

Rajesh Kumar vs.state of Delhi

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Court : Delhi

Decided On : Mar-30-2017

Appellant : Rajesh Kumar

Respondent : State of Delhi

Judgement :

\$~19 * IN THE HIGH COURT OF DELHI AT NEW DELHI + DECIDED ON :
MARCH30 2017 CRL.REV.P. 811/2016 RAJESH KUMAR

... Petitioner

Through : Mr.Kedar Yadav, Advocate with Mr.S.K.Solanki & Mr.Hemant Sharma,
Advocates. VERSUS STATE OF DELHI CORAM: HON'BLE MR. JUSTICE
S.P.GARG Through : Mr.Amit Gupta, APP. Respondent S.P.GARG, J.

(ORAL) 1. Present Revision Petition under Section

Cr.P.C. has been filed by the petitioner to impugn a judgment dated 1.12.2016 of
learned Additional Sessions Judge in Crl.A.No.204341/2016 whereby conviction
and sentence recorded by the learned Metropolitan Magistrate by orders dated
23.12.2015 and 23.01.2016 were upheld. The petitioner had suffered conviction in
case FIR No.

registered at Police Station Okhla for commission of offence punishable under
Sections

IPC. He was sentenced to undergo Simple Imprisonment for six months under
Section 354 IPC and to pay fine Rs.5,000/- under Section 341 IPC. The petition is

contested by the State. Crl.Rev.P.811/2016 Page 1 of 4 2. I have heard the learned counsel for the parties and have examined the file. The prosecutrix X (changed name) and the petitioner were known to each other as they lived in the same vicinity. The victim was a school going child, aged about 15 years. Crime took place on 25.02.2012 at around 1.00 p.m. when the victim X was on her way to home from school. When she arrived in a lane, the petitioner forcibly restrained her; pulled her inside his house; and attempted to kiss her. On her raising alarm and after getting herself released, X managed to reach her residence. She informed her brother Mahesh about the incident who in turn called the police at 100.

3. DD No.11 came to be recorded at 1.27 p.m. at Police Post OIE Phase III, New Delhi, on that day. There is specific mention that some boys had teased the callers sister. The investigation was assigned to SI Vinod Kumar who along with Ct.Amit went to the spot. After recording victims statement (Ex.PW-1/A), FIR was lodged. In the complaint, the victim gave detailed account as to how and in what manner, her modesty was outraged. The petitioner was named in the FIR and specific role was assigned to him.

4. The victim appeared as PW-1 in the Court. Before recording her statement, the learned Presiding Officer had put various questions to ascertain if she was competent to make the statement and it was without any fear or pressure. After recording her satisfaction, the learned Presiding Officer recorded the victims statement. X proved her version given to the police at first instance without any variation. She reiterated that on her returning from school, when she was present in the lane, the accused tried to pull her inside the house; he then kissed her forcibly against her wishes. She, somehow, managed to escape and after coming to house, informed her Crl.Rev.P.811/2016 Page 2 of 4 mother and brother. The police recorded her statement (Ex.PW-1/A). In the cross-examination, she denied if the accused was falsely implicated due to any dispute with her family members.

5. On scrutinizing the testimony of the victim in its entirety, it transpires that nothing material has been elicited in the cross-examination to suspect her version. The petitioner did not deny his presence at the spot on the relevant date. Material

facts attributed to him remained unchallenged and unassailed in the cross-examination. The accused did not elaborate as to what was the cause of dispute with the victims family compelling them to rope him in the crime. No ulterior motive was assigned to the child witness to make a false statement to bring herself in disrepute.

6. Victims statement has been corroborated on material particulars by her brother PW-2 - Mahesh. He also declined in the cross-examination if there was any dispute or animosity with the petitioner prior to the incident.

7. No valid reasons exist to disbelieve the prosecutrix, the child witness who has assigned a definite and specific role to the accused in the occurrence. In 313 statement, the petitioner did not give plausible explanation to the incriminating circumstances proved against him. He came up with the plea that due to hurry to reach his shop he had collided with the victim and had no intention to outrage her modesty. The defence deserves outright rejection. For an unintentional collusion, the victim was not expected to level serious allegations against her acquaintance whereby attempt was made to kiss her. No such suggestion of accidental collusion was put in her cross-examination. Presence of DW-1(Bunty) at the spot at the time of occurrence was not suggested in the cross-examination to any witness. The accused did not produce on record any document to show if any quarrel over any issue had ever taken place with the family members of the victim prompting her to lodge a false complaint against him. No detailed particulars of any such incident have surfaced on record. In the absence of prior animosity or ill-will, the child witness who has nothing to do with any trivial issue of her family with the petitioner is not imagined to make a false statement.

8. The findings of the courts below based upon fair appreciation of the evidence deserve no intervention.

9. The victim was a school-going child. Finding her alone in the street, on her way-back to home, the petitioner, aged around 22 years, who lived in the neighbourhood outraged her modesty. Apparently, the petitioner taking advantage of the situation intentionally committed the crime. He deserves no leniency.

10. 11. The revision petition lacks in merits and is dismissed. The Trial Court record be sent back forthwith along with the copy of the order. (S.P.GARG)
JUDGE MARCH30 2017 sa Crl.Rev.P.811/2016 Page 4 of 4

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