Veena Vs. State

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Court : Delhi

Decided On : Jan-21-2014

Judge : V. K. Jain

Appellant : Veena

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

21. 01.2014 CRL.A. 1142/2013 VEENA ..... Appellant Through: Mr J.S. Kushwaha, Adv. versus STATE + ... Respondent Through: Mr Feroz Khan Ghazi, APP CRL.A. 949/2013 ASHOK @ PAPPU Through: Mr Ankur Sood, ... Appellant versus STATE (GNCT OF DELHI) ..... Respondent Through: Mr Feroz Khan Ghazi, APP CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J.

On 18.7.2009, the complainant Ravinder came to PS Sultan Puri and lodged an FIR, stating therein that his child M, aged about 4 years, had gone to market along with his sister-in-law Jyoti, but got separated from Jyoti on account of crowd in the market, and he had not been able to trace her. An FIR under Section 363 of IPC was registered on the aforesaid complaint made by Shri Ravinder Kumar.

2. On 08.05.2010, SI Naveen Kumar of AATS (West), Paschim Vihar, received an information that a person, namely, Shyam Lal, residing in Village Sodawas, District Alwar or Rajasthan was engaged in procuring/purchasing girls from Delhi and used to sell them off in the said village as also in village Girwas of the same District. On this information, a raiding party consisting of police officers went to Village Sodawas, along with secret informer. One Shyam Lal was apprehended on being pointed out by the secret informer and was interrogated. Shyam Lal took them to another house in the same village. The appellants were found sitting outside the house. Both of them were apprehended on being pointed out by Shyam Lal and were interrogated. Pursuant to the disclosure statements made by them to the police, a child, namely, M was found inside the house, outside which the appellants Veena and Ashok @ Pappu, who are sister and brother, were found sitting.

3. As many as six persons, three sent for trial, but three persons, namely, Vimla, Mukesh and Kartar were discharged by the Trial Court, whereas Shyam Lal died during the course of trial. Vide impugned judgment dated 20.09.2012 and Order on Sentence dated 21.09.2012, the appellants were convicted under Section 368 and 373 if IPC and were sentenced to undergo rigorous imprisonment for seven years each and to pay fine of Rs 10,000/- each or to undergo RI for two months in default under Section 368. Identical punishment was awarded to them under Section 373 of IPC. Being aggrieved, the appellants are before this Court by way of this appeal.

4. It is contended by the learned counsel for the appellants that no documentary evidence has been collected by the Investigating Officer to prove that the house from which the child is alleged to have been recovered belonged to or was possessed by either of the appellants. They have also pointed out that no witness from the village has been examined to prove that the aforesaid house was occupied by the appellants. The contention is that in the absence of such evidence, it cannot be said that the child was recovered from the custody of the appellants.

5. The deposition of PW-7 SI Naveen Kumar which finds full corroboration from the deposition of PW-8 Head Constable Dilbag Singh would show that the appellants, who were found sitting outside the house in village Sodawas made the disclosure statements Ex.PW- 7/G and PW-7/H. In her disclosure statement, the appellant Veena, inter alia, stated that she could get the child M who was with her recovered. In his disclosure statement Ex.PW-7/H, the appellant Ashok Kumar made an identical statement to the police. Since pursuant to the statements made by the appellants, the police discovered the fact that a child had been kept in the house outside which they were sitting and the child M was actually recovered by the police from a house in village Sodawas pursuant thereto, the said statements are admissible in evidence under Section 27 of Evidence Act, to the extent indicated above.

6. In State of Maharashtra vs. Suresh (2000) 1 SCC471 the respondent accused, while in police custody, made a statement stating therein that the dead body was kept concealed in the field; he would take it out and produce the same. The dead body was thereafter recovered, as pointed out by the respondent. The High Court, however, did not rely upon the aforesaid circumstance inter alia on the reasoning that two other possibilities, one being that the respondents could have seen someone else placing the dead body at that spot and the second being that the respondent could have been told by somebody else that the dead body was placed there, could not have been ruled out. Rejecting the reasoning given by the High Court, the Supreme Court, inter alia, observed and held as under:

26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as

to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

7. The statements made by the appellants and the recovery of the child M pursuant to the above-referred disclosure statements made by the appellants Veena and Ashok discloses three possibilities. The first possibility is that they themselves had kept the child M in the house in which she was found by the police. The second possibility is that they had seen someone keeping the child in the aforesaid house. The third possibility is that someone had told them that the child M had been kept in the aforesaid house of village Sodawas. Neither of the appellants has told the Court as to how he/she came to know that the Child M had been kept in the house from which she was recovered. In the absence of any explanation forthcoming from the appellants, the Court would be justified in drawing an inference that the appellants themselves had kept the child in the aforesaid house. The presence of the appellants outside the house, at the time police reached there along with Shyam Lal, corroborates the above-referred inference. The prosecution has thus been able to prove that the child M who was kidnapped from Delhi on 18.07.2009 was found in custody of the appellants. It would be pertinent to note here that the complainant came in the witness box as PW-6 and stated that his child M who had gone to the market of Sultan Puri along with her aunt Jyoti got missing from the market and the report Ex.PW-6/A was lodged by him with the police in this regard.

8. The appellants have not told the Court how the child M came into their custody. They do not claim to be related to the child. This is also not their case that the parents of the child had handed over her custody to them. The child got missing from Delhi and was found in a house in Village Sodawas in District Alwar or Rajasthan. Therefore, it is quite obvious that the appellants, knowing that the child had been kidnapped wrongfully concealed or confined her in the house in which she was found by the police. The appellants, therefore, have rightly been convicted under Section 368 of IPC read with 34 thereof. As regards charge under Section 373 of IPC, there is no evidence, either direct or circumstantial, from which

it could be inferred that the child was bought, hired or possessed by the appellants with intent that she shall at any stage be employed or used for the purpose of prostitution or illicit intercourse with any persons or for any unlawful and immoral purpose or knowing it to be likely that she will at any age be employed or used for such a purpose. The child may have been kept in the house only to make her work as a child labour. Therefore, the charge under Section 373 of IPC does not stand accrued against the appellants.

9. For the reasons stated hereinabove, while affirming conviction of the appellants under Section 368/34 IPC, I acquit them of charge under Section 373 of IPC.

10. Coming to sentence, the learned counsel for the appellant Veena submits that she is a lady who has already spent more than 3 years in custody and, therefore, needs to be dealt with leniently, particularly when there was no evidence to show that the appellant was engaged in business of pushing the minor children into prostitution and there is no evidence of her involvement in any other case. The learned counsel for the appellant Ashok, brother of the appellant Veena, makes similar submission and also submits that he has three minor children to look after and he also had spent three years in custody.

11. In the facts and circumstances of the case, the substantive sentence awarded to the appellant is reduced from 7 years each to 4 years each. However, there shall be no reduction of the fine imposed on them. The appeals stand disposed of. One copy of this order be sent to concerned Jail Superintendent for information and necessary action. Trial Court record be sent back. JANUARY21 2014 BG Crl.A. Nos. 1142 and 949/2013