

Randhir @ Malang vs.state

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Court : Delhi

Decided On : Aug-28-2018

Appellant : Randhir @ Malang

Respondent : State

Advocate for Pet/Ap. : Mr. Neeraj Bhardwaj, Ms. Kusum Dhalla

Judgement :

\$~ 50 *IN THE HIGH COURT OF DELHI AT NEW DELHI % + CRL. A. 456/2017
Date of Decision:

28. 08.2018 RANDHIR @ MALANG Through: STATE Versus Through:
Appellant Mr. Neeraj Bhardwaj, Adv. Respondent Ms. Kusum Dhalla, APP for
State. CORAM: HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT (ORAL)
1. The appellant has been produced pursuant to production warrants issued in
terms of order dated 07.07.2018 from the Central Jail No.4, Tihar, New Delhi. The
nominal roll in terms of order dated 07.07.2018 has also been received from the
Superintendent of Prison, Central Jail No.4, Tihar, New Delhi indicating to the
effect that as on 20.08.2018, the appellant had undergone five years, four months
and two days of incarceration qua the impugned sentence awarded vide order
dated 30.03.2017 in the State Case No.51/2/13 of a period of 13 years of Rigorous
Imprisonment for the offence punishable under Section 6 r/w Section 5 (m) of the
POCSO Act, 2012 and was sentenced to a further period of Rigorous
Imprisonment of one year for the offence punishable under Section 323 of the

Indian Penal Code, 1860 and was further sentenced a fine of Rs.50,000/- for the offence punishable under Section 6 r/w 5 (m) of the POCSO Act with CrI.A4562017 Page 1 of 6 it having been directed in the event of default of the payment of the said fine, the convict i.e. the appellant herein would undergone one year of Simple Imprisonment and out of the said fine of Rs.50,000/-, Rs.40,000/- was directed to be paid to the child/victim with the benefit of Section 428 of the Cr.PC, 1973 having been granted to the convict. Both the sentences were directed to be run concurrently.

2. The nominal roll indicates that a period of seven years, three months and 23 days as on 20.08.2018 is the unexpired period of sentence in the event of the fine being paid and apparently the nominal roll indicates that the fine has not been paid.

3. On behalf of the appellant learned counsel for the appellant does not press the appeal on merits in view of the testimony of the prosecutrix/the minor child and in view of the FSL result on the record and the MLC on the record in relation to the minor child. A submission is however made on behalf of the appellant that the sentence imposed be reduced which has been vehemently opposed on behalf of the State by the learned APP for the State submitting to the effect that despite the statement made by PW-2 that the appellant was in a drunken/ intoxicated state nevertheless the testimony of the PW-2 Shokeen and the statement made by the prosecutrix both under Section 164 of the Cr.P.C., 1973 and the statement of the prosecutrix examined as PW-1 are to the extent that the appellant on being seen by the eye witness PW-2 had gone to the extent of throwing the minor child/ the prosecutrix aged two and a half years at the time of the occurrence into the drain after committing penetrative sexual assault CrI.A4562017 Page 2 of 6 on the person of the child by inserting his penis into her vagina and also having caused hurt to her qua which the charge was framed on the date 06.09.2013, coupled with the testimony of the minor child examined as PW-1 which even goes to the extent of stating that the accused/convict i.e. the appellant herein had inserted his underwear into her mouth, coupled with the FSL result dated 29.11.2016 Ex. PW21D as also adverted to hereinabove which bring forth the prosecution version in relation to the DNA profile (STR analysis) generated from the blood sample of

the victim, anal swabs of the victim, nails clippings of the victim, frock of the victim, blood sample of the accused, blood and semen stains from the underwear from the spot and the DNA profile generated from the source of the Ex.14a i.e. the blood sample of the accused being similar with the DNA profile generated from the source of Ex.16 i.e. the semen stains from the underwear from spot, it is apparent that there is no ground for grant of any leniency whatsoever.

4. However, in terms of the verdict of Supreme Court in Phul Singh Vs. State of Haryana in Criminal Appeal No.506/1979 decided on 10.09.1979 and directions laid down by us in Sanjay vs. State 2017 III AD (Delhi) 24 dated 20.02.2017 so that the carceral period reforms the convict it is essential that the following directives detailed hereunder are given qua the reduced sentence of imprisonment so that the sentence acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation. Crl.A4562017 Page 3 of 6 5. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible: appropriate meditational therapy; correctional courses through educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status; shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent, ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti - social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons; adequate counselling being provided to the appellant to be sensitized to understand why he is in prison; conducting of Psychometric tests to measure the reformation taking place and; that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.

6. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date Crl.A4562017 Page 4 of 6 of release, of the measures being adopted for reformation and rehabilitation of the appellant. Though vide the impugned order on sentence the convict has

been sentenced to pay a fine of Rs.50,000/- for the offence punishable under Section 6 read with Section of the POCSO Act and out of the said fine Rs.40,000/- had been directed to be paid to the child victim and that the appellant having been directed to undergo one year of simple imprisonment in the event of default of fine and as the nominal roll received from the Superintendent, Central Jail No.4, Tihar, New Delhi indicates that the fine has not been paid by the appellant, coupled with the factum that there has been no referral by the learned Trial Court to the Victim Compensation Scheme for Delhi formulated under Section 357 A of the Cr.P.C., 1973 where the minimum compensation for a rape victim is specified as Rs.3,00,000/- and a maximum Rs.5,00,000/-, in terms of the verdict of the Honble Division Bench of this Court in Ramdass V. State Crl.A5722018, the verdict dated 2.8.2018, and the verdict of the Honble Division Bench of this Court in Rakesh V. State Crl.A. 125/2003, the verdict dated 26.7.2018, the Delhi State Legal Services Authority (DSLISA) is directed to examine this issue forthwith and to ensure that the minor victim examined as PW1 receives the appropriate compensation that she is entitled to in accordance with the Victim Compensation Scheme for Delhi formulated under Section 357 A of the Cr.P.C, 1973.

7. The appeal and the prayer seeking reduction of sentence are both declined. Crl.A4562017 Page 5 of 6 8. Copy of this judgment be also sent to the Principal Secretary, Delhi State Legal Services Authority, through a Special Messenger for the said compliance and be also sent to the Superintendent, Central Jail No.4, Tihar Jail, for being handed over and explained to the appellant, the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions. The Trial Court Record be returned with the certified copy of this judgment. ANU MALHOTRA, J
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