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Mangat Ram Vs. the State

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Court : Delhi

Decided On : Jan-14-1986

Reported in : 30(1986)DLT23

Judge : G.R. Luthra, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 366

Appeal No. : Criminal Appeal No. 73 of 1985

Appellant : Mangat Ram

Respondent : The State

Advocate for Pet/Ap. : V.K. Ohri and; P.S. Sharma, Advs

Judgement :

G.R. Luthra, J.

(1) The present appeal is directed against a judgment dated December 22, 1984 of Shir Mahesh Chandra, Additional Sessions Judge, New Delhi convicting the appellant for commission of offences punishable under sections 366 and 376 Indian Penal Code and his order dated January 4, 1983 sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 200.00 in default of payment of which to undergo further rigorous imprisonment for six months for the offence punishable under section 366 Ipc and further sentencing

him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 200.00 in default of payment of which to undergo rigorous imprisonment for six months for the offence punishable under section 376 IPC. The sentences of imprisonment were directed to run concurrently.

(2) Miss Roshni Devi (Public Witness 1) is a daughter of Mattu Ram (Public Witness 3). She was living with her parents in house No. Rzc 14, Sagarpur West, New Delhi. The appellant Mangat Ram was residing in house No. RZC-16, Sagarpur West, New Delhi.

(3) The version of the prosecution briefly is as follows. On June 7, 1983 noon, Roshni Devi was going towards the house of her friend Raj Kumari living in the neighborhood. Mangat Ram appellant met her in the way near a temple. He gave some pershad of boondi to Roshni Devi which she took. On taking that pershad she felt giddy. In that state she was taken to a place near a drain on a bicycle. Thereafter she was taken in a car to place near Red Fort. It was only when she was near Red Fort that she regained her consciousness. Then the appellant threatened her that she would be killed unless. She did whatever was told to her. Under that threat she was taken to a temple where rituals of marriage were gone into. By that time it was night. She was taken to a lonely place in a park and subjected to sexual intercourse by the appellant. She wanted to resist but was threatened that if she did so, she would be killed. She was then taken back to the temple where they passed the night. In the morning she was taken to Janakpuri. Matu Ram (Public Witness 3) had gone on his duty. He came back at about 4 p.m. and found his daughter missing. He made a search. Some ladies in the neighborhood told him that they bad seen Roshni Devi with the appellant.

(4) Rattan Lal (Public Witness 2) is elder brother of Roshni Devi. He was working as warder in Central Jail, Tihar. He came back from his duty and found Roshni Devi missing. He searched for her. He learnt from Shakuntia residing in the neighborhood that Roshni Devi was seen going with the appellant. He then lodged a report with the police at about 2.00 a.m. on June 8.1983. That report was recorded by head constable Karan Singh Pw 10 who was then working as duty officer in the police station Cantt. A copy of the first information report was handed

over to Si Rameshwar Dayal (Public Witness 16) for investigation.

(5) Si Rameshwar Dayal left with constable Ramu in search of the appellant. At about 3 p.m. Babu Lal (Public Witness 4), who is also brother of Roshni Devi met Si Rameshwar Dayal. Babn Lal, Si Rameshwar Dayal and Constable Ramu were going together. When they reached near Janak Cinema at about 3 p.m. they saw both the appellant and Roshni Devi going together. On the pointing out of Babu Lal the appellant was arrested and Roshni Devi was recovered. At that time Roshni Devi was wearing a Salwar and Kameez. Both these clothes were taken into possession and converted into a sealed parcel. Later on those clothes were sent to the Central Forensic Science Laboratory for making a report if they had human semen on them.

(6) The plea of the appellant was one of total denial. The learned Additional Sessions Judge believed the prosecution version and found that Roshni Devi was less than 16 years of age on the date of occurrence and that the appellant bad kidnapped her and bad committed sexual intercourse with her. Accordingly the appellant was convicted and sentenced, as already mentioned.

(7) The matter of age of Roshni Devi on the date of occurrence is of great importance. The prosecution in this respect relies upon the statement of Roshni Devi (Public Witness 1). Rattan Lal (Public Witness 2), Matu Ram (Public Witness 3) and Babu Lal (PW 4). They all stated that the age of Roshni Devi at that time was 15 years. Matu Ram (Public Witness 3) is father while Public Witness 3 and Public Witness 4 are the brothers of Roshni Devi. Their statements find support from the opinion of Dr. Y. Singh, (PW 13) Radiologist, Safdarjung Hospital, New Delhi. He stated that on June Ii, 1983 Roshni Devi was referred to him for assessment of her age that, her X-rays were taken and that on the basis of the skiagrams, he prepared a report Ex. Public Witness 13/A. In his opinion, as mentioned in his report as well as statement on oath made by him, Roshni Devi was more than 13 years and less than 16 years of age on June Ii, 1983.

(8) Learned counsel for the appellant submitted that neither Roshni Devi nor her brothers and father could be relied upon and that the opinion of Dr. Y. Singh alone was not conclusive and that, thereforee, it did not stand proved that Roshni Devi

was below 16 years of age so as to make her taking away from the custody of the parents as 'kidnapping' and sexual intercourse even with her consent as rape.He particularly relied upon the following statement on cross-examination of Matu Ram (Public Witness 3) :

'AFTERRattan, Jagdish was born after 2 years thereof, and then a daughter named Omwati was born. All my children were born after an interval of two years. One daughter had died and I am now with eight children. It is incorrect that Roshni is above 18 years of age.'

(9) The learned counsel argued that that statement showed that Matu Ram was married about 45 years ago, that he had nine children, each born after a spacing of two years, that in that way all the nine children including Roshni were born within a period of 20 years and that in that way, the age of Roshni Devi, who is the youngest, worked out to 25 years.

(10) Matu Ram is an illiterate person. The gap of two years in between every child is only a rough estimate. There could be a bigger gap. Even according to the suggestions put in the cross-examination of that witness, Roshni Devi was above 18 years of age which meant that she was near about 18 years. The clearly indicates that the calculations based on the gap between two children of Matu Ram is obviously wrong. In fact the illiterate persons like Matu Ram have merely rough estimates and even the age of Roshni Devi as 15 years is also a rough estimate. Such estimate of Public Witness 3 and even of his sons Public Witness 2 and Public Witness 4 may not have been found safe for reliance but for the fact that they find support from the independent medical opinion expressed by Dr. Y. Singh (Public Witness 13). On the basis of these statements of the father and brothers of Roshni Devi coupled with the opinion of Dr. Y. Singh it was rightly held by the learned Additional Sessions Judge that Roshni Devi was below the age of 16 years on the date of the occurrence.

(11) The version of the prosecution that Roshni Devi was subjected to sexual intercourse finds support from the medical evidence and report of the Central Forensic Science Laboratory. Dr. Rajni Madan (Public Witness 15) of Safdarjung Hospital stated that on June 9, 1983 she medically examined Roshni Devi and

found that her hymen was torn and that there was bleeding from the hymen which had laceration. The presence of the aforesaid bleeding and laceration clearly indicates that Roshni Devi was subjected to sexual intercourse at a very small gap of time which confirms the prosecution version that sexual intercourse took place on the night between June 7 and 8, 1983. Dr. D.D. Ganguly (Public Witness 8) of the Safdarjung Hospital stated that on June '9, 1983 at 10.45 a.m. he medically examined Mangat Ram appellant and found that he was capable of performing sexual intercourse. That opinion makes it very probable that sexual intercourse could have been performed by the appellant.

(12) Salwar and Kurta of Roshni Devi, were taken into possession by Si Rameshwar Dayal (Public Witness 16) were sent to the Central Forensic Science Laboratory. The report of the said Laboratory is Ex. Public Witness 16/B and that shows that there was human semen on the Kurta which is described as ladies shirt in the report. Presence of human semen clearly indicates that there was sexual intercourse with her. The most important corroboration to the version of the prosecution is from the recovery of Roshni Devi. That recovery stands proved from the statement of Si Rameshwar Dayal (Public Witness 16), Constable Ramu (Public Witness 12) and Babu Lal (Public Witness 4). The recovery was when Roshni Devi and the appellant were going together and the appellant was arrested there and then.

(13) Roshni Devi also stated that she was recovered by the police on the pointing out of her brother Babu Lal. However, she gave a little different version. She stated that the appellant took her to Janakpuri, that he left her alone on the way and that then he went away to his aunt. Counsel for the appellant tried to make capital out of this statement of Roshni Devi and stated that her statement disclosed that the appellant did cot accompany her and that thereforee her recovery was not from the appellant. But to me it appears that the said different version is on account of some error of memory because the appellant was arrested on the same day which makes the statements of Babu Lal, Constable Ramu and Si Rameshwar Dayal more probable and near to troth and thus capable of being relied upon.

(14) Counsel for the appellant then submitted that the version of the prosecution that Roshni Devi was taken against her will by the appellant cannot be believed, that it was hardly probable that Roshni Devi could be taken under the effect of some drugs contained in pershad and that then she could be taken from place to place and that it was clear that Roshni Devi was a consenting party to accompany the appellant and had willingly sexual intercourse with her.

(15) Learned counsel urged that on account of that consent of Roshni Devi, there could neither be any offence of abduction nor kidnapping nor rape.

(16) Learned Additional Sessions Judge believed the entire prosecution version which meant that Roshni Devi was not consenting party to accompany the appellant as well as to the sexual intercourse I have not reason to differ from the conclusions of the learned Additional Sessions Judge. It could be that Roshni Devi was taken under spell of some drug mixed with pershad and thereafter she was made to accompany under threats of risk to her life. Had she accompanied the appellant of her own, it could not be expected that she should suddenly turn round against the appellant as soon as she was recovered. She was recovered in the evening of June 8, 1983. On the very next day i.e. June 9, 1983 she was produced before Shri Jaswant Singh, Metropolitan Magistrate and her statement under section 164 Cr.PC. was recorded. This is apparent from the statement of Shri Jaswant Singh (Public Witness 7). It is also very important to note that the appellant does not explain as to how and why Roshni Devi was a consenting party to accompany him and allow sexual intercourse with her. The plea of the appellant, as I have already stated, is of total denial, which means that Roshni Devi never accompanied him. He could have very well explained in his statement under section 313 Cr P.C. that Roshni Devi had some affair with him and that is why she of her own free will went and he had sexual in'ercourse with her.

(17) Even if we suppose against facts, for the sake of arguments, that Roshni Devi was a consenting party, the appellant is guilty of offences because she was a minor and had been kidnapped and even sexual intercourse by him with her consent was rape she was being less than 16 years of age,

(18) I, thereforee, do not find any force in the appeal as for as conviction of the appellant is concerned. However, having regard to the young age of the appellant, I reduce the sentence in respect of each count to four years. But the sentence of fine as already imposed shall remain. Each of the sentences of four years for the offences punishable under sections 366 and 376 Indian Penal Code shall shall run concurrently. That means that the appellant will have to undergo a total rigorous imprisonment for four years besides the sentences of fine and in default of payment of fine, rigorous imprisonment imposed by the learned trial court.

(19) Criminal Appeal No. 73 of 1985 stands disposed of.

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