

**Shiv Shanker Vs. State**

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**Court :** Delhi

**Decided On :** Jul-07-2015

**Judge :** Indermeet Kaur

**Appellant :** Shiv Shanker

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment :07th July, 2015 % + CRL.A. 785/2012 SHIV SHANKER Through versus ..... Appellant Mr.Neeraj Bhardwaj, Advocate. STATE Through ..... Respondent Ms.Kusum Dhalla, APP for the State. With + CRL.A. 944/2013 GEETA Through ..... Appellant Mr.Jatin Rajput and Mr Anupam Dubey, Advocates. versus STATE (NCT OF DELHI) Through ..... Respondent Ms.Kusum Dhalla, APP for the State CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1. These are two appeals filed by Shiv Shankar and Geeta impugning the judgment and order on sentence dated 12.12.2011 and 21.12.2011 respectively wherein the appellant Shiv Shankar had been convicted for the offence under Sections 376/366/34 of the IPC and had been sentenced to undergo a maximum incarceration of R17years besides fine for each of the two offences. Appellant Geeta had been convicted for the offence under Section 376/366 read with Section 109 of the IPC and had also been sentenced to a period of 7 years RI besides fine for each of the two offences. The sentences were to run concurrently.

Benefit of Section 428 of the Cr.PC had been granted to the appellants.

2. The version of the prosecution was that the prosecutrix (PW-6) had come to Delhi from Jharkhand on her cousin Dashrath having promised her a job. On the fateful day i.e. on 27.03.2009, she met with appellant Geeta who assured her for a job. Geeta introduced her to appellant Shiv Shankar. On the same night, appellant Shiv Shankar established physical relations with PW-6 against her will. He thereafter took the prosecutrix to the red light area at G.B. Road with the intention to sell her. The prosecutrix realized her predicament. She reported the matter to the police. Present FIR was accordingly registered.

3. The prosecution in support of its case has examined 10 witnesses of whom the star witness was the prosecutrix herself who was examined as PW-6. It was on her version that the present FIR was registered. Apart from her version, the statement of the doctor (PW-2) has also been relied upon by the prosecution to advance their case. It is pointed out that the MLC of the victim (Ex.PW-2/A) shows that her hymen was torn. To determine the age of the prosecutrix, the medical opinion of the concerned medical officers i.e. PW-8 & PW-9 were obtained who had opined that the victim was more than 15 years but less than 16 years of age as on the date of the incident. The Investigation Officer was examined as PW-10. PW-4 & PW-5 were the constables who were present at the time when the prosecutrix had reported the matter to PW10.

4. In the statement of the accused recorded under Section 313 of the Cr.PC, both of them had pleaded innocence and had stated that they have been falsely implicated in the present case.

5. On behalf of appellant Shiv Shankar it is pointed by Mr.Neeraj Bhardwaj, Advocate that the appellant has undergone almost four years of incarceration; he has been falsely implicated; attention has been drawn to the version of the prosecutrix which had formed the basis of the FIR i.e. her statement under Section 161 of the Cr.PC, her version recorded before the Metropolitan Magistrate under Section 164 of the Cr.PC as also her version on oath in Court. It is pointed out that there are inherent contradictions and discrepancies in these three versions which wash away the credibility of PW-6 and she being the only witness, if her testimony

is discarded, there would be nothing left with the prosecution. It is pointed out that the MLC had also noted no injury upon the victim and even presuming that there was any physical relation established between the appellant Shiv Shankar and the victim, it would be a case of consent. Appellant Shiv Shankar is entitled to a benefit of doubt.

6. On behalf of appellant Geeta, Mr. Jatin Rajput, learned amicus curiae has argued that no role has been attributed to her except the submission of the prosecutrix that Geeta had assured the prosecutrix to secure a job for her. Geeta has been falsely implicated.

7. Learned Public Prosecutor has refuted these submissions and submits that no fault can be found in the judgment of the trial Court.

8. Arguments have been heard. Record has been perused.

9. PW-6 is the star witness of the prosecution. She has on oath deposed that she had come to Delhi from Jharkhand about two months ago as her brother Dashrath had promised her a job in Delhi. She was working in an office where she was maltreated by her employer. She ran away from there. On the way, she met one lady by the name of Geeta. Geeta introduced her to Shiv Shankar. They had promised her that they could arrange a job for her. On their assurance, she accompanied them. Both the accused took her to a room where she stayed the night. The accused Shiv Shankar committed rape upon her during the night. In her cross-examination, she stated that galat kaam was attributable to Shiv Shankar.

10. Learned counsel for appellant Geeta rightly points out that after the promise of a job by Geeta, no other role has been attributed to Geeta. That apart this Court notes that this role which has been attributed to Geeta was found mentioned for the first time in the statement of the prosecutrix on oath in Court. In her version under Section 161 of the Cr.PC, she had stated that she had come to Delhi on the asking of her brother as she had been promised a job in Delhi. She was working with an employer who was maltreating her. On 27.03.2009, she met with a lady namely Geeta who had promised her a job. Geeta introduced her to Shiv Shankar. Thereupon Shiv Shankar took her to his room where in the night he committed

rape upon her. In this version, the prosecutrix does not state that it was Geeta who had accompanied Shiv Shankar at the time when she was taken to the room. In the statement of the prosecutrix under Section 164 of the Cr.PC, there is no mention of Geeta at all. In fact, in this statement she has stated that when she had left the job with her employer in Delhi, she met one person (Shiv Shankar) who had taken her to his room and he had committed rape upon her. Thus, the role attributable to Geeta, even as per the version of the prosecution, is only the role of promising her a secured job. In the FIR (first statement of the victim), there was no mention by the prosecutrix that Geeta had taken her along with co-accused to the room where rape had been committed upon her. This finds mention only for the first time in her version on oath in Court, which is a natural improvement qua the role of Geeta. Thus no role much less any special role has been ascribed to Geeta, Geeta is entitled to the benefit of doubt. This Court is of the view that her conviction by the trial Judge was uncalled for. Geeta is entitled to an acquittal. She is accordingly acquitted of all the offences for which charges have been framed against her.

11. The version of the prosecutrix under Sections 161, 164 of the Cr.PC read with her version on oath in Court does not find any improvement qua the role of Shiv Shankar. All along, Shiv Shankar was the person, who had taken her to his room and committed rape upon her. He had thereafter taken her to the red light area where the victim apprehended that she was going to be sold in a brothel. She immediately reported the matter to the police. This version of the prosecutrix has remained unassailable and unimpeachable. She has stuck to her stand.

12. Furthermore this version of PW-6 is corroborated by the version of PW-10 (SHO of PS Kamla Market) to whom she had first reported the matter after she had been taken to the G.B. road area. PW-4 & PW5, the constables who were present along with PW-10 have also affirmed this version.

13. The medical evidence of the victim i.e. her MLC Ex.PW-2/A also shows that her hymen had been broken. Even if injuries were not reported on her person, it would not detract her otherwise cogent and credible version which has been supported by this part of the medical evidence which had noted her hymen to be

broken.

14. There is also no reason as to why appellant Shiv Shankar would have been falsely implicated. In fact on a specific query put to the learned defence counsel, on this score he had also no answer.

15. The prosecution has been able to establish its case to the hilt qua appellant Shiv Shankar. The version of the prosecutrix coupled with the statements of PW-10, PW-4 & PW-5 as also her medical evidence establishes that appellant Shiv Shankar is guilty of the offences for which he has been convicted.

16. The victim even presuming that she was an adult had not consented to this relationship. She had reported the matter to the police at the first instance. The appellant has been granted the minimum sentence which is 7 years for the offence punishable under Section 376 of the IPC. Leniency in sentence is also not called for.

17. Appeal of appellant Shiv Shankar is accordingly dismissed.

18. Both the appeals are disposed of in the above terms.

19. A copy of this order be sent to the Jail Superintendent for intimation and compliance. INDERMEET KAUR, J JULY07h 2015 A/m

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