of the case was conducted by SI Hori Lal Verma who after completing investigation submitted charge sheet in the court. Accused Smt Reshma and Vivekanand abjured the guilt submitting that the girl was not recovered from their house and rather she was recovered from the market place where the girl had gone to make purchases. They also stated that it was Mool Chand who had brought the girl to their house but they refused to keep her at their house upon which Mool Chand told them that she was his real niece and that on account of financial straits, it was not possible for the family to arrange for her marriage and that since she was a minor girl, she would be married Shakti Singh after she attains puberty. It was further stated that accepting the version of Mool Chand as true, they allowed the girl to stay at their house but she was treated as her daughter and all comforts were given to her and she was not abused at any stage.

In the instant case in all, nine witnesses were examined out of whom the testimonies of PW 2 Anar Devi and PW 3 Ganga Devi being relevant are taken up for scrutiny. I have heard Sri Sheshnath Advocate who has been appointed as Amicus curiae and perused the materials on record. I have also heard learned AGA. The learned counsel appearing on behalf of the appellants has submitted that the material on the record does not justify the conviction of the appellants for the offences set out above. He also contended that the convictions of Smt Reshma and Vivekanand cannot in any event be maintained. I have gone through the evidence on record and also scrutinized the rest of the material bearing in the charges framed against the appellant

Smt Anar Devi PW 3 deposed on 18.11.1981 that about five years back, Mool Chand had taken her daughter who was then aged 7 years on the pretext of showing her Exhibition at Aligarh. After sometime she received a letter from Mool Chand that her girl had been wangled from his custody by some miscreants. Upon receipt of letter, she made assiduous search for her daughter but she was nowhere traceable. In cross examination she stated that Mool Chand was not her real brother in law but was the son of his great father in law. She also stated that Mool Chand had taken her daughter on the pretext that he would bring her back after showing her Exhibition at Aligarh. She also stated that her husband had expired two years back and ever since then, she had fallen in financial straits. She denied the suggestion that she had sold off her daughter on account of impoverished condition. She also denied the suggestion that when the girl was recovered, she had falsely nominated Mool Chand as the perpetrator of the crime. PW 2 Anar Devi deposed that she was taken on the pretext of showing her Exhibition at Aligarh and at that time she was aged 7 years. She also deposed that she was taken on a train upto Sikandra Rao and thereafter she performed journey by a bus upto Aligarh. On way, Mool Chand teased her by touching her private part with his finger. At Aligarh, she was taken to the house of one Shakti Singh situated in Surendra Nagar of Aligarh city and at that time, accused Smt Reshma Devi and Vivekanand were also present there. She also deposed that after staying for sometime, Mool Chand had left and it was then that Smt Reshma told her that she had been sold off to her on a consideration of Rs 2500/- by Mool Chand and that she was to be married to her son Shakti Singh after she attained puberty..

3. This witness was extensively cross examined, and it would suffice to say that nothing adverse impeaching her testimony could be elicited. First of all, I would take up the case against the appellants namely, Smt Reshma and Vivekanand. It is stated that initially the prosecutrix was taken to the house of Shakti Singh where in Smt Reshma and Vivekanand were present. Mool Chand had left the girl after accepting a sum of Rs 2500/- from Smt Reshma on the assumption that she would be married to Shakti Singh son of Smt Reshma. She also deposed that Mool Chand had misrepresented to Smt Reshma and Vivekanand that the prosecutrix was his real niece and that on account of poverty, they were unable to arrange for marriage and also that she may be married to Shakti Singh. It is also deposed that

thereafter, Mool Chand had brought some Pandit and marriage was performed but at the same time she deposed that no Phera was done in the marriage ceremony. She also stated that thereafter, it was decided by Smt Reshma and Vivekanand that the marriage would be performed all over again after she attained puberty. She also deposed that she was not at any stage abused and that she was given all comforts during her stay there. She also deposed that she stayed at Aligarh for about 10 to 12 days and thereafter she was shifted to Mathura from where she was recovered by the police. She also deposed that Smt Reshma always treated her like her daughter in law and she was called by the name "Kamlesh". She also deposed that she never put on veil before Vivekanand and Reshma and she had a free run in the house and always used to behave like a daughter in the house. She denied the suggestion that she was deposing falsely against Mool Chand.

From the above testimony, it amply transpires that the prosecutrix was neither mal-treated nor abused at any stage. It would also transpire that Mool Chand had inveigled the aforesaid appellants into accepting that the prosecutrix belonged to an impoverished family and her mother had no wherewithal to arrange for her marriage and lapping up the version of Mool Chand, the appellants Vivekanand and Reshma agreed to keep her in their house. It is categorically stated by the prosecutrix that she was offered all comforts and she was never ill treated nor she was abused at any stage. In the facts and circumstances of the facts mentioned supra, I am of the irresistible view that no incriminating circumstances are forthcoming to warrant prosecution against the appellants Vivekanand and Smt Reshma. It would not be too much to say that they were beguiled into accepting the version of Mool Chand who gave them to understand that her mother was unable to arrange funds for marriage. At this stage, learned AGA drew my attention to the fact that Smt Reshma and Vivekanand had given a sum of Rs 2500/- to Mool Chand and it was exchanged for money. No doubt, the prosecutrix has deposed that when she started weeping after Mool Chand had left, Smt Reshma had told her that she had been purchased after exchange of Rs 2500/-. Both the appellants have denied the allegations. Having bestowed my anxious consideration to this aspect, I am of the view that this circumstance cannot be read incriminating to the appellants.

4. As a result of foregoing discussion, I am of the irresistible view that the conviction and sentences recorded against the appellants namely, Smt Reshma and Vivekanand are liable to be set aside. Coming to the allegations against the Mool Chand, appellant, all the witnesses have in unison stated that the appellant had brought prosecutrix on a false pretext to Aligarh and gave her to the appellants Reshma and Vivekanand by misrepresenting that her mother was unable to arrange for her marriage on account of extreme financial straits and poverty and that he was her real uncle. Smt Ganga Devi PW 4 mother of the prosecutrix also deposed that it was Mool chand who had taken her daughter on a false pretext that he was taking her to Aligarh to show the Exhibition and after sometime, he gave her to understand by a letter that she had been wangled by some miscreants on way back. The prosecutrix in her statement has also levelled serious allegations of touching her private part during the journey and also that she was exchanged for Rs 2500/-.

In the facts and circumstances, I fully agree with the conclusion arrived at by the trial court that it stands proved that accused Mool Chand had taken prosecutrix on false pretext out of the lawful guardianship of her mother and tried to molest her during the journey and induced her to go from her house to marry her with intention that she may be or knowing that it is likely that she will be forced and seduced to illicit intercourse In the facts and circumstances, the appellant Mool Chand has committed offence punishable under section 363, 354, 366 A and 368 IPC. As a result of foregoing discussion, the appeal preferred by appellant Mool Chand fails and it is dismissed and conviction and sentences recorded against him by the trial court are maintained. The appellant shall be taken into custody and shall be made to serve out the sentences imposed on him if not admitted to bail during pendency of the appeal

In so far as appellants Smt Reshma and Vivekanand are concerned, their appeals are allowed. The conviction and sentences recorded against them are set aside. They are on bail. They need not surrender. Their sureties and bonds are discharged. 'Let a copy of this judgment be communicated to the trial court alongwith record for compliance accordingly.