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Om Parkash Vs. State

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Court : Delhi

Decided On : Feb-02-1987

Reported in : 1987(1)Crimes645; 31(1987)DLT327

Judge : Malik Sharief-ud-din, J.

Acts : Indian Penal code, 1860 - Sections 366

Appeal No. : Criminal Appeal No. 74 of 1986

Appellant : Om Parkash

Respondent : State

Advocate for Pet/Ap. : S.T. Singh, Adv

Judgement :

Malik Sharief-ud-din, J.

(1) Even though this appeal is on my board at No. 2, none appeared turn the appellant. In this situation Sodhi Teja Singh has been heard and he has very fairly taken me through the entire record.

(2) The appellant has been convicted under Sections 366,3761.P.C. He was sentenced to six months' rigorous imprisonment under Section 342 IPC. He was also sentenced to four years' rigorous imprisonment and to a fine of Rs 100.00 , in

default further rigorous imprisonment under Section 366 IPC. The appellant was also sentenced to rigorous imprisonment for seven years and a fine of Rs. 100.00 . in default three months' rigorous imprisonment under Section 376 IPC. The learned trial Judge however, directed that the substantive sentences shall run concurrently.

(3) The appellant was prosecuted on the following set of facts.

(4) The victim Kumari Lali, lived in EZ/100 J J. Colony, Sultanpuri with her parents and there was some marriage fixed in respect of the daughter of her paternal uncle namely Kumari Savitri for 5th of March 1984. The family had invited guests At about 8 P.M. on 4th of March, 1984 the prosecutrix Kumari Lali was asked to go to the house of her father's sister to fetch some bedding for the guests. She was, thereforee, on her way to EZ-323 Sultan Puri where her paternal aunt was residing. The appellant lives at a short distance from the house of the prosecutrix. While on her way she was forcibly dragged by the appellant into a small room of his house where she was subjected to rape by him. It is alleged that the appellant bolted the door from inside and when she wanted to raise alarm she was threatened and during the course of rape her mouth was gagged. As a result of the rape she bleaded.

(5) After rape she was thrown out of the room by the appellant, she returned and reported this incidence to Rewati Devi, her mother, who in turn informed about it to her husband Tara Chand and Jagdish Pershad. The matter was reported to police and the police picked up the blood Along with the chaddar from the cot of the appellant's room where the prosecutrix was raped.

(6) On consideration of the evidence of the prosecutrix corroborated by circumstantial piece of evidence, the Trial court felt that there was enough justification to rely on the testimony of the prosecutrix who according to the vidence recorded in the case was between 10 to 12 years of age at the time of the incident.

(7) During the course of investigation, the prosecutrix was examined by Dr. D. Bhattacharya, PW-8, Radiologist who also opined that the prosecutrix was 10 to

12 years of age Dr. J.K.Handa.PW-4 had examined the accused and had found him fit for indulging in sexual act.

(8) The stand of the accused at trial has been that he has been falsely implicated and the witnesses are inimical to him. At trial during the course of arguments, the only important contention that was raised was that being a child witness, the testimony of the prosecutrix has to be very carefully and cautiously examined and that it cannot be relied upon if not otherwise corroborated. I am of the view that the real position is that the testimony of a child witness cannot be simply rejected because she is a child. In the present case, particularly, considering her age and the manner in which she was examined by the trial court it cannot be said that she is not intelligent and did not understand the purport and importance of what she was staling. It is only a rule of prudence that the court in the circumstances of a particular case refuses to act on the testimony of a child witness, in that event the courts do ask for corroboration. The sound rule is, thereforee, that while appreciating the evidence of a child witness, the court has to deal with it cautiously and not that corroboration should be insisted upon in each and every case. Ultimately this in turn depends upon the judgment of the court.

(9) In the present case the prosecutrix Kumari Lali has fully supported the version she had tendered at the earliest stage which is to the effect that while she was proceeding to her paternal aunt's house the appellant dragged her into his room and raped her. There is nothing in her testimony to support the contention that she n not truthful or is inimical to the appellant. One of the arguments raised at trial was that according to the medical evidence there were no marks of violence on her body. This is a most irrelevant consideration for the simple reason that even if no resistance was offered by the prosecutrix, the appellant cannot escape the consequences for the simple reason that the prosecutrix was a minor at the time of commission of the offence. This argument was perhaps raised to indicate that she was a consenting party.

(10) Dr. Anita Nuteja, who had examined the prosecutrix had found that there was history of bleeding. She further found the blood marks present on her clothes and also found blood stained marks over ulva. She bad also found a tear on the

perineum which was bleeding on touch. Hymen was torn. In fact, the whole case rests on the testimony of the prosecutrix. If any corroboration is required. Reference may also be made to the testimony of Rewati Devi, PW-7, to whom immediately after the incidence the prosecutrix had reported the whole incidence. Jagdish Pershad. PW-2, Tara Chand, PW-3 and Rewati Devi, PW-7 have clearly deposed that there was a marriage in the family and to fetch bedding for guests the prosecutrix was asked to go to the house of her paternal aunt at the time of incidence. If that is not enough the other corroborative piece of evidence is the testimony of Dr. Anita Nuteja that prosecutrix was bickering from her private parts. That there were blood stains on the clothes she was wearing at the time of incidence is indicated by the report Ex. P-X, P-Y of C F.S.L. Dr. Anita PW-10 had found that there was a tear on the perineum which was bleeding on touch and the hymen was torn.

(11) There is otherwise also no reason to disbelieve the prosecutrix's testimony. There is no evidence to the effect that any of the prosecution witnesses including the prosecutrix bore any grudge to the appellant. There is no reason as to why the girl should level a rape charge against a stranger. particularly in the absence of any worthy set of facts or any motive to do so. in the present case the fact that she was bleeding and the fact that her hymen was torn is clear evidence of the penetration which is sufficient to constitute offence of rape. I am, thereforee, of the opinion that there is no possibility of any worthwhile argument being raised against the prosecution evidence or in defense of the appellant. I find that the trial court has given adequate reasons for placing its implicit faith and from my point of view rightly so on the testimony of the prosecutrix. The appeal as such is without any merit. It is dismissed. The conviction and the sentence passed by the trial court is confirmed.

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