

Surinder Kumar vs.state

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Court : Delhi

Decided On : Dec-21-2018

Appellant : Surinder Kumar

Respondent : State

Advocate for Def. : Mr. Kewal Singh Ahuja

Advocate for Pet/Ap. : Mr. Rajeev Bajaj

Judgement :

\$~R-61 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

21. ^ December, 2018 + CRL.A. 530/2002 SURINDER KUMAR, Appellant Through: Mr. Rajeev Bajaj, Cwne versus STATE Respondent Through:-

"Mr. Kewal Singh Ahuja, APP , for the State CORAM: HON'BLE MR. JUSTICE R^KG^BAj - . ' ORDER (ORAL) The appellant was arrested;Oril2:i/54 1. (in Sessions Case No.240/r9f6);on;^~^~^~ under Section 173 of the cMe 6f)drim submitted upon conclusion of Investigation into first and brought to trial report (charge sheet) 1973 (Cr.P.C.) information report (FIR) No.l 19/1996 of Police Station -Hauz Qazi, involving offences punishable under Sections (cid:127)376/349/506/323/363/366 of Indian Penal Code, 1860 (IPC). On conclusion of the said trial, he was held guilty and convicted on the charge for offence under Sections 363/366/376(f) and Section 506 (II Part) IPC. By order on sentence passed on 30.03.2002, the trial court awarded rigorous imprisonment for

four years under Section 363 IPC, rigorous imprisonment for seven years with fine of Rs.3,000/- for offence under Section 366, rigorous CrI. Appeal 530/2002 1 Page I of 4 imprisonment for ten years with fine of Rs.9,000/- for offence under Section 376(f) IPG and rigorous imprisonment for two years for offences under Section 506 (II Part) IPG. The trial court directed that in case of default in payment of fine imposed for offences under Section 366 and 376(f) IPG, the appellant would undergo further rigorous imprisonment for one month and three months respectively. The substantive sentences on all four counts were directed to run concurrently with benefit of set off in terms of Section 428 Cr.P.C. having been accorded. The present appeal was filed to assail the said judgment and 2. order on conviction. On 19.04.2004 the appellant moved an application praying for he to be released with punishment restricted to the period of detention already undergone, thereby indicating he was not challenging the judgment on merits. The learned Single Judge then to enlarge the appellant on bail suspended dated 19.04.2004. The nominal roll dated 06.07.2018 sent by the Superintendent Central Jail No.7, Tihar, indicates the appellant had by then undergone incarceration for nine years, two months and sixteen days, this including the period of remission earned.

3. At the hearing, the learned counsel (appointed by Delhi High Court Legal Services Committee), representing the appellant submitted that the judgment of conviction on merits is not challenged, the only plea raised being that the evidence clearly shows that the prosecutrix was over twelve years in age and, therefore, minimum CrI Appeal 530/2002 Page 2 of 4 punishment prescribed in law for the offence of rape under Section 376 (2)(f) IPG, as then in vogue, would not apply. It is submitted that there is a case made out for rigor of the sentence to be reduced.

4. Having heard both sides and having gone through the record, this court finds merit in the above contentions with regard to the age of the prosecutrix (PW-3). She gave her own age as 12 years. Her mother (PW-6) also testified at the trial and gave her age as the relevant point of time to be 12 years. Though the prosecution had also relied on municipal record (Ex.PW-H/A) indicating the age to be less than 12 years old, it cannot be ignored that the said municipal record was not prepared contemporaneously, it been based on application which was later

ni^de, it; not being clear as to how it is to be connected to the prosecutrix,.her relevant particulars being missing there fi-om. There is no schobl ^recbrd favailable in respect of the prosecutrix. only reliable material to gauge the age ofthe prose&i^^M opmipn (Ex.PW-2/A) of PW-2, the radiologist of LNJP hospitd who confirmed that it (the age of the prosecutrix) could be up to thirteen years. It is the upper age limit indicated by the opinion which will hd^eito be assumed in favour of the defence. Thus, the assumption ofthe trial court that the prosecutrix was less than twelve years ofage on the relevant date is found to be In these circumstances, erroneous. The incident which is the subject niatter of this case occurred 5. more than twenty-two years ago. The appeal has been pending for over sixteen years now. Having regard to these facts and CrI. Appeal 530/2002 ' circumstances, this court is of the view that ends of justice would be met if the punishment for the offence under Section 376 IPG is modified to rigorous imprisonment for seven years with fine as imposed by the trial court.

6. 7. Ordered accordingly. Having regard to the period of incarceration already suffered, it would undoubtedly include the period served in default of payment of fine. In this view, there need be no directions for the appellant to surrender back to custody. > J8 The appeal stands disposed of in abpve terms. .(cid:127) (cid:127)v ^ ^ '(cid:127) - R.K. GAUBA,J.

DECEMBER212018 Vk i"- CrI. Appeal 530/2002 Page 4 of4 (cid:127) (cid:127) (cid:127) (cid:127)

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