

Ramaswamy Vs. State

Ramaswamy Vs. State

SooperKanoon Citation : sooperkanoon.com/692601

Court : Delhi

Decided On : Mar-22-1993

Reported in : 1993(26)DRJ1

Judge : Sat Pal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; [Indian Penal code, 1860](#) - Sections 376

Appellant : Ramaswamy

Respondent : State

Advocate for Pet/Ap. : J.L. Kalra and; Raman Sawhney, Advs

Judgement :

Sat Pal, J.

(1) This is a petition for release of the petitioner on bail under section 439 of the Criminal Procedure Code (hereinafter referred to as 'the Code'). The prosecutrix, who is 11 years old and is a student of six class in her statement has alleged that at about 11.15 a.m. on 16th November, 1992, the petitioner came to her house when she was all alone and closed the outer door and thereafter he caught hold of her and tried to open the nala of salwar. She has further stated that when she tried to make hue and cry, the petitioner shut her mouth with his hand and at that moment

her aunt Mrs. Paramjit Kaur, who is a resident of Raghbir Nagar Extension, New Delhi happened to come to their house and the petitioner ran away.

(2) Mr. Kalra, the learned counsel appearing on behalf of the petitioner, has submitted that as per the allegations made by the prosecutrix, no case is made out under section 376 read with Section 511 of the Code. In this connection he drew my attention to section 375 wherein rape has been defined. He submitted that since there was no penetration in the present case, the petitioner cannot be alleged to have committed rape. He further submitted that according to the statement of the prosecutrix she did not receive any injury. He also submitted that this was not a case of attempt to rape inasmuch as there was no attempt for sexual intercourse as in terms of the allegations, the petitioner is alleged to have opened the nala of salwar of the prosecutrix. He contended that, if at all, it could be a case under section 354 Indian Penal Code but not under section 376/511 Indian Penal Code. In support of his contention learned counsel placed reliance on a judgment of Punjab and Haryana High Court in Rameshwar vs State of Haryana 1984, CrI.L.J. 786 and a judgment of Rajasthan High Court in Madan Lal vs State of Rajasthan, 1987 CrI.L.J. 257.

(3) Mr. Sawhney, the learned counsel for the State, however, submitted that the prosecutrix was of tender age and the petitioner had closed the door and thereafter opened nala of salwar of the prosecutrix which clearly shows that the petitioner had started the process to commit rape.

(4) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In this connection it will be relevant to refer to section 511 IPC. In terms of section 511 Indian Penal Code whoever attempts to commit an offence punishable by this Code and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment provided for that offence or with such fine as is provided for the offence, or with both. The point for consideration is as to whether the action of the petitioner amounts to an attempt to commit rape. I would not like to express my

opinion on the merits of the case while deciding this petition but in view of the fact that the petitioner is alleged to have opened the nala of the salwar of the prosecutrix after closing the door and also in view of the fact that the prosecutrix is only 11 years old, I am of the opinion that it is not a fit case for grant of bail at this stage. Accordingly, the petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com