SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State Vs. Brijesh Kumar

State Vs. Brijesh Kumar

SooperKanoon Citation : sooperkanoon.com/61592

Court : Delhi

Decided On : Jul-27-2015

Judge : S. P. Garg

Appellant : State

Respondent : Brijesh Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

9. h JULY, 2015 DECIDED ON :

27. h JULY, 2015 + CRL.A. 1246/2010 STATE ..... Appellant Through : Mr.Navin K.Jha, APP. versus BRIJESH KUMAR Through : ..... Respondent None. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. State has preferred the instant appeal under Section 377 of Code of Criminal Procedure for enhancement of sentence awarded to the respondent in Sessions Case No.95/2009 arising out of FIR No.1059/2006 under Sections 363/368/376/506 IPC PS Nangloi. It is pertinent to note that the respondent was convicted by a judgment dated 27.01.2010 of the learned Addl. Sessions Judge under Sections 363/366/376 IPC and vide order dated 04.02.2010 he was awarded various prison terms with fine. Under Section 376 IPC, the respondent was sentenced to undergo RI for three years with fine ` 3,000/-. Appellants contention is that in the absence of adequate and sufficient reasons the Trial Court

committed grave error in awarding sentence less than seven years as prescribed under Section 376 IPC. The appeal is contested by the respondent.

2. I have heard the learned Addl. Public Prosecutor for the State and have examined the file. On perusal of the statement of the prosecutrix X (assumed name) and other relevant witnesses, it transpires that it was a case of elopement with consent. Daily Diary (DD) No.12A (Ex.PW3/A) was recorded at PS Nangloi when victims father reported that her daughter was missing from the house since 20.09.2006 at 10.00 a.m. At that time, the respondent was not suspected to have kidnapped the prosecutrix. Her age was disclosed 15 years. Subsequently, the prosecutrix was recovered on 15.11.2006 and after recording her statement, Sections 376/368 IPC were added. In her statement, the prosecutrix not only implicated the respondent but also levelled various allegations against Sanjay, Daulatram, Subhash and Anita. They were discharged vide order dated 19.05.2007 and the State did not challenge the said order. It is pertinent to mention that some of them also remained in custody. It has further come on record that after the respondent and X went together, she remained at various places for considerable time where physical relations were established. At no stage, X bothered to contact her parents to inform them about her whereabouts. X was taken by the respondent to different places of his relations. Since they did not provide shelter to them, they changed their residences / places during this period. When the respondent visited Delhi to fetch money, admittedly, X remained in the company of Sanjay for number of days alone. At no stage, she raised any alarm or hue and cry for her kidnapping. Apparently, she was willing and consenting party throughout. Since, she was below 16 years of age, the Trial Court was left with no alternative but to convict the respondent. Again, age of the prosecutrix has not been ascertained with certainty. It is based upon the date of birth recorded in the school record where she took admission on 08.04.2004 in class VI. No birth certificate of the prosecutrix was produced that time. The prosecution was unable to collect the date of birth as recorded by the prosecutrix in the school where she took admission for the first time i.e. MCD Primary School, J.J.Colony, Nangloi, E-Block, Delhi. During medical examination, no visible injuries were found on her body. The respondent was aged around 20 years. In 313 Cr.P.C. statement, he categorically stated that there were love affairs between the two and she had

accompanied with him voluntarily. This possibility cannot be ruled out. Apparently, these were the adequate and special reasons for the Trial Court to award less than seven years sentence as prescribed under Section 376 IPC. The incident is dated 20.09.2006. The respondent has suffered the ordeal of trial / appeal for about 9 years. Sentence order demonstrates that the convict is to look after his family comprising of his wife, one daughter, old aged parents, two brothers and two sisters. The antecedents of the convict are clear; he is a first time offender and is not involved in any other criminal case. He has already served out the sentence awarded by the Trial Court. No useful purpose will be served to enhance the sentence as pleaded by the learned Addl. Public Prosecutor particularly when his involvement in any other crime has not surfaced after his release. In State of Chattisgarh vs. Lekhram, AIR 2006 SC1746 wherein in similar circumstances, the appellant therein was sentenced to undergo imprisonment for the period already spent by him in custody which was about one and a half year. This Court in Sanjay Vs. State, ILR (2013) III Delhi 2389 held :

4. The legislature in its wisdom made a provision for awarding a sentence of less than seven years when there are special and adequate reasons for the same. I have before me the prosecutrixs testimony. It goes without saying that the prosecutrix merrily proceeded with the Appellant most willingly. She travelled with him in a bus and then in a train to Lucknow. The prosecutrix was brought back to Delhi by the Appellant himself where the Appellant and the prosecutrix were apprehended at New Delhi Railway Station by the police. Thus, although the Appellant does not want to contest the Appeal on merits, it is borne out from the record that it was a case of consensual intercourse with the prosecutrix. While awarding punishment, the Court has to take into consideration the mitigating and aggravating circumstances. The prosecutrix was aged 15 years and 08 months and she was incapable of giving the consent for sexual intercourse. I have seen numerous cases where the girls sometimes less than 16 years of age take a lead in eloping with a boy, enters into a marriage with the boy and have sexual intercourse with him. Such a predicament was noticed by this Court in several cases including in two judgments passed by the Division Benches of this Court, namely, Manish Singh v. State Govt. of NCT & Ors., AIR2006 Delhi 37 and Bholu Khan v. State of NCT of Delhi & Ors. (W.P.(Crl) 1442/2012) decided on

01.02.2013.

5. Considering the age of the prosecutrix and the facts narrated above, in my view, it is a fit case where sentence less than the minimum should be awarded. Similar view was taken and sentence less than minimum was awarded by a learned Single Judge of this Court in Brij Pal v. State Crl.A. No.1366/2012 Page 4 of 4 (Crl.Appeal No.278 of 2000) decided on May 31, 2011. I accordingly sentence the Appellant to undergo RI for four years and to pay a fine of ` 2,500/- for each of the offences under Sections 366 and 376 IPC, and in default of payment of fine, the Appellant shall undergo SI for one month each. Both the substantive sentences shall run concurrently.

3. In the light of above discussion, I find no merit in the appeal and is dismissed.

4. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information. (S.P.GARG) JUDGE JULY27 2015 / tr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com