

State Vs. Shambhu

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Court : Delhi

Decided On : Jul-31-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Shambhu

Judgement :

§~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 274/2014
STATE Represented by: Petitioner Mr.Vinod Kumar Sharma, Adv. versus
SHAMBHU Represented by: Respondent Ms.Aashaa Tiwari, APP for State.
CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS.
JUSTICE MUKTA GUPTA

ORDER

% 31.07.2014 Crl.M.A. 6067/2014 (delay) 1. An affidavit has been filed by the DCP explaining the delay of 81 days in filing the present petition. For the reasons stated in the affidavit, the delay in filing the petition is condoned.

2. Application is disposed of. CRL.L.P. 274/2014 1. The Petitioner impugnes the judgment dated October 22, 2013 acquitting the respondent for the charge of offences under Sections 363/376/377 IPC and Sections 3 & 4 of Prevention of Children from Sexual Offences Act (in short the POCSO Act).

2. Learned counsel for the Petitioner contends that in view of statement of prosecutrix in the Court the acquittal was unjustified and a perverse order has been passed by the learned Trial Court which is required to be rectified by this Court. CRL.L.P. 274/2014 page 1 of 4 3. We have heard learned counsel for the Petitioner and perused the record. The prosecutrix who came to live with her maternal grand father in village Issapur, Delhi went missing on December 30, 2012. When despite search the maternal grand father could not trace her a missing report was lodged on December 31, 2012 resulting in institution of FIR under Section 363 IPC. Efforts were made to trace the prosecutrix. Subsequently on an information received it was revealed that the prosecutrix was at Mohangarh, Jaisalmer, Rajasthan with Shambhu the respondent. She was recovered from hotel Sangam, Jaisalmer, Rajasthan on January 04, 2013 and both the prosecutrix and Shambhu were brought to Delhi on January 05, 2013. Statement of prosecutrix was recorded wherein she stated that she was in love with the respondent and voluntarily accompanied him. They first went to Faridabad and then to Jaisalmer. The respondent had committed vaginal and anal intercourse with her against her consent. Thus, Sections 376 and 377 IPC were also added and the prosecutrix was medically examined. Her statement was recorded under Section 164 Cr.P.C. wherein she stated that she was having friendship with the respondent and had gone to stay with him of her own free will and both of them had anal intercourse only once and that was also with her consent and without any force.

4. On a charge-sheet being filed statement of material witnesses were being recorded including the complainant Jai Om the maternal grand father of the prosecutrix who deposed about the search carried out pursuant to the missing report lodged. Statement of Durga Singh, the Manager of Sangam hotel at Jaisalmer Rajasthan, was also recorded who stated that the respondent and the prosecutrix stayed at his hotel in room No.211. He also CRL.L.P. 274/2014 page 2 of 4 stated that on January 04, 2013 Police officials from Delhi came to his hotel and made enquiries. Thereafter, the respondent was apprehended and the girl was also taken into protective custody.

5. The prosecutrix appeared as PW-10. She stated that she was called by the respondent to meet her. Thereafter, they went by Metro to Faridabad to the house of Shambhus friend and spent a night over there. On December 31, 2012 respondent took her to Jaisalmer where they stayed in a hotel till January 05, 2013. The respondent committed carnal intercourse with her 23 times against her consent. She however stated that neither at the time of going to Faridabad from Delhi in the Metro train nor in the hotel at Jaisalmer she raised any alarm, nor she resisted the moves of Shambhu.

6. The MLC of the prosecutrix Ex.PW-11/A revealed that her hymen was intact and no injury was seen in Vulva, Labia majora, Labia manora, Perennial region and anal region. All the regions were found normal and without any bleeding, scar or bite marks. Further, as per the FSL report Ex.P-A no blood or semen could be found in the pubic hair, vaginal swab, vulval swab, perennial swab and anal swab of the prosecutrix.

7. As the prosecution failed to prove that the age of the prosecutrix was less than 18 years at that time i.e. on December 30, 2012 came to the conclusion that the prosecutrix could not be held to be minor. The prosecution neither examined the parents of the prosecutrix nor proved any date of birth certificate nor any ossification test was got conducted. In the light of the fact that the prosecutrix made major improvements from her statement made under Section 164 Cr.P.C., had not sought any help while travelling from Delhi to Faridabad to Jaisalmer, nor resisted the moves of CRL.L.P. 274/2014 page 3 of 4 the Shambhu and her version not being corroborated by the MLC or the FSL report, the Trial Court came to the conclusion that Shambhu was entitled to the benefit of doubt.

8. Indubitably a victim of rape is not an accomplice and conviction can be based on her sole testimony without any corroboration if the same inspires confidence. In the present case the prosecutrix has made varying statements under Section 161 Cr.P.C., 164 Cr.P.C. and before the Court. Her conduct does not show that any force or coercion or threat was extended to her by the respondent. The MLC and the FSL report do not corroborate her version. It was the duty of the prosecution to have proved the age of the prosecutrix, however prosecution failed to prove the

same by any cogent and reliable evidence. In view of these findings, which we reiterate, we find that the impugned judgment suffers from no perversity or illegality and hence no case for interference is made out.

9. Petition is dismissed.

10. Trial Court Record be sent back. PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

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