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Devraj Vs. State

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Court : Delhi

Decided On : Jul-15-1987

Reported in : 1987(3)Crimes305; 1988(14)DRJ24

Judge : Malik Sharief-ud-Din, J.

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

Appeal No. : Criminal Appeal No. 115 of 1988

Appellant : Devraj

Respondent : State

Advocate for Pet/Ap. : Meera Bhatia and; R.P. Lao, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) By an order dated [29th March 1986, the appellant was convicted into Section 376 Indian Penal Code and was sentenced to undergo rigorous imprisonment for ten years and to the payment of fine of Rs. 500, in default of payment of which a further rigorous imprisonment of six months was imposed.

(2) Briefly stating the facts are that the victim Kumari Nisha Madan, who was studying in the nursery class of Gauri Public School, Gita Colony, Delhi, was raped

on January 21,1985 by the appellant, a Rickshaw Puller who bad been engaged by the said school to lift the children to and back from the school, after school hourS. At about 11.30 A.M. on the date of incident the victim Kumari Nisha Madan who on the date of incident was about 3 years of age, went down the stairs to take water after seeking permission from her teachers in the class-room. On her return, she was found weeping and complained of pain in the abdomin. Having found her in utter distress, her teachers reported the matter to head-mistress and thereafter she was sent with the appellant Dev Raj in his Rickshaw who was asked to deliver her to her parents. The appellant is supposed to have taken her to her house and after dropping her on the road side he is slated to have returned. Thereafter, the mother of the victim finding the child profusely bleeding from her private part took the victim to a family doctor. I he parents were ultimately advised that since the child was in danger of death she should be immediately removed to J.P.N. Hospital. Prior to this, the mother of the child had visited the school where she was not given any satisfactory details in respect of the fact as to how the child had sustained injury. She was given proper treatment at the J.P.N. Hospital where she had been admitted, and was examined by Dr. Usha Chikara Public Witness 11. Dr. Usha Chikara found a perinea tear mid line bleeding profusely. She was examined under anaesthesia and she noticed. a verticle mid line tear as well as multiple laceration in the vagina high up. The doctor on the basis of these injuries got impression that these were caused by sexual intercourse. The child was further found in deep distress and restlessness. On the following day, Kumari Nisha, after she regained consciousness, informed her mother Saroj Madan Public Witness 2 that she was beaten on the private part by the appellant, meaning thereby that she was sexually assaulted by the appellant resulting in profuse bleeding.

(3) During the course of investigation, the investigating officer seized the under-wear and the pant of the victim as also the under-wear of the appellant which were of blood stains. These were sent to the laboratory for Chemical analysis and the report of the Forensic Expert is that the blood on all the three Exhibits is of human origin. It was further opined that whereas the blood group on the under-wear of the appellant could not be determined the blood group on the clothes of the victim was found that of 'B' group.

(4) Before I proceed further in the matter, a reference may be made to some of the undisputed facts. On the date of incident the victim had gone to the school on the Rickshaw of the appellant. From all that goes before me it is amply clear that the rape was committed while she was in school. That she was brought back at the instance of the head-mistress and her teachers to be delivered to her mother at her house is also not in dispute- it is not controverter that she had complained of pain to the teachers and there is clear evidence to the effect that she was found profusely bleeding when she was dropped by the appellant outside her house. That she had sustained injuries in her vagina, as noticed by Public Witness I I Dr. Usha, due to sexual intercourse is clearly established by the testimony of Public Witness I I Dr. Usha Chikara. It is not, thereforee, necessary for me to overburden this judgment by making: a reference to the testimony of witnesses who have testified in respect of facts which are not disputed.

(5) The fact that Kumari Nisha, victim in the present case, was raped in my view is sufficiently established by Public Witness 11 Dr. Usha Chikara and the only-question that requires determination is as to whether there is sufficient. evidence to connect the appellant with the commission of this crime.

(6) The stand of the appellant is that he is innocent. The learned trial judge has not examined Kumari Nisha as he came to the conclusion that the victim was of such a tender age that she was not able to understand the questions properly. It is to be borne in mind that at the time of commission of the alleged offence Nisha was hardly 3' years of age. It is a common experience that a child of 3' years is not capable to understand or even answer the questions. For good and valid reasons, thereforee, her testimony could not be recorded. Under these circumstances the court is left with the only testimony of Public Witness 2 Smt. Saroj Madan, the mother of the victim who has. testified on oath that on the next day of the incident when her daughter Kumari Nisha regained her composure she told her about the appellant having sexually assaulted her. There is no earthly reason for Public Witness 2 Saroj Madan to falsely implicate the appellant. She would be, perhaps, the last person to screen the real culprit and to involve any innocent person. There is no reason for the victim also, who being of tender age does not understand the implication of what she says, to point out towards the appellant as the person who

had assaulted her. The testimony of Saroj Madan, mother of the victim, thereforee inspires confidence and is worth all the credit from all standards of evaluation and assessment. That the appellant is involved in the commission of this crime is further established by the fact that human blood was detected immediately after the incident on the underwear of the appellant, How and wherefrom this blood had come is not explained by the appellant. Unfortunately, the blood group from the blood stains on the underwear of the appellant could not be determined but that is not of much consequence. If the blood group of the underwear of the appellant were found to be the same as that of the victim then it would have been the end of the road for the appellant and there could be no need for any smart discussion in respect of such clinching evidence. In the circumstances of this case, I am of the view that no other evidence could possibly be available.

(7) Miss Meera Bhatia representing the appellant as amices curiae urged that the time and place of the incident are not mentioned and that Public Witness 11 has not opined about the rape having been committed with the child. In my view, in the background of peculiar facts of this case, not much importance can be attached to these objections. From all the evidence it is clear that the incident took place while the child was in the school and she complained of pain to the teachers. It cannot be that she. only started bleeding after she reached home. It is obviously the effort of the teachers to somehow save the school's and their own reputation. Much is sought to be made out from the testimony of Public Witness I I that from the injuries found on the person of the victim she got an impression that the injury in question was due to sexual intercourse. If one looks at her testimony without attaching much importance to the words used, it is clear that she has given a firm opinion that the victim has been raped. Under the circumstances of this case, thereforee, I find that the Id. trial judge was justified in arriving at the conclusion that the appellant is connected with the commission of this crime. There is sufficient, valid and credible evidence leading to the irresistible conclusion of the involvement of the appellant in the commission of this crime.

(8) The appeal is without merit and is dismissed.

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