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Krishna Vs. State

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Court : Delhi

Decided On : Jul-24-2015

Judge : Indermeet Kaur

Appellant : Krishna

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :16.07.2015 Judgment delivered on :24.07.2015 Crl. Appeal No.754/2012 KRISHNA Through ..... Appellant Mr.S.S.Ahluwalia, Advocate. versus STATE Through ..... Respondent Ms.Kusum Dhalla, APP for the State. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment dated 21.10.2011 wherein the appellant stood convicted under Sections 363/376 (2) (f)/377 of the IPC. Vide order on sentence dated 29.10.2011, he had been sentenced to undergo RI for a period of 10 years for the offence under Section 376 (2)(f) of the IPC along with fine of Rs.25,000/- and in default of payment of fine to undergo SI for a period of three months. He had been sentenced to undergo RI for a period of 10years for the offence under Section 377 of the IPC as well along with fine of Rs.1,000/- and in default of payment of fine, to undergo SI for 15 days. For his conviction under Section 363 of the IPC, he has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.1,000/- and in default of payment of

fine, to undergo SI for 15 days. 2 This is an unfortunate case where a three year old child has been subjected to a dastardly act of rape. Such like offences are heinous i.e. to say the least. The perpetrator of such a crime deserve no leniency. In all such cases of grave crimes, there is however a greater responsibility on the conscience of the Court to nail the real culprit as the punishment for such like offences are also of a punitive nature. 3 The version of the prosecution in the instant case was unfolded in the testimony of the complainant Rakesh Prashad (PW-7), the father of the unfortunate victim. It was pursuant to his complaint that the present FIR had been registered. His version was that the accused who was known to them had taken their minor daughter on the pretext of playing. He did not bring her for some time. Efforts to trace his daughter did not materialize. They however saw their daughter in the company of the accused who brought her back at 11:00 pM and left at a distance of 50 paces from the house. His daughter was unconscious and she had bruises on her body. She was bleeding from her private part. This version of PW-7 was corroborated by the version of his wife Ranju Devi examined as PW-8. She is the mother of the victim. The three years old child was examined as PW-13. She was medically examined. Her MLC Ex.PW4/A had noted injury marks upon her body. Scratch marks were also there on her body and the victim was bleeding from her private parts. Dr. Virender Singh (PW-4) had examined the accused and as per his MLC Ex.PW-4/A, there was nothing to suggest that he could not do the act of sexual intercourse. 4 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence. He had stated that he has been falsely implicated. At the time of offence, he was sleeping on his roof along with his friend Rajesh. He had been picked by the police and implicated on the false statements made by the parents of the victim. 5 In defence three witnesses were examined. DW-1 and DW-2 were the parents of the accused. DW-3 was a neighbour. They all had deposed that on the fateful day and at the fateful time, the appellant was sleeping on the roof with Rajesh. This is a case of false implication. 6 The trial Judge however did not find favour with the defence set up by the accused. The evidence adduced by the prosecution was appreciated and the trial Judge on the basis of the ocular and documentary evidence adduced had convicted the appellant and sentenced him as aforenoted. 7 On behalf of the appellant, learned amicus-curiae has submitted that this is a

clear case of false implication. The appellant was not even in the vicinity at the time when the incident had occurred. It was fairly conceded that although an act of rape had been committed upon the unfortunate minor baby, the accused not being present and this defence has been established through the cogent evidence i.e. DW-1, DW-2 & DW-3, it is a clear case where he has been falsely roped in. Learned defence counsel to support his submission has placed reliance upon a Bench of this Court reported as 2013 VI AD (Delhi) 449 State Vs. Nand Ji Prasad; submission being that in a similar factual matrix, the Court had not relied upon the testimony of a child victim noting it to be full of contradictions. Submission of the learned defence counsel on this score being that in this case also, the victims examination was clearly silent about the detail of the incident on which a specific query had been put by the learned Presiding Officer. 8 Arguments have been heard. Submissions and counter submissions of the parties have been noted. 9 PW-7 was the complainants father. He was running a parchun shop for the last about 15 years. He has four children including two girl. He knew the appellant Krishna who was a resident of across their block. He had deposed that at 7.00 p.m. on the fateful day i.e. on 20.4.2011 the appellant had taken PW-7s daughter aged about 3 years on the pretext of playing with the child. He did not bring her back for a long time. Efforts to trace their daughter failed. At about 11.00 p.m. the accused left PW-7s daughter at 50 paces from the house of PW-7. PW-7 had reiterated that he had seen the accused leaving his daughter. On seeing him appellant tried to rush. PW-7 found his daughter in unconscious condition; her tongue was out of her mouth. He noted abrasions on the back portion of her private part and blood was oozing out from her private parts. In his cross-examination he stated that he was not on visiting terms with the family of the accused. He had further stated that when the accused took his daughter she was playing outside. He tried to search for his daughter. He first took his daughter in an unconscious condition to the police station and then to the hospital. Vehement submission has been made by the learned counsel for the appellant on this score. His submission is that this was wholly unnatural on the part of the father of the victim to have taken her in such a precarious condition to the police station first rather than the hospital; which is not a natural conduct. He denied the suggestion that the appellant has been falsely implicated. 10 The wife of PW-7 i.e. the mother

of the victim, Ranju Devi, was examined as PW-8; she reiterated the version as detailed by PW-7. She had deposed that her daughter was playing outside when the appellant took her on the pretext of giving her a toffee at about 11.00 p.m. She saw that when her husband was searching for their daughter the appellant had brought her back and had left their daughter; at 50 steps away from their house. She saw scratches upon her body and her daughter was semi-conscious and blood was oozing out from her private parts. Her husband PW-7 rushed the baby girl to the police to inform them of the unholy incident. 11 In her cross-examination, the witness had stated that they were on talking terms with the family of Krishna. He had taken their daughter away on the pretext of giving her toffee. She had not accompanied her to the police station. She had also reiterated that the accused left their daughter near the jhuggi of the Nai. She denied the suggestion that the father of the accused used to make purchases from their shop on credit and since he could not pay the amount the case has been falsely implicated upon the appellant. 12 Both PW-7 and PW-8 have reiterated that the victim was first rushed to the police station and not to the hospital. It is vehemently argued by the learned defence counsel that this was an unnatural conduct on the part of PW-7; he should have taken the victim to the hospital and not to the police station. This court is, however, not convinced with this argument. Each person reacts in different manner. In the instant case the parents of the victim were under the great anxiety and had been looking earnestly for their daughter and when they found her at 11.00 p.m. and noticed that their daughter had been dropped by the appellant at 50 paces away from their house and she was in an unconscious condition with scratch marks on her body and bleeding from her private parts, the first reaction of the father was to rush her to the police station to inform the police about the dastardly act which had been committed upon their daughter by the appellant. It was a most normal reaction. It was not abnormal. PW-7 had thought it fit to report the matter to the police first as he was sure about the culprit; against whom he wanted action; after that the victim was taken to the hospital. There was nothing unnatural in this behavior. Argument of the counsel for the appellant on this score deserves no merit. 13 Victim was examined as PW-13. She was a three year old child. After a preliminary round of questions put to her by the Presiding Officer, she detailed her version. It was in a question-answer form. She pointed out towards

the accused; she indicated towards lower parts of her body where she had been hurt. Nothing worthy of any discredit could be elicited from this three year old child. There was nothing in her cross-examination which could dent it. 14 The medical record which was the MLC (Ex.PW-11/A) of the victim proved through Dr.Neeraj Sharma (PW-11) had noted inflammation on various portions of her private parts. Her labia was separated and hymen was torn; there were fresh tears and inflammation. She was kept under anesthesia. This medical record of the victim fully corroborates the oral version of the parents of the victim and the victim herself. 15 The medical record of the accused/appellant Ex.PW-4/A shows that there was nothing to suggest that he could not perform the sexual act. 16 The blood samples of the appellant as well as victim and vaginal swab of the victim were also taken and had been sent for scientific analysis. The report of the FSL has reported that the samples were putrified. 17 Learned defence counsel has not disputed the fact that a ghastly crime had been committed and the victim had been subjected to an act of rape. implicated. His submission was that the appellant has been falsely Much reliance has been placed upon the versions of the defence witnesses i.e. DW-1, DW-2 and DW-3. 18 DW-1 and DW-2 are the parents of the accused. DW-3 was their neighbor. His version was that the accused had suffered injury. His foot had been fractured. He was at the relevant time sleeping with Rajesh. He has been falsely implicated. This was the line of defence adopted by the accused even in his statement recorded under Section 313 Cr.P.C. However, the Court notes that at the time of the crossexamination of the witnesses of the prosecution i.e. PW-7 and PW-8 the line of defence adopted by the accused was that the father of the appellant owed some money to the father of the victim and his not paying the money was the bone of contention which had led to the false implication of the appellant. The argument of the defence counsel that the appellant had suffered a fracture was also not supported by medical evidence. 19 The defence of the appellant is wholly vacillating; as such no reliance can be placed upon the versions of such confused witnesses. This Court is not convinced with this defence. There was no reason for the false implication of the appellant in the present case. The appellant was living in the vicinity of the victim since the last three years. It was only on this particular day when the incident had occurred that the matter was reported. The judgment of Nand Ji Prasad (supra) is wholly

inapplicable to the facts of the instant case. 20 The impugned judgment in this background calls for no interference. There is no merit in the appeal. Dismissed. INDERMEET KAUR, J JULY24 2015/ndn

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