

Sandeep Kumar Vs. State

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Court : Delhi

Decided On : Aug-04-2014

Judge : Indermeet Kaur

Appellant : Sandeep Kumar

Respondent : State

Judgement :

\$~R-2A * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

24. 7.2014 Judgment delivered on :

04. 8.2014 CRL.818/2001 SANDEEP KUMAR Through Appellant Mr.R.N.Sharma, Advocate. versus STATE Respondent Through Ms.Kusum Dhalla, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 23.10.2001 and 31.10.2001 wherein the appellant Sandeep along with co-accused Sunny had been convicted under Section 366 read with Section 34 of the IPC and each of them had been directed to undergo RI for 5 years and to pay a fine of Rs.1000/- in default of payment of fine to undergo SI for six months. 2 The co-accused Sunny was declared a juvenile and his matter was remanded back to the Juvenile Justice Board. 3 Record shows that on the statement of A (PW-1) the

present FIR has been registered under Sections 366/376/34 of the IPC. Besides the present petitioner and co-accused Sunny there were two other persons who were involved in the incident. They were Tinku and Sunil Prasad Tiwari both of them had been tried for charges under Section 376 of the IPC. In the course of the trial both of them had expired. 4 As per the version of PW-1 she along with her friend Sunita had gone to Baba Mandir (temple) at 5.00 p.m. on the fateful day i.e. on 19.02.1998. On their way back when they reached at Kakrola Road the four accused persons i.e. Tinku, Sunil Prasad Tiwari, Sandeep and Sunny accosted them; Tinku and Sunil Prasad Tiwari often used to visit their homes. They allured the victim and her friend to accompany them; they were taken to a room in a plot near Surya Kiran Nurshing Home. Tinku and Sunil Prasad Tiwari remained inside the room and the other two persons including the present appellant went outside. Tinku raped Sunita and Sunil Tiwari committed rape upon PW-1. The role attributed to the present appellant and the co-accused Sunny was that they remained outside and in fact locked the room from outside. Appellant had also brought a bottle of liquor which had been consumed by the accused persons. 5 Investigation was marked to SI Avtar Singh (PW-14) who along with constable Baljit (PW-10) reached the house of the victim. Her statement Ex.PW-1/A was recorded pursuant to which the present FIR was registered. The rukka was handed over to Constable Baljit (PW-10). The site plan Ex.PW-14/B was prepared. Exhibits were seized from the spot which included a bed sheet and gudari vide memo Ex.PW-10/A and Ex.PW-10/H respectively. Sandeep was arrested at the instance of the mother of the victim and on the same day his personal search was conducted vide memo Ex.PW-10/E. 6 The medical examination of the victim was also conducted. During the course of investigation her date of birth from her school record was obtained and the Principal of the Govt. Girl Senior Secondary School No.2, Najafgarh through Ex.PW-4/B evidenced her date of birth as 06.2.1984. Her bony age was conducted and X-ray plates were examined by Dr. Rajiv Chaudhary (PW-3) opining her age to be between 12 to 14 years. On both counts the trial judge had correctly concluded that the victim was a minor on the date of the offence. This was in brief the version of the prosecution. 7 On behalf of the appellant arguments have been addressed in detail. The main gist of the arguments of the learned counsel for the appellant is that the version of PW-1 in

her cross-examination shatters her examination in chief, as if the version is read in its entirety, it shows that the victim had not been lured by the accused to accompany them, but she had gone on her own. This was her own admission in one part of her cross-examination to which attention has been drawn. Further submission being that PW-1 in her cross-examination has also admitted that she did even know the name of the present appellant; his description has also not been given. In these circumstances, it was incumbent upon the investigating officer to have got the TIP of the appellant conducted but no such procedure was adopted. To support his submission learned counsel for the appellant has placed reliance upon 1995 Cr.L.J.

3974 Shyam and Anr. Vs. State of Maharashtra, MANU/MH/0573/2005 (High Court of Bombay) Prashant Dnyanraj Thorat Vs. State of Maharashtra and 1996 Cr.L.J.

2242 Jitendriya Palo Vs. State of Orissa. Further, submission of the learned counsel for the appellant being that the appellant was 18 years and 4 months of age as on the date of the offence; he had just attained majority. He has suffered a long and protracted trial for 16 years. In case if his conviction is not set aside the provisions of the Probation of Offenders Act, 1958 may be applied. Under Section 360 of the said Act he may be released on probation. On the point of sentence learned counsel for the appellant has placed reliance upon AIR 1979 SC680 Dilbagh Singh Vs. State of Punjab and AIR 1983 SC654 Masarullah Vs. State of Tamil Nadu 8 Arguments have been countered. It has been pointed out that on no count does the impugned judgment call for any interference. It is submitted that the testimony of the victim is clear and categorical. The role attributed to the present appellant is also unequivocal. He had participated in the crime along with the co-accused and had enticed the victim knowing fully well that she would be subjected to an illicit and illegal activity. On the point of sentence, it is pointed out that none of the judgments cited by the learned counsel for the appellant show that probation had been granted for the offence of such a nature. The court has already been lenient in granting sentence of only 5 years when this offence is punishable up to 10 years. 9 Arguments have been heard. Record has been perused. 10 PW-1 is the star witness of the prosecution. She has on oath

deposed that on the date of incident she was studying in 7th class in the Government Girls Senior Secondary School, Najafgarh. She and her friend Sunita, who was residing in her neighbourhood and was studying in the same school, were going to the temple on the fateful day at about 7.00- 7.30 p.m. When they reached at Kakrola Road Tinku, Sunil Tiwari, Sandeep and Sunil met them. Tinku suggested they would accompany the girls to their homes but PW-1 and her friend refused. On insistence of the accused persons PW-1 and her friend accompanied them. They were taken to a room behind the temple. Sandeep and Sunil then left the room. Sandeep had also brought a liquor bottle which was given to Tinku; while leaving accused Sandeep and Sunil locked the door from outside. Sunil Tiwari had committed rape upon PW-1 and Tinku committed rape upon her friend. After some time Sandeep and Sunil opened the door; they were threatened by Tinku that this incident should not be disclosed to anyone. This witness was subjected to a lengthy cross-examination by the different counsels appearing for the different accused. PW-1 admitted that she knew the name of Tinku and Sunil Tiwari but she did not know Sandeep and Sunil by their name. She learnt their name when they were called by accused Tinku in the room. Tinku was on visiting terms with PW-1. He used to visit her house along with Sunil Tiwari. She denied the suggestion that she went outside with Tinku on earlier occasions. Witness was confronted with her earlier statement which was recorded before the Magistrate Ex.PW-1/A. In that statement she had stated that Sunil and Sandeep were outside; she had not spelt out the detail why they were standing outside. Sunil and Sandeep had locked the door. This so-called improvement has been highlighted by the learned counsel for the appellant to substantiate his submission that the witness had given exaggerated version in court thus belying her statement. In one part of her cross-examination PW-1 has admitted that they had accompanied the accused persons to the room on their own. Trite it is to state that no one sentence can be extracted from a statement of a witness to give it a meaning which otherwise would not be evident on the reading of the version in its entirety. Version of PW-1 is clear, cogent and unequivocal. This is to the effect that both PW-1 and Sunita were known to Tinku and Sunil Tiwari. On their way back from the temple on the fateful day they met Tinku and Sunil Tiwari, Sandeep and Sunny. On their insistence they accompanied them; Tinku and Sunil Tiwari were on visiting terms

and were known to PW-1. The name of the appellant Sandeep and coaccused Sunil were learnt by her later on when they were called by coaccused Tinku by their name. Specific role has been attributed to the present appellant. Not only was he present at the initial stage at the time when the girls were lured to accompany the accused persons but at the time when Sunil Tiwari and Tinku entered the room to commit rape upon the girls. The present appellant along with co-accused Sunil had stood vigil outside the room. He had even locked the door of the room. Sandeep had brought a bottle of liquor which had been consumed by all the accused. Thereafter, after some time, the appellant Sandeep had unlocked the door. 11 This version of PW-1 has remained un-assailed and has all the ingredients which are essential for the offence under Section 366 of the IPC. Under Section 366 of the IPC it must be established that kidnapping or abduction of a woman had taken place with an intent that she may be either compelled to marry against her will or that she may be forced or seduced to illicit intercourse. The testimony of PW-1 established all these aforesaid essentials qua the present appellant. 12 The submission of the learned counsel for the appellant that the identity of the appellant was not established is also negated by the version of PW-1. Although PW-1 did not specifically know the appellant Sandeep by his name yet she learnt his name in the course of the incident when he was called out by his name by his friend. Sandeep was arrested on the same day. It is not the case of the appellant Sandeep that he was not known to the co-accused and that he had been falsely roped in for any particular motive. In fact in the statement of the appellant recorded under Section 313 Cr.P.C. he had pleaded a bare denial. No specific defence has also been set up by the appellant as to why the victim had falsely taken the name of the present appellant had it not been the true picture. In this factual scenario, it was not incumbent upon the investigating officer to have got the TIP conducted as is the argument of the learned defence counsel. 13 The fact that the victim was a minor has also been established through cogent evidence. Her date of birth has been proved through PW-4 evidencing it to be 06.2.1984. On the date of offence which was 19.02.1998 she was a minor. This has also been corroborated by her ossification report Ex.PW-3/A conducted through her X-ray plates Ex.PW-3/1-15. The conviction of the appellant under Section 366 of the IPC was well founded. It does not call for any interference. 14

On the point of sentence it has been submitted that the appellant has suffered a long protracted trial of 16 years and on the date of offence he was just 18 years and 4 months of age. He has now travelled in life; he is a married man with family; there would be no useful purpose in sending him back to incarceration and accordingly probation has been pleaded for. 15 Nominal roll of the appellant reflects that as on 08.3.2002 out of the total sentence of 5 years RI which had been awarded against him, he had suffered incarceration of about 7 months 27 days besides remissions earned of 20 days; meaning thereby that he had suffered a sentence of 8 months on the date when he was granted bail which was out of the total period of 5 year incarceration which has been awarded against him. The role ascribed to the present petitioner was that he had remained outside the room at the time when the offence was being committed. Keeping in view the aforementioned background it appears that sentence awarded to the appellant is excessive. reduced to RI for a period of 2 years. Crl. Appeal No.818/2011 Accordingly, RI5years is The fine amount remains Page 10 of 11 unaltered. Bail bond stands cancelled. Surety discharged. The appellant be taken into custody to serve the remaining sentence. Appeal is disposed of in the above terms. INDERMEET KAUR, J AUGUST04 2014 ndn

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