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Ram Kumar Vs. State

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Court : Delhi

Decided On : Jan-31-2014

Judge : V. K. Jain

Appellant : Ram Kumar

Respondent : State

Advocate for Pet/Ap. : Mr. Sumit Verma, Mr. Feroz Khan Ghazi

Judgement :

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

31. 01.2014 + Crl. Appeal No.755/2013 RAM KUMAR Through: Versus STATE Through: .Appellants Mr. Sumit Verma, Adv. Respondent Mr. Feroz Khan Ghazi, APP for State CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J.

(Oral) On 2.12.2011, the complainant - Vansraj came to the police station Bhalaswa Dairy and lodged a complaint, stating therein that his daughter aged about 12 years had left the house for going to school at about 6 am on that day. When he went to the school at about 9 am to inquire about her, he was informed by her teacher that she had not come to the school. He expressed suspicion that

the appellant - Ram Kumar (Jhule Wala) @ Shyam aged about 40 years had induced his daughter and taken her to an unknown place. The appellant Ram Kumar had earlier been the tenant of the complainant. The aforesaid information was recorded vide DD No.21A which led to registration of an FIR no.201/2011 under Section 363 of IPC. The case of the prosecution is that the prosecutrix was found at Jahangir Puri Metro Station on 24.5.2012. After medical examination of the prosecutrix, she was produced before the Magistrate where her statement under Section 164 of the Code of Criminal Procedure was recorded. In the aforesaid statement, she stated that on 2.12.2011 at about 4.-5 am, she had run away from the house, since she wanted to live with the appellant whom she loved. She met the appellant, who was waiting quite away from the house for her and thereafter both of them went to Gurgaon where she started residing in the accommodation provided to the appellant by the employer. She also stated that she had physical relations of husband and wife with the appellant, though she had not married him. She also expressed desire to continue to live with the appellant.

2. Since the prosecutrix was only about 12 years old at the time she left the house, the appellant was prosecuted and charged under Section 363/376 of IPC.

3. The prosecutrix came in the witness box as PW14 and stated that on 2.11.2011, she left her house for going to school and when she reached the main road, she met the appellant. On that day, she was quite annoyed with her father on account of his having scolded her, and on finding the appellant on the main road, she went with him. The appellant took her to Gurgaon where he had taken a room on rent, in a company where he used to work and started residing with him. She further stated that the appellant made physical relations with her, against her wish during the period of her stay with him. She also stated that she did not marry the appellant though he quite often promised to marry her after one or one and a half year. She claimed that during the period she stayed with the appellant for about six months, he had physical relations with her against her wishes, on a number of occasions. During her cross examination, she denied the suggestion that the appellant used to treat her like his daughter and did not make physical relations with her, during the period she stayed with him. During the cross examination, she admitted that she had gone with the appellant of her own and he never allured or

enticed her.

4. PW9 Mrs. Jyoti is the teacher in Govt. Girls Senior Secondary School, Adrash Nagar no.1, Delhi. In her deposition in the court, she produced the documents related to admission of the prosecutrix in the aforesaid school. The said documents are Ex.PW9/A to PW9/D. She also stated that as per record of the school, her date of birth is 23.8.1999. PW10 Mr. B.S. Meena is an official from Kasturba Hospital, Jama Masjid. He produced the record of the hospital from which the child was born to Maya, mother of the prosecutrix resident of House No.L-862 on 23.8.1999. PW11 Mr. Vans Raj is the father of the prosecutrix whereas PW12 Mrs. Maya Devi is her mother. Both of them deposed about prosecutrix leaving the house. PW13 Dr. Mamta examined the prosecutrix in BJRM Hospital on24.5.2012. According to her, when the victim was brought to the hospital, she told her that she had gone with Ram Kumar whom she knew for about one and a half year and was willing to stay with him. According to the witness, she had further told her about having sexual intercourse with Ram Kumar a number of times and no external injuries on her person was found at the time she was examined. The internal examination of the prosecutrix was, however, refused by her mother. PW15 Dr. Gopal Krishna has proved the MLC of the appellant as Ex.PX6.

7. PW17 has stated that on 24.5.2012 he along with constable Seema and constable Gulshan went in search of the prosecutrix where secret informer informed that the prosecutrix would come at Jahangirpuri Metro Station from Gurgaon On receipt of the information, they reached the aforesaid Metro station and found the prosecutrix coming out of the metro station. PW18 SI Shashi Lalta stated that on 25.5.2012, she arrested the appellant from Bhalsawa Pul on being identified by the complainant and took him to the hospital where he was medically examined.

8. In his statement under Section 313 of Code of Criminal Procedure, the appellant stated that the prosecutrix was known to him for the last one and a half year and had accompanied him willingly and with her own consent. He further stated that they were residing together as husband and wife and she had told her age as 16

years to him.

9. A perusal of the discharge slip issued by Kasturba Hospital would show that Maya wife of Bansraj i.e. mother of the prosecutrix, had given birth to a female child in the aforesaid hospital on 23.8.1999. The corresponding entry made in the relevant register of the hospital in this regard is Ex.PW10/B, which confirms that she had delivered a female child on 23.8.1999. Ex.PW9/B is the photocopy of the application form submitted at the time of admission of the prosecutrix in the school. Her date of birth is recorded as 23.8.1999 in the aforesaid form. Ex.PW9/A is the school leaving certificate issued by Primary School, Mukundpur. In the aforesaid document also her date of birth is recorded as 23.8.1999. The record of the hospital coupled with the record of the school and deposition of parents of the prosecutrix in the Court proves beyond a shade of doubt that she was born on 23.8.1999. Thus, on 2.12.2011, when the prosecutrix left her house and thereafter accompanied the appellant to Gurgaon, she was less than 16 years of age, though she was more than 12 years old at that time.

10. It has come in the deposition of prosecutrix that she had sexual intercourse with the appellant a number of times, when she was residing with him in Gurgaon house for about six months. Though, in her statement under Section 164 Cr.PC as well as in the statement given to the doctor in the hospital, the prosecutrix had stated that she had gone with the appellant of her own and did not allege sexual intercourse against her consent, when she came in the witness box, she claimed that the appellant had committed sexual intercourse with her against her wishes. However, considering the fact that the prosecutrix was less than 16 years of age, at the time she had sexual intercourse with the appellant, it would be irrelevant whether it was with or without her consent. What is relevant is the age of the prosecutrix and the date on which she had physical relations with appellant, and the documentary and oral evidence produced by the prosecution overwhelmingly proves that she was less than 16 years old at that time.

11. I see no reason to disbelieve the deposition of the prosecutrix to the effect that the appellant had sexual intercourse with her at the time she was living in Gurgaon, with him, though in her cross examination, it was suggested to her that

the appellant treated her like her daughter and had no sexual and physical relations with her, which runs counter to the stand taken in his statement under Section 313 of Cr.PC where he stated that both of them were living as husband and wife. Thus, there can be no reasonable doubt with respect to the appellant having committed sexual intercourse with the prosecutrix at the time she was living with him in Gurgaon.

12. Though the appellant in his statement under Section 313 Cr.PC claimed that the prosecutrix had given her age to him as 16 years, even if such a representation was made by the prosecutrix to the appellant, would be of no consequence since in fact she was much below 16 years at the relevant time.

13. For the reasons stated hereinabove, I find absolutely no ground for interference with the conviction of the appellant, which is accordingly confirmed.

14. Coming to the point of sentence, in terms of Section 376(2) of IPC, as it stood at the time the appellant had committed rape on the person of prosecutrix, the prescribed sentence is a minimum of 7 years, though it may extend up to imprisonment for life. It is only by way of amendment made with effect from 3.2.2013 that the prescribed sentence was enhanced to a minimum of 10 years, in case rape is committed on a woman who is under 16 years of age. Had the prosecutrix been less than 12 years of age at the relevant time, only then the appellant would have been liable to imprisonment for a period of less than 10 years, but, as is clear from the date of birth of the prosecutrix, she was more than 12 years of age at that time.

15. Considering all the facts and circumstances of the case, including, the stand taken by the prosecutrix in her statement under Section 164 Cr.PC as well as before the doctor stating therein that she had left with the appellant of her own and wanted to marry him, the ends of justice would be met if the appellant is sentenced to undergo imprisonment for a period of 7 years and is also subjected to pay fine. Accordingly, while maintaining the sentence of fine imposed upon the appellant, the period of substantive sentence awarded to the appellant is reduced from 10 years of 7 years. The appeal stands disposed of accordingly. Trial court record be sent back forthwith. One copy of this order be sent to the concerned Jail

Superintendent for information. JANUARY31 2014/rd V.K. JAIN, J.

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