

Narain Vs. State

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Court : Delhi

Decided On : Jan-12-1989

Reported in : 1989(2)Crimes686; 37(1989)DLT350

Judge : Santosh Duggal, J.

Acts : [Indian Penal code, 1860](#) - Sections 363 and 376

Appeal No. : Criminal Appeal No. 186 of 1987

Appellant : Narain

Respondent : State

Advocate for Pet/Ap. : Usha Kumari and; B.T. Singh, Advs

Judgement :

Santosh Duggal, J.

(1) The appellant has come up with the present appeal sent from jail against his' conviction and sentences under sections 363, 363 and 376 of the Indian Penal Code recorded vide judgment dated 4th May, 1987 passed by Shri V.S. Aggarwal, Addl. Sessions Judge, Delhi. By separate order recorded the same day, the accused was awarded sentence of R.I. for 10 years and fine of Rs 50.00 and R 1. for one month in default for the offence under section 376 IPC; sentence of R.I. for three years and fine of R.S. 50.00 and in default R.I. for one month for the offence

punishable under section 366 Indian Penal Code and sentence of R. 1. for three years and fine of Rs. 50.00 for the offence punishable under section 363 of the IPC: the imprisonment for default of payment of fine being here also one month. The substantive sentences have been ordered to run concurrently.

(2) The plea of the appellant is that he has been falsely implicated in the case and that the trial court erred in appreciating the discrepancies in the case and believing the prosecution evidence in toto.

(3) The appeal having been sent from jail, Mrs. Usha Kumar. Advocate was appointed amicus curiae for the appellant. On the appeal being taken up today for hearing, she has appeared and assisted the court. Mr. B.T. Singh, Advocate, is representing the respondent (State).

(4) The main contention of Mrs. Usha Kumar, arguing on behalf of the appellant, is that there were certain such discrepancies, in the case of the prosecution, which cast a doubt on the veracity of the statements made and that legal evidence also does not fully corroborate the prosecution case. She has pointed out that the raped girl is stated to have been about 5 years of age at the time of the incident and that whereas her parents deposed that they heard cries of their daughter, coming from a building, and on reaching there found that she was bleeding from her private part and the accused was standing there and when he tried to run, he was apprehended, the girl, when examined as Public Witness 3, had stated that she was left back near her house by the accused. Mrs. Kumar argued, therefore, that apart from the fact that this flies the statements of the parents, otherwise also, there can be no offence of kidnapping when the accused was allowed to have taken her away and brought her back and left her at the place from where she was taken away. She also pointed out to the record of medical examination of the appellant as accused and stated that although the prosecution case is that the accused was apprehended the same day and sent for medical examination, the next day, the doctor who examined him appearing as PW. 12 stated in cross-examination that the duration of the injuries must have been more than 48 hours. She pleaded that this takes away the basis of the prosecution case inasmuch as if the injuries on his person or private part were more than 48 hours old, then the

incident attributed to him as on 10th February, 1986, could not have place in the manner stated. She also pleaded that even if the conviction is maintained, it was a case, keeping in view the young age of the appellant, to reduce the sentence and make it to the minimum laid down by law, namely R. 1. for 7 years.

(5) Mr. B.T. Singh pointed out that the medical examination of the girl as deposed to by Dr. (Mrs.) Nisha Jain, PW11, duly establishes the allegation of rape of the girl and that there is complete medical corroboration to the statement of the prosecutrix as well as her parents. He further submitted that though it was necessary that the accused must have received injuries on the on private part but since there was one injury on the person of the accused, as observed was recorded by the doctor examining him. the so-called discrepancies occurring in the statement of the prosecutrix, as highlighted by the learned counsel for the appellant is not much significance considering the tender age of the girl and that her statement read as a whole, fully establishes the fact that it was the accused who had removed her to a deserted place when she was playing outside her house and raped her and was apprehended at the spot by her parents.

(6) I have gone through the evidence in the case and the judgment of the learned trial court. I find that the learned trial judge had ascertained the competence of the prosecutrix to make statement in court, though in view of her tender age, namely, she being below 7 years, she was not administered oath. She has given a full account of the incident right from the time she was picked up while playing outside her house and taken to a quarter and has categorically stated that while there, the appellant took off her underwear and raped her. She has also deposed that thereafter her parents came there. She denied the suggestion that she was naming the accused at the instance of her parents. Although she stated in reply to a question by defense counsel that the accused had left her outside her residence, but this type of discrepancy can be ignored on the facts and circumstances of this case keeping in view the tender age of the girl. Her statement read as a whole completely implicates the accused and the trial court has rightly believed her as also the corroborative evidence of her parents. It has also been observed by the learned trial court that the victim of the rape was a girl of 5 years of age and in the event of any suggestion that 'her parents had any motive in falsely implicating the

accused, then there was no reason that they would go to the extent of tutoring their daughter to name the accused falsely while the real culprit was saved.

(7) Mr. Singh has also rightly pointed out that the medical evidence in this case fully establishes that the girl was raped. She was in such a condition that her medical examination was conducted under anaesthesia. Injury No. 4, as found on the person of the accused, as recorded in MLC Ex. Public Witness 12/A, also lends corroborative evidence because there was an abrasion on the prepuce skin on dorsum about 5 cm long.

(8) The mere fact that the doctor when asked in cross examination stated that the duration of the injuries was more than 48 hours would not, as urged by Mrs. Kumar, be accepted as a factor which would falsify the entire prosecution case because it has to be observed that the duration of injuries has nowhere been recorded by the doctor in the certificate itself. He was deposing in the court after more than a year of the examination of the accused. It cannot even be imagined how he could on the basis of memory depose about this fact when while conducting examination of the injuries which were before him, he did not record this fact. Nothing, therefore, turns on this opinion given by the doctor in his cross-examination.

(9) On a totality of the facts and circumstances, as proved on record and fully corroborated by medical evidence I find it to be a case where the conviction has been rightly recorded both for the offences under section 376 as well as for the offences punishable under sections 363 and 366 IPC. The sentence of R.I. for ten years for the main offence as well as R.I. for three years each for the other two offences is also adequate in the circumstances of this case, which is that of rape of 5 years old girl. The fine is also very meagre amount in case of each count.

(10) I do not find any merit in the appeal and the judgment of the trial court is maintained both on the point of conviction as well as sentence.

(11) The appeal is accordingly dismissed. The appellant be informed of this order in jail.

