

Kartar Singh Vs. State

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Court : Delhi

Decided On : Jan-19-1993

Reported in : 1993CriLJ2483; 1993(2)Crimes569; 49(1993)DLT458; 1993(25)DRJ246

Judge : R.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 377

Appeal No. : Criminal Revision Appeal No. 89 of 1992

Appellant : Kartar Singh

Respondent : State

Advocate for Pet/Ap. : R.K. Taneja and; R.D. Jolly, Advs

Judgement :

R.L. Gupta, J.

(1) This revision petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure (Code for short) has been filed for quashing charges against the petitioner under Sections 377 and 376 read with Section 511 of IPC.

(2) The story of the prosecution is that on 11.10.91, Anuradha aged about 8 years studying in third standard and Divya alias Gullu aged about 6 years were called by

the petitioner Kartar Singh to his quarter No.110/22, Railway colony, Kishan ganj, Delhi. Anuradha is the daughter of Hans Raj who resides in H.No. 110/14 Railway colony. Thus both the petitioner and, Hans Raj are neighbours. The petitioner asked Anuradha to bring a match box from her house and when these two small girls came in his house, the petitioner made Anuradha sit on his right thigh and Divya on left thigh and started kissing them. He put his penis in the mouth of Anuradha and discharged semen in her mouth. On that account she vomited. The petitioner then urinated in the mouth of Divya. Anuradha further told the police that the petitioner had also outraged their modesty by putting his fingers and also by attempting to penetrate his penis in their private parts. On raising hue and cry, they were allowed to go by the petitioner with a threat not to tell this thing to their parents. Anuradha also told the police that the petitioner had also bitten on her left cheek. On the basis of the aforesaid statement of Anuradha, the police registered the case. Investigation was conducted by Si Amar Deep Sehgal. After completion of necessary investigation the challan was filed.

(3) Learned counsel for the petitioner contended that actually no case under Sections 377 or 376 read with Section 511 Indian Penal Code was made out against the petitioner and at the most an offence under Section 354 Indian Penal Code was made out and petitioner could be charged only under that Section. He has drawn my attention to some Authorities. The First case is that of State of Punjab Vs. Major Singh : 1967 CriLJ1 . That was a case wherein the accused was alleged to have outraged the modesty of a female child of only 7-1/2 months by causing injuries to her private parts by fingering. Accused was challenged and tried under Section 354 Indian Penal Code only and there was no occasion for the court to discuss whether the case under Sections 377 and 376 read with Section 511 Indian Penal Code was made out or not because either penetration and attempt to penetrate were not involved in that case. In these circumstances, I am of the view that this authority is not at all applicable to the facts of the present case. The second case is of Moh. Mian Vs . State : 37(1989)DLT35 . In that case the prosecution had alleged that a female child aged about 2-1/2 years only was raped. The case was that her parents had seen the appellant committing rape. But both of them turned hostile and did not support the case of rape on the person of their daughter. They came out with a story that when they came out for searching

their daughter, they found her bleeding from her private parts and the appellant was seen ;by them standing on the stairs. In these circumstances this court came to the conclusion that the mere fact that hymen of the girl stood torn by itself would not be a sufficient and conclusive circumstance to show that the appellant had committed sexual intercourse with the girl. The third case is State Vs . Tej Ram : 36(1988)DLT280 . In that case a person was charged for kidnapping, wrongfully confining and then raping a minor girl of 12 years. The Fir was found to be belated, medical evidence was discrepant as to time of rape. Old enmity and no semen or blood on the genital or clothes of accused were found. Thus he was acquitted on the basis of the aforesaid circumstances.

(4) To my mind none of the authorities cite at the bar on behalf of the petitioner apply to the facts of the present case. So far as the charge under Section 377 Ipc is concerned, it consists in a carnal intercourse committed against the order of nature or in an un-natural manner by one with another person. The act of the petitioner of inserting his penis into the mouth of these two tender girls prima facie is brutish, beastly, barbarous, defrayed and lustful. Learned counsel for the petitioner also contended that after the petitioner is alleged to have discharged semen in the mouth of Anuradha, he could not have been capable of committing any type of intercourse with the other girl and, thereforee, qua the other girl i.e.Divya alias Gullu no offence can be said to be made out. It is difficult to agree with this contention also because the second act attributed to the petitioner is also of the same nature as the one allegedly committed by him with Anuradha. He is alleged to have discharged urine in her mouth, which act, if true, is equally carnal. The statement of Anuradha prima facie seems to inculcate the petitioner with an offence under sections 376 read with 511-IPC because he made an attempt to penetrate his penis into the private parts of these two girls after fingering them.

(5) I thereforee, do not find any merit in this revision and the same is hereby dismissed. However, any observations made while disposing of this petition may not prejudice the mind of the trial court in coming to its own independent conclusion.