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Mehmood Alias Mudia Vs. State

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Court : Delhi

Decided On : Mar-09-1998

Reported in : 1998IIIAD(Delhi)464; 1998CriLJ2408; 1999(1)Crimes460; 75(1998)DLT77; 1998(45)DRJ280

Judge : Dalveer Bhandari, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 366 and 376

Appeal No. : Criminal Appeal No. 165/77

Appellant : Mehmood Alias Mudia

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Rajiv Awasthi, amices Curia

Judgement :
ORDER

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and order of this learned Additional Sessions Judge dated 16.4.1977. The accused/appellant faced the trial under Sections 366 and 376 I.P.C. The learned Additional Sessions Judge acquitted the

appellant of the charge under section 376 IPC but convicted and sentenced him to undergo rigorous imprisonment for two years under section 366 and imposed a fine of Rs.200.

Brief facts necessary to dispose of this appeal are recapitulated as under:-

2. According to the prosecution, in the morning of 12th March, 1975, Tara and Bappo, two minor daughters of Babu Khan went to deliver lunch tiffin to their uncle Munnan at Jama Masjid. While returning, they hired one tonga of one Dhunnia. The appellant was also already sitting in that tonga. The tonga driver took tonga to Shahdara on the instructions of the appellant and both these girls were kept by the appellant there on that night at Shahdara. Next day the younger daughter Bappo was permitted to go to her residence. After arriving at her residence Bappo, she narrated the entire incident to her parents. Consequently, a report was lodged by Babu Khan on 16.3.1975.

3. The prosecution has examined 16 witnesses to support its case. The prosecutrix (PW-9) Tara has been examined, in which she has categorically stated that she had known the accused for some time and she had been talking to him. The accused had taken both the sisters to Shahdara. Bappo was permitted to return but he took the prosecutrix to Meerut, where a house was taken on rent and the accused and the prosecutrix stayed there for about 8 days. She categorically mentioned that the accused had not committed any sexual intercourse with her. A specific question was put to her whether the appellant went to meet her near Jama Masjid? In reply to that question, she stated that he used to meet her for 2-3 months prior to the incident.

4. Abdul Aziz PW-8 had stated that the accused/appellant used to live with him in his house. He had further stated that 1/3-4 years ago, two girls had come with the appellant and one of them came on that day. The appellant had said to Abdul Aziz that he was going to get married with the prosecutrix Tara. He had also stated that the father of the prosecutrix had told him that he was about to perform NikE of this girl with the appellant.

5. The learned amices curiae submitted that the learned Additional Sessions Judge has seriously erred in convicting the appellant under section 366 IPC particularly when he had acquitted the appellant under section 376 IPC. He further submitted that the conviction under section 366, IPC is not maintainable on the strength of the evidence led by the prosecution. He had invited my attention to the statement of PW-9 prosecutrix. According to her statement, it appeared that she had known the accused for a long time because they lived in the same neighborhood and she used to meet the accused for the last two to three months prior to this incident. This fact is also corroborated by the testimony of PW-8 Abdul Aziz. The appellant used to stay with Abdul Aziz and in his statement, he had mentioned that these two girls came to the house of the appellant about one year and nine months ago. Abdul Aziz in his statement had mentioned that the father of the prosecutrix had told him that he was about to perform her nikah with the appellant.

6. The testimony of prosecutrix PW-9 finds corroboration from the testimony of Abdul Aziz PW-8. From the statement of PW-8, it is abundantly clear that the prosecutrix had not only known the accused quite well but there was a talk of Nikah between the prosecutrix and the appellant was in progress.

7. Learned amices curiae submitted that there are serious information in the prosecution version and in view of the evidence of PW-9, and PW-8, no conviction can be sustained under section 366 IPC. Learned amices curiae also submitted that there has been no recovery of knife in this case.

8. I have heard learned amices curiae and learned counsel for the State. On the facts and circumstances of this case, when the learned Additional Sessions Judge had acquitted the appellant under section 376 IPC, then, he was not justified in convicting the appellant under section 366 IPC. From the statement of prosecutrix PW-9, and PW-8, Abdul Aziz, it is abundantly clear that the appellant had known the prosecutrix and her family members very well for quite sometime. The father of the prosecutrix was also thinking of performing Nikah (marriage) of the prosecutrix with the appellant. The prosecutrix herself has categorically denied any suggestion of sexual intercourse with the appellant while she was with the appellant for about

8 days in Meerut. She also did not utter a single word about her kidnapping by the accused to anyone during the period of 8 days when she was with the appellant at Meerut. It is abundantly clear that the prosecutrix had known the accused who was her neighbour for quite sometime. She had gone to Meerut and other places voluntarily.

9. On scrutiny of totality of the facts and the circumstances of this case, the conviction of the appellant under section 366 IPC cannot be sustained. Consequently, the judgment and order of the learned Additional Sessions judge dated 16.4.1977 is set aside. The appeal is allowed. The appellant has already been released on bail by this court. The bail bonds are cancelled. Fine, if paid by; the appellant shall be refunded. The appeal is accordingly disposed of. I would like to record the able assist-ance rendered by the learned amices curiae Mr. Rajiv Awasthi in this case.

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