

Ram Bahadur Vs. State

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Court : Delhi

Decided On : Apr-09-1987

Reported in : 32(1987)DLT6

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Criminal Appeal No. 13 of 1987

Appellant : Ram Bahadur

Respondent : State

Advocate for Pet/Ap. : B.D. Batra, amices Curiae and; Bharati Anand, Adv

Judgement :

M.K. Chawla, J.

(1) Kumari Laxmi is aged about 11 or 12 years. On 28-4-1985 at about 12 Noon, while she was waiting at the bus stop of Janki Devi College for going to her house at Sardar Patel Marg, Dhaula Kuan Delhi the accused Ram Bahadur, as per the prosecution evidence, approached her and told her that the maternal uncle of Laxmi is unwell. Laxmi agreed to accompany him to inquire about the health of her uncle. The accused then took her in a three wheeler Scooter to the Railway

Station and made her sit in a train scheduled for going to Moradabad. On that very evening they reached Moradabad. On enquiry as to where is her maternal uncle, the accused is alleged to have threatened her to keep quite. It is the further case of the prosecution that on the morning of 30th April, 1985 Laxmi was taken to a bathroom at the Railway Station. The accused also followed her. In the bathroom, the accused asked Laxmi to undress herself. She felt nervous and raised alarm. She came running out of the bathroom. After covering some distance she met Vijay Raj, Mumtaz, Narain Singh and Jagdish, who were working as labourers at the Railway Station. These persons apprehended and secured the accused who was chasing Laxmi. Both of them were produced before the Moharrar at Police Station Moradabad. Statement of Mumtaz was recorded and case registered. As the accused and Laxmi had come from Delhi and the offence of kidnapping had taken place there, the case was transferred to Delhi, for further investigation. On 3.5.1985, Laxmi was brought to Chankaya Puri Police Station where her statement Ex. PW-3/A was recorded. The case was then referred to Police station RajinderNagar. There also her statement Ex. PW-2/DA was recorded.

(2) Laxmi was then produced before the Duty Magistrate and her statement under Section 164 Cr. P.C. was recorded. Laxmi did not complain of the accused having committed the sexual intercourse. She was not sent for medical examination. The accused was brought to Delhi in the month of July and was produced for identification parade on 10.7.1985. He refused to join the same. On the basis of the facts disclosed in the report under Section 173 Cr. P.C., a prima facie case under Sections 363, 366, 354, and 506 I.P.C. was found to have been made out. The charges were accordingly framed. The accused pleaded not guilty and claimed trial.

(3) The prosecution examined as many as 11 witnesses out of which the statement of the prosecutrix and her mother are important. The evidence of the remaining witnesses is of formal nature.

(4) In the statement under Section 313 Cr. P.C. the accused denied his involvement of kidnapping, intimidating or outraging the modesty of Laxmi. He even denied his arrest at the Railway Station Moradabad. He, however, did not

produce any evidence in defense.

(5) The learned Addl. Sessions Judge on consideration of the material on record came to the conclusion that the prosecution has not been able to bring any material to justify the conviction of the accused under Sections 366, 354 or 506 Indian Penal Code . He, however, held him guilty of the offence under Section 363 Indian Penal Code . and sentenced him to undergo rigorous imprisonment for a period of three years and a fine of Rs. 100.00 . In default of payment of fine to further undergo rigorous imprisonment for one month.

(6) This very order of conviction and sentence is under challenge in this appeal. The accused, it appears has all through been in judicial custody and has filed the present appeal from jail. Shri B.D. Batra, Advocate was appointed as amicus curiae to defend the accused and assist the court in arriving at a just conclusion.

(7) Shri B.D. Batra, in his usual forceful manner has argued the case and has pointed out certain discrepancies between the statements of the prosecutrix, recorded at Moradabad, at police station Chankaya Puri, at Police Station Rajinder Nagar, her statement under Section 164 Cr.P.C. and the evidence before the trial court. The learned counsel succeeded in pointing out that Laxmi accompanied the accused voluntarily to Moradabad inasmuch as there was no valid Explanation from the side of the prosecution, as to what happened between the evening of 28th April, when the accused and Laxmi reached Moradabad, till the time of their arrest at 11.30A.M. on 30.4.1985. His submission is that Laxmi, at the time of alleged kidnapping was more than 18 years old. So no case u/s 363 can be said to have been made out against the accused/appellant.

(8) On the question of age, unfortunately neither Km. Laxmi nor her mother Sushila have been cross-examined. According to Sushila, Laxmi was about 11 or 12 years old on the day of her kidnapping while Laxmi gave her age as 13 years. The prosecution got confirmation of this fact from the Admission Register of N.D.M.C. Girls Middle School, where the birth of Laxmi is recorded as 14.5.1972. As there was no serious challenge to the age of the prosecutrix, she was not got medically examined. Even if we give the margin of one year or two years either side to the school certificate, Laxmi must be held to be minor on the date she was

made to accompany the accused.

(9) The statement of Laxmi by itself is a sufficient circumstance to bring home the charge against the accused. She has given in minute details the circumstances under which she was misled and brought to Moradabad by the accused and kept there for more than two days. In spite of the lengthy cross-examination, the learned counsel for the appellant was not able to point out any discrepancy or a circumstance to belie her version. Her statement has been believed to be true by the court and I have no hesitation to agree with this conclusion.

(10) On the question of sentence the learned counsel for the accused submitted that since from the date of the arrest on 30.4.85 the accused is in judicial custody and by this time he has served near about two years of sentence. If the period of remissions is also counted, then probably he must have or is going to complete the remaining part of his sentence. Further more, the accused is a very poor person who was making his livelihood by sale of his blood. The accused on that score, according to the learned counsel, deserves sympathy and leniency.

(11) There is much substance in the submissions of the learned counsel for the appellant. The accused is a young man of about 25 years. It appears that he was not aware of the serious consequences of his foolish act. Since then the accused is lying low. He is feeling repentant. Keeping in view the period of sentence he has already suffered, the ends of justice to my mind, will be fully met if the sentence is reduced to the one already undergone. Ordered accordingly. The accused be released forthwith, if not wanted in any other case.