

Man Singh Vs. State

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Court : Delhi

Decided On : Apr-28-1992

Reported in : 48(1992)DLT13; 1992(23)DRJ80

Judge : Delveer Bhandari, J.

Acts : [Indian Penal code, 1860](#) - Sections 366

Appeal No. : Criminal Appeal No. 66 of 1990

Appellant : Man Singh

Respondent : State

Advocate for Pet/Ap. : S.K. Agarwal,; J. Sethi and; R.N. Kapur, Advs

Judgement :

Dalveer Bhandari, J.

(1) This appeal is directed against the Judgment and Order dated 24th April, 1992 passed by Shri Mohd. Shamirn, the then Additional Sessions Judge, New Delhi, convicting the appellant under Section 366 and 376, of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 3 years and a fine of Rs. 1000.00 , in default, further rigorous imprisonment for one year under Section 366 of the Indian Penal code, and also rigorous imprisonment for 7 years under Section 376 and a Fine of Rs. 3000.00 . In default, further simple imprisonment for

18 months. The learned Judge ordered that all the sentences would run concurrently.

(2) The brief facts necessary to dispose of this appeal run thus. One Ratti Ram came to Police Post Madangir on 3rd May, 1985 at 8.45 p.m. and presented an application, mentioning therein that his daughter Kusum 15 years of age had been kidnapped by Man Singh, the appellant and one Irshad. The said application was sent to Police Station Kalkaji for registration of case under Section 363 Indian Penal Code on the basis of formal FIR. A case under Section 363 I Pc was registered against the appellant and Ajit Singh, Sub Inspector was handed over the work of investigation of this case. The prosecutrix was recovered from the possession of the appellant on 5th May, 1985. Both the appellant and the prosecutrix were medically examined. The prosecutrix was also put to ossification test. Clothes of the prosecutrix and the appellant were seized and were sent to C.F.S.L. for Chemical analysis.

(3) The appellant pleaded not guilty and claimed trial. According to the statement of the appellant, he has been falsely implicated in this case on account of the enmity at the instance of the brother of the prosecutrix. The appellant demanded the said amount from the brother of the prosecutrix namely Shri Chander Prakash, a number of time whereupon he became annoyed and got the accused/appellant falsely implicated in the present case.

(4) The prosecution has examined 9 witnesses to support its case. According to the prosecution, Kusum Lata, prosecutrix was a minor girl of 14 to 15 years. On 2.5.85 at 8 a.m. the appellant with the intent that she be secluded to illicit intercourse thereafter committed rape on her during the period from 2.5.85 to 3.5.85 at Nizamuddin Railway Station. According to the school leaving certificate, the date of birth of the prosecutrix was 1.1.1971. The school leaving certificate also gets corroboration from the ossification test, according to which, she was in between 14.5 to 15.8 years of age. The prosecutrix has categorically stated in her statement that she was raped by the appellant. The doctor's report has stated that her hymen was not intact and she was 12 to 14 weeks' pregnant at the time of her medical examination. The report of the doctor corroborated the statement of the

prosecutrix. The learned Additional Sessions Judge has correctly come to the conclusion, after carefully examining the entire evidence on record that an offence under Section 376 was committed by the appellant. The evidence finds corroboration with the ossification test and medical report. The consent of the prosecutrix is totally irrelevant because she was minor at the time of commission of the offence.

(5) Shri Aggarwal, learned counsel for the appellant has submitted that according to the charge in the night between 2nd and 3rd of May, 1985, the appellant had raped the prosecutrix in the railway compartment whereas according to the testimony of the prosecutrix, she was raped on the 1st and 2nd night and was also raped on 3rd night. According to the submission of Shri Aggarwal, there is discrepancy in the testimony of the prosecutrix with the charge. Secondly, in the charge, it is mentioned that the prosecutrix was raped in the railway compartment whereas according to her testimony, she was raped in jhuggi near the railway compartment. The conviction in this case rests primarily on the testimony of the prosecutrix and, if there are discrepancies in her statement, then, no conviction can be recorded on such a quality of evidence. The submission regarding infirmity in the evidence of the prosecutrix was made before the trial court also. The learned trial court has observed that occurrence in this case is dated on 2nd May, 1985. The statement of the prosecutrix was recorded on 18th January, 1988 nearly 3 years after the occurrence. therefore, if there are certain discrepancies or inconsistencies in her statement which are not unusual, according to the learned Additional Sessions Judge, such type of inconsistencies and discrepancies are natural. 'They are rather a pointer to the fact that a witness has not crammed her statement and her statement is natural and spontaneous. The prosecution version cannot be discarded on these minor inconsistencies and discrepancies in the statement of the prosecutrix, particularly when it has been recorded almost after 3 years. I affirm the finding of the learned Additional Sessions Judge.

(6) The learned counsel for the appellant has contended that the prosecutrix was a girl of easy virtues. He further stated that it is evident from her medical examination that she is a person of loose and licentious character, because

according to the medical report, the prosecutrix was 12 to 14 weeks' pregnant at the time of her examination. This submission is also devoid of merits. No one has a right to commit rape even if a woman or girl is of easy virtues or has been leading licentious life. The learned Additional Sessions Judge has mentioned in his judgment that close scrutiny of Ex. Public Witness 8/A reveals that accused was having sexual relationship with the prosecutrix for the last one year.

(7) The learned counsel for the appellant has mentioned that ossification test and X-Ray test reveal that she was of the age of 14.8 to 15.8 years. There can be variation of 3 years on either side and if that variation is taken into consideration, then the prosecutrix was not minor at the time of commission of the crime. This argument cannot be accepted looking to the facts and circumstances of this case. In the instant case, there has been no discrepancy on the aspect of the age of the prosecutrix. The school leaving certificate, ossification test and the statement of the father of the prosecutrix - all the evidence consistently go to show that the prosecutrix was minor at the time of commission of the offence.

(8) Shri Aggarwal, learned counsel for the appellant has lastly submitted that the appellant is a heart patient and has four children. Out of total sentence of 7 years, he has already undergone about 2 years and now after a lapse of almost 7 years, if he is sent back to jail, his entire family would be uprooted and the future of his four minor children would be ruined.

(9) Shri Aggarwal has placed reliance on a Judgment of the Punjab & Haryana High Court Niranjn Singh and another vs. The State of Haryana 1984 C.L.R.359. In this case, the conviction recorded by the trial court was set aside on the ground that the prosecutrix was found to be a girl of easy virtues and had eloped on her own free will. The case is entirely distinguishable on the facts of this case and has no application on the facts of the present case.

(10) The learned counsel for the appellant has also placed reliance on Judgment Dayachand vs . Sahib Singh and another : 1991 CriLJ1370 . According to this Judgment, medical opinion should be preferable to the school record, because it is a general tendency to have lesser age recorded in the school. The appellant also placed heavy reliance on the Judgment of the Punjab & Haryana High Court in

Chanderma vs. The State of Haryana 1984 2 C.L.R.82. In this case, the appellant was convicted under Section 376 of the Indian Penal Code . and sentenced to undergo 4 years imprisonment. It was argued before the court that the prosecutrix was a consenting and willing party in the commission of the offence and she was going around with the appellant on her own free will and since she was slightly less than 16 years of age, technical offence under Section 376/363, I Pc is made out. It was brought to the notice of the court that the appellant had already undergone a substantive period of 1 year and 5 months R.I. therefore, in the facts and circumstances of the case, the court observed:-

'I think ends of justice will be amply met if his sentence of imprisonment is reduced to the one already undergone. It is ordered accordingly. However, fine imposed by the trial court under section 376 Indian Penal Code ., is remitted. With this modification, this appeal fails and is hereby dismissed.'

(11) Shri Aggarwal has also placed on record another Judgment of the Bombay High Court reported as Nana Ramchandra Jadhav vs. State of Maharashtra 1984 Cr.I.LJ .852. In this case also, because the prosecutrix was willing and consenting party, the court mentioned that lenient view should be taken.

(12) After considering all the appellant/accused has already undergone a substantive sentence of 2 years, he is suffering from heart ailment and his four minor children will now be uprooted if he is directed to serve out the remaining sentences. In view of the peculiar facts and circumstances of this case, in my opinion, the ends of justice will be met if the sentence of imprisonment is reduced to the one already undergone. It is ordered accordingly. However, the appellant is directed to deposit the fine if not already deposited within one week from today.

(13) With these observations, the appeal is partly allowed.