

Bablu vs.state

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Court : Delhi

Decided On : Jun-07-2017

Appellant : Bablu

Respondent : State

Judgement :

§~15 * + % IN THE HIGH COURT OF DELHI AT NEW DELHI BABLU Date of Decision: June 07, 2017 CRL.A. 402/2015 Through: Mr.Pramod Kumar Dubey, DHCLSC Panel Advocate Appellant Versus STATE CORAM: HON'BLE MR. JUSTICE SUNIL GAUR Respondent Through: Ms. Neelam Sharma, Addl. Public Prosecutor JUDGMENT (ORAL) In this appeal, the challenge is to impugned judgment of 24th September 2013 vide which appellant has been held guilty for the offence under Section 376 of IPC and to impugned order of sentence of 26th September, 2013 vide which he has been sentenced to rigorous imprisonment for ten years with fine of `10,000/-, with default clause. Appellant also stands convicted and sentenced for the offences under Section 363 of IPC and 366 of IPC to rigorous imprisonment for seven years each, with fine of `5000/- each, with default clause. Trial Court has directed the above sentences to run concurrently. The facts as noted in the impugned judgment are as under:-

"Page 1 of 5 Crl.A.No.402/2015 On 24/05/2009, pullar. "Complainant Krishna made the statement which is to the effect that, he lives at the given address and is a rickshaw her daughter/prosecutrix aged three years at about 8:30 p.m. was playing outside the house and he was also standing outside the house and at that

time his neighbour Bablu who lives opposite to his house came to her daughter/ prosecutrix and started playing with her (khilane lag gaya) and then he (complainant) told him (Bablu) that it is too dark (kaafi raat ho gayi), let her daughter be given to him and he (Bablu) also go to sleep on which he (Bablu) asked him (complainant) to go and he (Bablu) will leave the prosecutrix at his (complainant's) house. He (complainant) left prosecutrix in the company of him (Bablu) and waited for long but Bablu did not come to the house. Then, he (complainant) went out and saw that Bablu and her daughter/prosecutrix were not there. They were searched but could not be found. He (complainant) searched them here & there (aas pass), but they could not be found. Then, he (complainant) on 24/05/2009, phoned on no.100 and the police came there. Police also made search but her daughter could not be found and he (complainant) said that at present he does not want any legal action and tries to trace her by his own means (apne taur par talash kar leta hu). On 25/05/2009, when he (complainant) saw Bablu at about 7:00 a.m. in the morning, going to his room asked him where his daughter is but he (Bablu) could not give any satisfactory reply. When he (complainant) collected nearby persons (aas paas ke logon ko ikattha kiya) and asked Bablu by pressurizing him (dabav dall kar pucha). Then, Bablu told that he has kept concealed prosecutrix in Ramleela Maidan, Village Badli. On which, complainant taking his wife, neighbours Vijay, Dinesh, Pradeep, with Bablu reached at Ramleela Maidan, Village Badli and where he (complainant) saw that his daughter/prosecutrix was (ghaas phoos) and he lying inside dry grass Page 2 of 5 CrI.A.No.402/2015 (complainant) recovered her and she was in naked condition and was in semi-consciousness (nagna avastha mei thi va ardh chetna me thi) and the blood was present all over her body and also on her vagina and had dried. Her T-shirt of red colour and underwear (kachhi) of kathai color which she was wearing were also not found present. the information on no.100 and the police came there and took the prosecutrix in possession."

At trial, apart from evidence of parents of prosecutrix, i.e. Krishna the complainant gave Thereafter, (PW-1) and Pushpa (PW-2), there is evidence of neighbours- Dinesh (PW-

3) & Pradeep Kumar (PW-5) and that of Dr. Gopal Krishan (PW-8) and Dr. Seema (PW-11) who have proved the MLC of the prosecutrix. ASI Raj Bala (PW-16) is the Investigating Officer of this case. The FSL report has been proved on record by Ms. Shashi Bala (PW-17). While taking note of the stand of appellant of false implication, trial court has relied upon the prosecution evidence to convict and sentence the appellant-accused as noted hereinabove. The challenge to the impugned conviction and sentence is on the ground that evidence of parents of prosecutrix is contradictory. It is pointed out by learned counsel for appellant that it has come in evidence of prosecutrix's father (PW-1) that he had allowed prosecutrix to play with appellant-accused, whereas prosecutrix's mother (PW-2) in her evidence has maintained that they were not on talking terms with appellant-accused. Learned counsel for appellant draws attention of this Court to FSL report to point out that the report regarding the grouping of semen is not conclusive and so benefit of doubt ought to be extended to Page 3 of 5 CrI.A.No.402/2015 appellant, who had taken a plea of alibi before the trial court. To submit so, attention of this Court is drawn to the cross-examination of prosecutrix's father to show that appellant used to leave for work in the evening by 7:00 P.M. or so and used to return back from his work in the morning at about 7:00 A.M. on the next day. Thus, it is submitted by learned counsel for appellant that impugned judgment and sentence deserves to be set aside while extending the benefit of doubt to appellant. On the contrary, learned Additional Public Prosecutor for respondent-State submits that it has come on record that on the day of incident, appellant was on leave and so the plea of alibi fails. It is pointed out that prosecution version stands duly corroborated from the MLC of prosecutrix. It is further submitted that FSL report corroborates the prosecution version as semen was found in the sample taken from vagina of prosecutrix and that offence committed by appellant is heinous one and so this appeal deserves to be dismissed. Upon hearing and on perusal of impugned judgment, order on sentence and the evidence on record of this case, I find that the plea of alibi has not been taken by appellant in his statement under Section 313 Cr.P.C. and that father of prosecutrix in his evidence, while deposing about the time of appellant's going for work and coming back, has clarified that on the day of incident appellant was on leave. It has come on record that when appellant was questioned by father of prosecutrix about the whereabouts

of prosecutrix, appellant had not given any satisfactory answer. It does appear from the evidence of prosecutrix's father that relation between parents of the prosecutrix and appellant were Page 4 of 5 CrI.A.No.402/2015 cordial and that the appellant was neighbour of parents of the prosecutrix. Though it has come in the cross-examination of mother of prosecutrix that appellant and family of prosecutrix were not in talking terms but this by itself does not demolish the prosecution case because there is convincing evidence on record to the effect that under the pressure of neighbours, appellant had told that prosecutrix is there in the Ramleela ground of the village and infact prosecutrix was found there and blood was found on her naked body. After going through the FSL report, I find that that semen was found in the vagina of prosecutrix and that the blood group of sample could not tally as it had become putrefied. But this by itself is not sufficient to conclude that the medical evidence does not support the prosecution version. In fact, from the MLC of the prosecutrix, the prosecution version stands fortified. Upon taking overall view of the evidence on record, this Court finds that the conviction awarded to appellant is legally sustainable and the sentence awarded to appellant is the minimum sentence and so it cannot be reduced as there are no exceptional circumstances to do so. Consequentially, finding no substance in this appeal, it is dismissed while maintaining the conviction and sentence awarded to appellant. Appellant be apprised of the fate of this appeal through concerned Jail Superintendent. (SUNIL GAUR) JUDGE Page 5 of 5 JUNE07 2017 skb CrI.A.No.402/2015

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