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Court : Delhi

Decided On : Jan-22-1986

Reported in : 1986(2)Crimes417; 29(1986)DLT425; 1986(10)DRJ314

Judge : Charanjit Talwar, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 376

Appeal No. : Criminal Appeal No. 153 of 1985

Appellant : Kuli Ram

Respondent : State

Advocate for Pet/Ap. : Rajiv Chauhan, amices Curia

Judgement :

Charanjit Talwar, J.

(1) By this appeal the appellant is challenging his conviction under Section 376 of the Indian Penal Code. He is thus seeking to set aside the judgment passed on 20th April, 1985 and the order of the same date. sentencing him to undergo rigorous imprisonment for seven years. The incident, occurred at night of 12th May, 1984. The First Information Report was got recorded by the prosecutrix on the next day. The accused was also arrested on that date. The prosecutrix as well as the appellant were medically examined on that very day at Lok Nayak Jai

Prakash Narain Hospital. According to medico legal certificate Ex. Public Witness 8/A pertaining to the appellant, the appellant stated to the doctor at the time of his examination that he had a had sexual intercourse with a woman who had offered herself to him. This has been recorded in that document. The underwear which was worn by the appellant at the time of his examination was taken into possession. On analysis semen stains were found on it. Public Witness 8 Dr. Veer Singh who had examined the appellant on 13th May, 1984 at about 8 P.M. corroborated the fact that the appellant had informed him at the time of his examination that he had 'done intercourse with a female candidate, who herself offered'. The prosecution has established vide report Ex. Public Witness IO/E that the underwear worn by the appellant did contain human semen stains. It is, thereforee, established that the appellant did commit intercourse. At any rate this fact had been admitted by him before Dr. Veer Singh.

(2) The question which arises is whether the appellant had intercourse with the prosecutrix and, if so, whether it was with her consent. The prosecution has been able to establish that prosecutrix Krishna Devi was subjected to intercourse on 12th May, 1984 at about 11 p.m. This is clear from the report of the C.F.S L. in which it is stated that live spermatozoa was found in the vagina 'taken at the time of the medical examination. Her petticoat which had been taken into possession was also found to contain stains of human semen.

(3) The facts of the case. have been noticed in detail in the judgment of the learned trial court. It is not necessary to notice those all over again. The prosecutrix statement had categorically state that she had been threatened, on a point of' knife and 'it was because of fear that she did not raise any alarm when the appellant and his companions committed rape on her. The defense sought to create a doubt whether the appellant had two companions or three. Whether the companions were not arrested or could not be apprehended question which has become academic. I have to assess whether the findings of the learned Additional Sessions Judge that the appellant had committed .rape have to be sustained. During the course of arguments Mr. Rajiv Chauhan learned counsel for the appellant submitted that the prosecutrix appeared to be a woman of easy virtue and thus corroboration of her statement was necessary in law. He has drawn my

attention to the statement made by the appellant before the doctor in support of his plea that the prosecutrix was not a good character woman. As noticed by the trial court no suggestion was put to the prosecutrix that it was she who had offered herself to the appellant either on payment or that she was a 'street walker'. Infact the suggestion put to her was that she was not raped by the appellant herein. It was not suggested that the appellant had sexual intercourse with her with-her consent.

(4) The arguments that the Fir was recorded late is also of no avail. The prosecutrix had explained that as she lives all alone in a jhuggi she was afraid to go out at night, thereforee the report.was lodged:on the next day. It is apparent from the record that it was on her pointing out of the flat that the appellant was arrested from, there. Her testimony that she knew from before that the .appellant lived in that flat has not been question in crossexamination. I agree with the findings of the trial court that there is no reason to disbelieve the prosecutrix. The further criticism that it is unsafe to, rely on her testimony as the associates of the appellant bad not been arrested or tried also seems to be misconceived. It appears from the crossexamination of the Investigating Officer Public Witness 10 Asi B.R.Yadav that those persons were named but their addresses could not be found out. The Investigating Officer has stated 'I could not find out the address of Suresh and Bambia. I obtained police remand/of the accused for two days. Despite that the accused did not furnish the address of Suresh and Bambia tome'.. As the other associates could, not be found out those were not arrested. For,the decision of this appeal the fact that the other two associates were pot prosecuted has no. bearing.

(5) .I up hold the conviction of the appellant for the offence under Section 376 of the Indian Penal-Code. The occurrence is of 12th May, 1984 i.e. after the amendment of the Section 376 of the Code under which the minimum sentence.provided is seven years. The trial court has, thereforee, awarded him the minimum punisment. It appears that before the trial court it.was not. urged that there were some peculiar or special reasons to im pose a lesser sentence.Mr. Chauhan submits- that .as per the age given: by the appellant in his statement under Section 313 of the- Code of, Criminal p'roceoure he was 19 years of age.

The statement was made on 8thApril, 1985 i.e.after about 11 months of the date of incident. There is no suggestion on record by the prosecution that in fact the appellant was not of 18 years of age when the offence was committed. I agree with Mr. Chauhan that in a case of first offender his clean antecedents can also be considered to be special reason to impose sentence of imprisonment for a term less than seven years, keeping in view the young age of the appellant and also keeping in view the fact that he is not a previous convict, it is a fit case in which a lenient view ought to betaken. I, thereforee, reduce the sentence from seven years rigorous imprisonment imposed on the appellant to four years rigorous imprisonment. The appeal is accepted to this extent, The appellant be informed in jail.