

Manoharlal Vs. State

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Court : Delhi

Decided On : Jan-05-1988

Reported in : 1988(1)Crimes627; 34(1988)DLT173

Judge : Malik Sharief-ud-Din, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 366

Appeal No. : Criminal Appeal No. 61 of 1987

Appellant : Manoharlal

Respondent : State

Advocate for Pet/Ap. : R.M. Tufail, Adv

Judgement :

Malik, J.

(1) The appellant was convicted under section 366 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for 4 years and to payment of fine of Rs. 500/. In default of payment of fine he was required to undergo further rigorous imprisonment for three months. It was also directed that the period of under-trial custody should be set off against the sentence so recorded.

(2) Briefly standing the allegations against the appellant are that he kidnapped one Kumari Veena prosecutrix from the lawful custody of her father on 16th of December 1983 with a view to compel her to marry against her will and that Kumari Veena on the relevant date, according to the prosecution, was a minor below 18 years of age as her date of birth recorded in the school admission register was 6th of July 1967. Stating in detail, it is alleged that on 16th of December 1983 at 7 a.m the prosecutrix left for her school and did not return from the school in the normal course and a report in this regard was lodged by her father on the same day at 11.30 p.m. It is alleged that after kidnapping the appellant took the prosecutrix to various places like Pathankot, Chamba wherefrom she was ultimately recovered on 4th of March 1984.

(3) The stand of the appellant under section 313, Cr. P.C. is that he did take Kumari Veena along with him and after keeping her at village Itti for 15 days took her to Pathankot and thereafter he kept her in the quarter of one Gauri Shankar at Chamba where he was working and that he was arrested on 4th of March 1984. He further goes on record to state that it was on a letter written by the prosecutrix to him that he took her along with him.

(4) After hearing the learned counsel for the appellant it is apparent that the scope of the enquiry in the present case is limited inasmuch as it is admitted by the appellant that he took Kumari Veena with him and she was recovered from his possession.

(5) What is important in the circumstances of this case is the fact whether the prosecutrix was kidnapped by the appellant against her will and also whether the prosecutrix was a minor in which case her will or no will will be of no consequence. In this regard, it appears, that the learned Sessions Judge after observing that the conclusive proof in respect of the age of the girl would be the municipal record went further and in the ultimate analysis relied upon the age given in the school admission register supported by the testimony of her father and herself and corroborated by their ossification test performed by the Radiologist. This the learned trial court did despite its feeling that there is a tendency to get a wrong age recorded in the school admission register. Mr. Tufail has laid great stress on

medical evidence in this regard and has urged that the conclusion arrived at by the trial court are clearly erroneous and are based on no proper appreciation of evidence

(6) It may be stated that admittedly the date of birth of the girl mentioned in the school register is 6th of July 1967 and both the father of the girl as well as the prosecutrix have stated that she on the date of the incident was 17 years old. This, however, is not the end of the matter because the prosecution itself was not content with this evidence on the point and have made an attempt to corroborate the fact of minority of the prosecutrix by medical evidence. In this regard the prosecution examined Dr. (Mrs.) K. Malviya (P.W.5) who on clinical examination opined that the age was between 16 and 17 years but since in her view this was not the accurate determination of the age the prosecutrix was referred for ossification test and Radiologist opined that her age could be between 17 and 18 years. It is in this situation that the testimony of Public Witness . 6 Dr. M.C. Bhatia assumes importance. Public Witness . 6 Dr. M.C. Bhatia in fact conducted the ossification test and according to him the age of the prosecutrix was between 17 and 18 years. He has further opined that the age can be on the lesser side, may be 16 years and this in turn would depend on the heredity, climate, race, diet, etc. At the same time, according to him the age could be higher by one year also, depending on the same factors. Finally, he states that it is wrong that Veena was above 18 years of age at the time of the examination which to me appears to be a contradiction in turn. When he says that the age could be less than one year he takes 17 years in consideration and by reducing it by one year states that her age could be 16 years despite his opinion .that the age is between 17 and 18 years on ossification test and similarly when he says it could be higher by one year he takes only figure 17 into consideration and after adding to it one year he makes it 18 which, in my view, is not correct and if it could be higher by one year the least that can be said is that on the date of the examination she could in no case be less than 18' years of age. The least that can be said is that the benefit of this testimony which is rather hesitant in respect of the accurate age can in no case go to the prosecution and when the doctor says that the age could be between 17 and 18 years if one year is either of the side to be reduced or added it must be added to 17 years and a half. In that view of the matter, I am of the view that there

has been an apparent error in the appreciation of the evidence and the prosecutrix, it appears, was not a minor on the date of the incident. The least that can be said is that the benefit of such a confused evidence in respect of age has to go to the accused and not to the prosecution.

(7) Now that being the situation in respect of the age of the prosecutrix the testimony tendered by the prosecutrix will have to be examined in that context. It is an admitted fact by the prosecutrix that she knew the accused much before the date of the incident. The prosecutrix states that on being contacted by the appellant she was told that he loved her and could provide her with good clothings, food and living and that he would take her to sight seeing places. She was further told that the appellant will be coming on the 16th of December 1983 and take her with him and according to her on the date of the incident when she left her house at 7 a.m. for going to school and thereafter the accused asked her to accompany him. It is in her testimony that thereafter they went to the bus stop, took the bus to Kashmere Gate and from there they took the bus to Pathankot and stayed there at the house of aunt of the accused. According to her, next morning they left for Dhanbad where they stayed for about 12 days, then they went to village Itti where they remained for 15 days and thereafter to Pathankot and ultimately to Chamba. According to her, the accused had told her that she should give her age as 18 years as he wanted to marry her. This in substance is the evidence tendered by the prosecutrix and the prosecution assuming that the prosecutrix was a minor relied on this evidence to bring home to the accused that he had kidnapped the prosecutrix with a view to subject her to illicit intercourse or compel her to marry the appellant against her will. At no stage has it been the prosecution case that the prosecutrix was subjected to illicit intercourse. The prosecutrix is silent about it. There is no evidence that there was any attempt made by the appellant at any stage during more than two months time to prevail upon the prosecutrix to marry him against her will. The subdued murmur of the prosecutrix that the appellant told her to give her age at 18 as he wanted to marry in the circumstances of this case is of no consequence. In my view, no other point arises for consideration in this appeal.

(8) After having come to the conclusion that the prosecutrix on the date of incident was a major the only evidence that could throw light on the fact that she was compelled to go with the appellant against her will would be her own testimony. Her testimony clearly goes to show that she went with accused and lived at different places with him of her own free will. It would be seen that she went with the accused from Delhi, a crowded city up to Kashmere Gate where she boarded a bus and while going from place to place she changed different buses at different times and even though she had the occasion to complain that she was being kidnapped she did nothing of the sort. This sufficiently strengthens my belief that it was because of her sufficient maturity and developed age that she had gone with the appellant. In my view, therefore, the conviction and sentence recorded against the appellant by the learned trial Judge is unsustainable. The appeal is allowed and the conviction and sentence recorded against the appellant is set aside. He shall be released forth with unless required in some other case.