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Manoj Vs. State

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Court : Delhi

Decided On : Apr-24-2015

Judge : S. P. Garg

Appellant : Manoj

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : MARCH18 2015 DECIDED ON : APRIL24 2015 + CRL.A.794/2011 & Crl.M.A.No.16843/14, Crl.M.B.Nos.2177/12, 1711/12 & 1130/11 MANOJ Through : ..... Appellant Mr.Avninder Singh with Ms.Sumi Anand, Advocates. versus STATE Through : ..... Respondent Ms.Kusum Dhalla, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Aggrieved by a judgment dated 23.03.2011 of learned Additional Sessions Judge in Sessions Case No.62/10 arising out of FIR No.94/06 Police Station Mandir Marg by which the appellant Manoj was convicted under Section 376, he has preferred the instant appeal. By an order dated 25.03.2011, the appellant was awarded RI for seven years with fine `2,000/- under Section 376 IPC.

2. Briefly stated, the prosecution case as set up in the charge- sheet was that on the night intervening 8/9.03.2006 in a garage of H Block, Kali Bari Marg, New Delhi, the appellant committed rape upon X (assumed name), aged about 16

years. The Investigating Officer lodged First Information Report after recording victims statement (Ex.PW-8/A). The prosecutrix X implicated the appellant Manoj for forcibly committing rape upon her on the pretext to marry her. X was taken for medical examination. The accused was arrested and medically examined. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused under Section 376 IPC. The prosecution examined eleven witnesses to substantiate its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. The appellants conviction is primarily based upon the sole testimony of the prosecutrix X. She has, however, given divergent versions about the incident and her evidence does not inspire confidence. Admitted position is that she was as working domestic help in the house of Manju Sharma. Manju Sharma had written to the concerned police station on 08.03.2006 that X working with her as maid since 31.01.2005 had gone to bring maggi from the market at around 05:30 p.m. on 08.03.2006 and did not return. Apparently, X had accompanied the appellant with her free consent on 08.03.2006 without even informing her employer. In her statement (Ex.PW-8/A) to the police, she disclosed about appellants acquaintance with her about two days before the incident at Sabzi market, H Block and his inclination for love towards her. She met the appellant the next day. On 08.03.2006, she met him again at around 05:00 p.m. at Mandir Marg; went to Talkatora Garden and discussed family matters. The appellant took her in the garage of H Block and they had dinner there. During night, the appellant established physical relations with her on the promise to marry against her wishes. Admittedly, X was a consenting party when she accompanied the appellant to the garage and took dinner with him there. She remained present in the said garage throughout the night. In her 164 Cr.P.C. statement she disclosed that the appellant had established physical relations with her six times during that night. Strange enough, she did not raise hue and cry; no resistance was put by her. The garage was not located in a secluded place and no residents of the locality heard her cries. She did not suffer any injury on her body including private ones. In her Court

statement, she disclosed that she was taken in a TSR forcibly. Even at that time, she did not raise any alarm. It is unclear if she had given consent for physical relations on the pretext of marriage or physical relations were established forcibly against her wishes. On the next morning, it was the accused who left her at the place of her work. Even at that time, the prosecutrix did not complain about his conduct and behaviour to anyone including her employer. In her examination-in-chief, she claimed that the entire incident was disclosed/narrated by her to her employer Manju and she had called the police. PW-10 (SI B Lakra) has given an entirely different version stating that he had arrived the police station on getting telephonic message from Police Station Mandir Marg that a girl was sitting there to lodge complaint of rape. Thereafter, he went to the Police Station and recorded victims statement. Admittedly, Manju was not examined and cited as a witness. IO did not make any independent inquiry from the neighbourhood where the occurrence took place. The prosecutrix disclosed about the presence of appellants friend in the garage initially, who left soon thereafter. IO did not examine any inmate of the garage. In his examination, the IO informed that one Sriram a tenant in the said garage had gone to his native village and his son used to stay in the said garage. None of them has been examined by the Investigating Officer.

4. The occurrence took place on the night intervening 8/9.03.2006. The FIR was lodged after a considerable delay on 09.03.2006 at 02:30 p.m. by recording rukka (Ex.PW-10/A). The prosecutrix was taken for medical examination to Lady Harding Medical College at around 10:00 p.m. on 09.03.2006. PW-3 (Dr.Beenu Kushwah) who medically examined her vide MLC (Ex.PW-3/A) deposed that there was no evidence of any physical assault or of definite tear in hymen. There was no bleeding or other erosion; no sign of defence. The medical examination did not reveal if sexual act was done forcibly upon the prosecutrix. Neither the prosecutrix nor the appellant had suffered any injuries/scratch marks. Had there been forcible rape, there was every possibility of the prosecutrix to have sustained struggle marks while putting resistance. She must not have allowed the appellant to have repeated physical relations throughout the night particularly when he was not armed with any weapon to create fear in her mind.

5. The Investigating Officer did not collect cogent proof of prosecutrixs age though she had studied in a school upto 2nd standard. As per ossification report (Ex.Pw-5/A) dated 21.04. 2006 she was aged more than 18 years. The Trial Court also came to the conclusion that the prosecutrix was more than 16 years of age on the date of occurrence. She was mature enough to understand the consequences of physical relations. There was no question of promise to marry as the prosecutrix had met the appellant only about two days before the incident. Moreover, before the appellant could fulfill any such alleged promise to marry, on the next day itself X lodged complaint against him for committing rape upon her. X had no valid reasons to remain in the company of the appellant throughout night even without any knowledge to her employer. From the circumstances on record it can be inferred that physical relations (if any) were consensual. Since X was more than 16 years of age on the day of occurrence, the appellant cannot be held liable under Section 376 IPC. Xs statement has not been corroborated by any other oral, medical or scientific evidence. In the cross-examination, she admitted that the accused loved her. She denied to have any love affairs with the appellant. Had it been one side affair, there was no question of promise to marry. She further admitted that appellants offer to marry her would not be accepted by her. Apparently, there was no breach of alleged promise to marry.

6. On an overall appreciation of the evidence of the prosecutrix and her conduct, it appears that X is not a reliable witness. I am of the considered view that the prosecution has failed to establish its case beyond reasonable doubt. The conviction and sentence recorded by the trial court cannot be sustained and are set aside.

7. The appeal is allowed. Conviction and sentence are set aside. The appellant be released forthwith if not required to be detained in any other case. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order. (S.P.GARG) JUDGE APRIL24 2015 sa

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