

Ranjeet Malik Vs. State

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Court : Delhi

Decided On : Apr-23-2014

Judge : Indermeet Kaur

Appellant : Ranjeet Malik

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :17.04.2014. Judgment delivered on :23.04.2014 CRL.A. No.670/2002 & CrI. M.A. No.2787/2003 RANJEET MALIK Appellant Through Appellant with his counsel Mr. K.B. Andley, Sr. Adv with Mr. M.L. Yadav, Adv. versus STATE Respondent Through Mr. Navin K. Jha, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment and order of sentence dated 22.07.2002 & 31.07.2002 respectively wherein he has been convicted for the offence under Section 376 of the IPC and has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.40,000/- and in default of payment of fine to undergo SI for 1 year. Nominal roll of the appellant has been called. It shows that as on the date when he had been granted bail, he had suffered incarceration for 5 years 8 months and 28 days. 2 At the outset, learned counsel for the appellant has prayed for leniency in sentence and has submitted that in view of the proviso contained in Section 376 of the IPC, if there are adequate and

special reasons, the Court can in its discretion reduce the sentence from the minimum prescribed. It is pointed out that in this case the victim even as per the radiological report was between 12-14 years; she was not 12 years of age and as such the minimum sentence even as per the Statute would be 7 years; the appellant now being a married man and living with his family, on a sympathetic consideration, he may not be ordered to be re-incarcerated and be sentenced for a period of 5 years 8 months and 28 days which he has already suffered. 3 Needles to state, this plea has been opposed by the learned public prosecutor. 4 Before answering this argument, it would be relevant to note the facts of the case. 5 Record reveals that the prosecutrix (PW-6) was studying in 6th standard at the time when the incident had taken place; this was on 19.03.2000. The father of the victim had died; she had a mother who was working as a beautician and she generally left the home at 09:30 AM. The victim and her mother were living on the first floor; the accused was their landlord and living on the ground floor. On the date of the incident, it was Saturday. At about 03:00 PM, he had invited the victim to watch TV with him; his wife was not present with him; his two year old daughter Aarti was present; as per the version of the prosecution, the appellant had first fingered the private part of the victim and thereupon, he committed rape upon her. 6 FIR was lodged on the statement of the mother of the prosecutrix Ruchi examined as PW-7. It was lodged on the same day. Dr. Sangeeta, (PW-1) had examined the victim on the following day i.e. 20.03.2000; her hymen was found torn; however no external injury was noted. Her vaginal smear and her underwear as also the underwear of the accused had been seized and sent by SI Mukesh Kumar (PW-13) to the CFSL. Apart from the underwear of the victim and the accused, the bed-sheet and pyjama of the accused had also been seized by the Investigating Officer vide memo Ex.PW-7/A. The CFSL report has been proved as Ex.P-X. This report had opined human semen on the bed-sheet as also on the pyjama of the accused; the underwear of the victim and the accused also contained human semen. This report remained unchallenged. 7 It was on the basis of the aforementioned evidence collected by the prosecution that the accused was convicted and sentenced as aforementioned. 8 On behalf of the appellant, on merits, it has been argued that the deposition of PW-6 is not in conformity with the version given in the rukka; submission being that both in the rukka as also in the

statement of PW-6 on oath in Court, there is no evidence of penile penetration and in the absence of which ingredients of the offence under Section 376 of the IPC (unamended IPC) are not substantiated. It is pointed out that the victim had only stated that the accused had fingered her vagina which at best can be an offence under Section 354 of the IPC. 9 Arguments have been refuted. It is pointed out that on no count does the impugned judgment call for any interference. 10 Testimony of PW-6, prosecutrix is the most relevant piece of evidence. The victim was a student of Presentation Convent Sr. Sec. School and was studying in the 6th standard at the time when she had come into the witness box. This was in the year 2001. The incident is dated 19.03.2000. The victim at that time as per her version under Section 164 of the Cr.PC was still in the 6th class. Pushpender Kumar (PW-11), the administrative representative of the Presentation Convent Sr. Sec. School has produced the admission slip wherein her date of birth is evidenced as 01.01.1989 meaning thereby that on the date of the offence, she would be around 11 years and 10 months. However, this date of birth of the victim was not proved on record; it was only an admission slip which had been proved. Thus during the course of investigation, the Investigating Officer had obtained the X-ray plates of the victim which was examined by Dr. Rajnish Juneja (PW-10), the Radiologist of Hindu Rao Hospital and as per his opinion the victim was between 12-14 years of age; he had proved his report Ex.PW-10/A; Xray plates had been proved as Ex.PW-10/B to Ex.PW-10/E. This evidence remained unrebutted. 11 Thus this evidence which is the ossification report of the victim suggests that the victim was aged 12-14 years on the date of the incident and giving margin of two years in favour of the accused, the prosecutrix is held to be more than 12 years of age on the date of the incident. 12 The testimony of the victim otherwise remained unrebutted. Her version on oath in Court (PW-6) is fully corroborative of the version given by her mother (PW-7) in the rukka pursuant to which the present FIR had been registered. PW-6 has on oath detailed and sequenced the incident in the manner in which it had occurred; the same sequence finds mention in the narration given by PW-7 which is a part of the rukka. 13 PW-6 has on oath stated that on the fateful day i.e. 19.03.2000, she was living on the first floor along with her mother in house No.42; Ranjeet Malik who is their landlord and residing on the ground floor being a Saturday had invited her to watch TV; PW-6 was alone at that

time; her mother being a beautician had gone to work; the appellant came upstairs and asked her to watch a movie on the ground floor; she went to the ground floor. His two year old daughter was present there; her name is Aarti. Further testimony of PW-6 reads herein as under:

He made me lie down on the bed and started kissing me. He opened the button of my blouse. I was wearing skirt blouse at that time. Thereafter, he started pressing my breast. He removed my panty and put his finger in my vagina. Thereafter, he laid down on me. I fell plain (SIC) at the place of urinating and I do not know what he is inserting in my private part. Thereafter, he asked me to go inside and wash my vagina as well as panty. I washed my vagina but did not wash the panty. He asked me not to disclose this to my mother. He also offered me to give me Rs.10/- or Rs.20/- on each day on my not disclosing this to my mother. He gave me Rs.10/-. I left the money there and went to my house while weeping. My mother came back at 07:30 PM and I disclosed the entire incident to my mother. My mother took me to the police stn. My statement was recorded. My statement bears my signatures at point A. My statement is Ex.PW-6/A. I was taken to the hospital for medical examination. My panty was taken by the doctor. I can identify my panty.

14 This version on oath in Court is verbatim with the version given by the mother (PW-7) in the rukka. Submission of the learned counsel for the appellant that it was only a fingering of the vagina of the victim which would qualify as an offence under Section 354 of the IPC and there being no penile penetration is an argument bereft of force. PW-6 categorically stated that she felt pain at the place of urination and she dis not know what was being inserted in her private part. This was but natural because of the trauma being suffered by a young girl of a tender age years would obviously not know what exactly was happening with her. PW-6 has also stated that she had washed her vagina but she did not wash her panty. 15 In her lengthy cross-examination, she had stuck to her stand. There was no suggestion given to her that she was deposing for any ulterior purpose; even before this Court, this argument has not been pressed. 16 PW-7 was the mother of PW-6. As noted supra, she had affirmed the narration given by her daughter. She had reiterated that her daughter was taken to Hindu Rao Hospital for medical

examination and her panty was taken into possession. The medical evidence which has been proved in the testimony of PW-1 shows that the hymen of the victim was torn. On a specific query put to the doctor, she had stated that she cannot say as to what was the age of the tear of hymen as she does not have any particulars about that; in her cross-examination, PW-1 had stated that the victim was not cooperative for the vagina test as it was painful. She has further stated that in case of intercourse for the first time with a girl of the age of the victim by a fully grown person, she may or may not sustain injuries on her private parts. The medical evidence fully corroborates the version of the prosecution. 17 The scientific evidence which is the report of the CFSL further advances the version of the prosecution. Not only was semen detected on the underwear of the victim as also on the underwear of the accused but also on the bed-sheet and pyjama of the accused. 18 The trial Court returning a finding of rape by the appellant on the victim has been fully substantiated. In this background, the conviction of the appellant calls for no interference. 19 However, on the question of sentence, the trial Court has sentenced the appellant to undergo RI for a period of 10 years. The trial Court has noted that the victim was between 12-14 years of age. The minimum sentence prescribed for a victim of rape of 12 years is 10 years but where the victim is more than 12 years, the minimum sentence prescribed is 7 years. The accused has undergone a sentence of 5 years 8 months and 28 days. He was present at the time of hearing of the appeal. He has no doubt committed a heinous offence of rape and has destroyed the trust which the victim had reposed upon him who was a father figure who had called her to his ground portion to watch a movie being her landlord and was almost the age of her father. 20 In this background, this Court while maintaining the conviction of the appellant sentences him to undergo RI for 7 years. The fine of Rs.40,000/- which has been imposed upon him by the trial Court has since not been deposited. The sentence of fine remains unaltered; in default of payment of fine, the appellant shall undergo SI for a period of one year. The appellant is present in Court. He be taken into custody to serve the remaining sentence. 21 Appeal disposed off in the above terms.

INDERMEET KAUR, J APRIL23 2014 A