

Samay Singh vs.state

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SooperKanoon Citation : sooperkanoon.com/1203784

Court : Delhi

Decided On : Oct-19-2016

Appellant : Samay Singh

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

2. d August, 2016 Judgment Delivered on:

19. h October, 2016 CRL.A. 86/2015 Appellant SAMAY SINGH STATE
Represented by: Mr.Chetan Lokur, Advocate. Versus Respondent
Represented by: Mr.Ravi Nayak, APP for the State with SI Uma Dutt, PS Mangol
Puri. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Convicted for offences punishable under Section

IPC Samay Singh challenges the impugned judgment dated July 05, 2014 and the order on sentence dated July 15, 2014 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of `5000/- for offence punishable under Section
IPC.

2. Learned Counsel for the appellant contends that it appears from the testimony of the prosecutrix that the incident took place on the bed itself where the prosecutrix PW-1 slept on the side of the wall, her brother in the centre and PW-7,

the second wife of the appellant near the door. Thus, it was not possible for the appellant to reach to the prosecutrix and the same is evident from the site plan Ex. PW-7/B. Further, as per the complaint, PW-7 stated that she ran to her daughter and the same was accepted by her when the suggestion was put to her.

3. It was also contended that there is contradiction in the sequence of arrest which is evident from the testimonies of PW-9 and PW-13. CRL.A.86/2015 Page 1 of 4 Furthermore, the prosecutrix in her statement under Section 164 Cr. P.C. stated that the appellant was taken by the police in the morning itself. The appellant himself has testified as defense witness wherein he stated that he had sold his property for `50,000 and the money was given to PW-7 who later on gave it to her mother and as a result of which there was a fight between the appellant and PW-7 and that was the reason of him being falsely implicated in the present case. There were letters on record written by PW-7 to the appellant.

4. Learned APP for the State on the other hand contends that PW-7 the complainant does not know how to read and write and the same is fortified by her cross examination where she stated that she had studied upto 3rd standard and could not read and write. Further there was no complaint by the appellant with regard to the money given by PW-7 to her mother.

5. Process of law was set into motion on receipt of DD No.9B at 7:11 A.M. on September 24, 2012 at PS Mangolpuri on an information by PW-7 stating that she was standing opposite a juice shop and her husband did galat harkat with her 7 year old daughter. W/SI Suman PW-13 recorded the statement of PW-7, who is the mother of the prosecutrix on the basis of which FIR No.360/2012 under Sections 376/506/511 IPC was registered at PS Mangolpuri.

6. In the complaint PW-7 stated that she had two children and her husband Samay Singh was not doing any work those days and consumed liquor heavily. The prosecutrix was her step daughter. Her husband used to watch blue films at night on the television. In the intervening night of 23rd and 24th July, 2012, when everyone was sleeping, she heard the cries of the prosecutrix, she woke up and saw that the television was switched on and CRL.A.86/2015 Page 2 of 4 the shorts (nikar) of the prosecutrix were removed and her husband had also opened his

pajama. She immediately rushed towards the prosecutrix and took her. The prosecutrix while weeping said mummy papa gande hai, apni susu karne wali jagah meri susu karne wali jagah se laga rahe the. When PW-7 tried to talk to Samay Singh, he slapped her several times and threatened her and the prosecutrix to kill them if they disclosed about the incident to anyone. She further stated that few months ago, Samay Singh had tried to do galat kaam with the prosecutrix upon which she talked to him and he had realized his mistake and that is why she did not lodge any complaint. But this time, she tried to talk to him but he threatened to kill her. She stated that her husband Samay Singh tried to do galat kaam with the prosecutrix. Thus, action be taken against him.

7. After the registration of FIR, the statement of the prosecutrix was recorded by the learned Metropolitan Magistrate under Section 164 Cr. P. C. vide Ex. PW-6/B. The prosecutrix was taken for medical examination but PW-7 did not consent for gynecological examination of the prosecutrix. Samay Singh was arrested and was also medically examined.

8. PW-7, the complainant of the case, did not support the prosecution case. Upon being asked if she was under threat or pressure, she nodded her head in affirmative. She stated that she does not want to say anything more in this case. During her cross examination, she was confronted with her statement recorded under Section 161 Cr.P.C. She denied everything which was recorded in her earlier statement. She answered the suggestion in affirmative that if she is turned out of the appellants house, then she would neither be having any place to reside nor any means to sustain herself or the minor children. On the question posed that PW-7 was deposing falsely as CRL.A.86/2015 Page 3 of 4 she was threatened that her son would be taken away from her and she would be killed, PW-7 did not comment and started weeping. It was observed by the Learned Trial Court that PW-7 was continuously crying and her hands were shaking as she signed her statement.

9. The prosecutrix PW-1 deposed in sync with her statement recorded by the learned Metropolitan Magistrate, PW-6 under Section 164 Cr. P. C. even in cross-examination she reiterated about the incident.

10. The prosecutrix has stood by her previous statement however PW-7 has turned hostile apparently resiling due to the hardships of running a home and family singly. There is a fallacy in the argument of the learned counsel that the act could not have been possible while the appellant was standing near the bed and three people were already lying on the bed. It was nowhere stated by the prosecutrix that the appellant was standing while she was lying on the bed. There was no cross-examination on this aspect. In view of the convincing testimony of the prosecutrix, the conviction of the appellant can be based solely on her evidence even in the absence of any corroboration. Further is no discrepancy in the sequence of events leading to the arrest of the appellant as though apprehended in the morning, he was finally arrested at 5.30 PM on 24th September, 2012 and medically examined at 7.40 PM.

11. Consequently upholding the judgment of conviction and order on sentence, the appeal is dismissed. TCR be returned back forthwith.

12. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record. OCTOBER19 2016 vn CRL.A.86/2015 (MUKTA GUPTA) JUDGE
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