

Chander Nath Vs. State

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Court : Delhi

Decided On : Aug-21-1987

Reported in : 33(1987)DLT245

Judge : Malik Sharief-Ud-Din, J.

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

Appeal No. : Criminal Appeal No. 78 of 1986

Appellant : Chander Nath

Respondent : State

Advocate for Pet/Ap. : N.L. Kakkar and ; S.T. Singh, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) The appellant was charged, convicted and sentenced to various terms of imprisonment under sections 363 Ipc, 366 Ipc and 376 IPC. All the sentences were made to run concurrently. The sentence of imprisonment passed under section 363 is 2 years, the sentence passed under section 366 Indian Penal Code is 3 years and the sentence passed under section 376 Indian Penal Code is 10 years. The appellant was also sentenced to pay a fine of Rs. 5000.00 under section 376 Indian Penal Code in default of payment of which he was required to

undergo further R.I. for two years.

(2) The allegation against the appellant is that he kidnapped the victim Kumari Geeta, daughter of Vir Bahadur (Public Witness 10) on 11th June 1984 in village Kotia, Police Station Kalyanpuri, without the consent of the guardian and that this kidnapping was do

(3) The facts are that the appellant, who was also working as Chowkidar in the area, was having intimate relations with the family of Geeta victim and in this connection he used to visit the house of Vir Bahadur Public Witness 10. On the date of incident he is alleged to have come to the house of the complainant a lifted Geeta while she was playing in the street. He is then alleged to have taken her to some deserted place where he raped her and then escaped. Before the girl returned home after being raped she was picked up by the father who had gone in search of her and had failed to locate the appellant at his home. He had been earlier told by his wife Public Witness 2, Jasumati, that Geeta had been taken away by the appellant. The prosecution case further is that at the time Geeta was lifted by the appellant no objection was raised by her mother as they were intimate with the appellant and Geeta used to go to their house for playing with the children of the appellant.

(4) The matter was reported to the police and the appellant was arrested. During the course of investigation the police took into possession one shirt of the girl and a pant and a kachha of the appellant. The girl was sent to the hospital for medicalexamination and she was examined by one Dr. Rajiv Rangras Public Witness 5 on 12th June 1984. The seized clothes were also sent to Cfsi for examination.

(5) The entire prosecution case rests on the testimony of prosecutrix Geeta Public Witness 1, Jasumati PW2, mother of the victim. Dr. Rajiv Rangras PW5 and the report of Forensic Science Laboratory. The Pant and Kachha of the appellant and the shirt of the victim were subjected to forensic tests and it was discovered that all the three clothes, two belonging to the appellant and one to the victim, were carrying human semen and also human blood of A3 Group was traced thereon. This piece of evidence is the most clinching evidence in the light of the unqualified

support given to the prosecution case by the victim Geeta who has in clear terms stated that she was taken by the appellant to a jungle where she was subjected to rape as a result of which she sustained injuries on the body and also bleeder from her private part. PW2 Jasumati, her mother, has also deposed that on the day of incident the victim Geeta was taken away by the appellant and when she did not return she became apprehensive and sent her husband in search of her daughter who on finding her noticed her battered condition. Together with this evidence the prosecution case also gets support by PW5 Dr. Rajiv Rangras who had examined Geeta on 12th June 1984. In his opinion, he found the child with battered appearance and also noticed numerous abrasions on both legs, posterior aspect of gluteal region and sacral area and face. He also noticed an abrasion on the neck transversely placed. Upper lip of the victim was found bruised and oedematous. PW5 further found the hymen of Geeta torn, vagina was easily admitting one finger and was tender to touch. He also took vaginal smear for detection of spermatozoa. It would be noticed, therefore, that the testimony of Public Witness 1 victim Geeta is absolutely consistent with the evidence tendered by Dr. Rajiv Rangras and also with the report of CfsI and therefore there is absolutely no earthly reason for this court to disbelieve the testimony of the victim on the barren plea of the appellant that he was implicated due to enmity with the father of the girl. Dr. B.N. Reddy of the Forensic Science department had also found the presence of spermatozoa on the examination of the vaginal smear of the girl. All these facts clearly go to indicate that Geeta was subjected to rape and this was done by the appellant. The evidence against the appellant is clinching and there can be no doubt that the appellant alone is involved in the commission of this crime.

(6) The stand of the appellant that he was implicated in this case due to the enmity with the father of the victim is absolutely baseless. That the girl was kidnapped by the appellant has been sufficiently established by the evidence of victim as well as her mother PW2 that she was thereafter taken to jungle where she was raped. This fact also finds support by the medical evidence of PW5 as also the report of the CFSI. The appellant has not denied that his pant and Kachha were seized and there is no Explanation as to wherefrom he got the human blood of Ab Group and human semen on those clothes, it has been noticed that semen and human blood

of Ab Group were also found on the shirt of the girl.

(7) It was possibly under these circumstances that Mr. Kakkar could not assail the conviction and sentence on merit. He has, however, urged that the appellant has been in jail for the last so many years and has a number of children to look after and, therefore, the sentence of imprisonment passed against the appellant may be reduced to the least sentence provided under section 376 IPC. Here again, I may at once observe that this is not a case for reduction of sentence. The reason is that the victim on the date of incident was between 7-8 years of age. This fact has been sufficiently established by Dr. Ravi Kapoor Public Witness 12, Radiologist as also PW2 and Public Witness 10, mother and father respectively of the girl. On the date of incident the appellant was about 40 years old. The act of commission is so heinous and shocking that it can shake anybody's conscience. The worst part of it is the betrayal of confidence which the victim and the parents of the victim had in the appellant, It was due to that confidence that the child did not resist going with the appellant. In these circumstances where a child of seven years is subjected to rape by an elderly man like appellant after making due preparation and after betraying her confidence, there is no scope for urging that the sentence be reduced.

(8) Mr. Kakkar next contends that the sentence of fine imposed upon the appellant may at least be reduced. I am of the view that this is not a case where one can take a lenient view. There is no merit in the contentions raised for reduction of the sentence.

(9) The appeal is, therefore, dismissed. The sentences imposed are confirmed.