

Ramji Lal Vs. State

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Court : Delhi

Decided On : Feb-24-1994

Reported in : 53(1994)DLT829

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354

Appeal No. : Criminal Appeal No. 198 of 1992 and Criminal Miscellaneous Appeal No. 290 of 1993

Appellant : Ramji Lal

Respondent : State

Advocate for Pet/Ap. : Rajiv Awasthi and; Mukta Gupta, Advs

Judgement :

Jaspal Singh, J.

(1) On 8th December, 1983 Kalpana, was 3-' years old. On that day, when she came back from school she started crying and told her mother that Ramji Lal, who is the appellant before us, had molested her. The mother, alarmed by what her daughter had told her, narrated the incident to her husband who on 10th December, 1983 went to the school, met Mr.D.S.Dalal, who was managing the school and informed him of the incident. That very day the appellant was arrested

and Kalpana was sent to a hospital where she was examined and a small laceration was found over 'post fourchette'. After investigation challan was put in under Section 376 of the Indian Penal Code and it was for that offence that the appellant was tried. Ultimately he was convicted under Sections 376 read with Section 511 of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment. Aggrieved by the said judgment of conviction and the order of sentence he preferred this appeal.

(2) Mr. Rajiv Awasthi, Advocate who was appointed as amicus curiae, has very ably taken me through the evidence and has contended that at worst the appellant would be guilty of only an offence punishable under Section 354 of the Indian Penal Code. I tend to agree with him.

(3) It is true that Kalpana was examined in Court but it was only after almost 6 years of the incident. Even otherwise the record of her statement would go to show that she was not prepared to say anything with regard to the incident or against the appellant and that it was only on putting leading questions that she made a remark that she had been raped by non other but me appellant himself. However, the medical evidence, as already noticed above, belies her. There are other facets of the case too which falsify her claim. We can ill-afford to ignore the fact that though at the relevant time she was 3-4 years old she was examined in Court after about six years of the occurrence. Not only this she claims in the witness-book that she was taken to the bath room of the school where she was subjected to sexual intercourse and that the Principal had come into the bath room and had asked the appellant to go away. Had there been a rape the Principal would not have acted that way. In any case the Principal has not been examined. Since the material witness has been kept back without any Explanation the presumption would be that had he been examined he would not have supported the prosecution version. Yet another point also needs to be noticed. The father of Kalpana states that on 10th December, 1983 he had contacted Mr. D.S. Dalal who was managing the school and had told him everything. Mr. Dalal was examined by the prosecution and what is significant is that he has not said a word about the incident or about what, if any, had been told to him. Any how, it is the statement of the mother of Kalpana which clinches the issue. She has been

examined as PW-4 and as per her Kalpana had never told her about her having been subjected to sexual intercourse and that what had been told to her by the victim had led her to form the impression that the appellant had only tried to fondle her vagina with his fingers. Thus rape or attempt to rape is ruled out. The case consequently squarely falls within the mischief of Section 354 of the Indian Penal Code and as already noticed by me above, I do tend to agree with Mr. Awasthi that the case does not go beyond Section 354 of the Indian Penal Code. Consequently the appeal is accepted partly and his conviction is converted into Section 354 of the Indian Penal Code which prescribes a term which may extend to two years. Since I am converting the conviction from Section 376 read with Section 511 of the Indian Penal Code to Section 354 the appellant is sentenced to undergo two years rigorous imprisonment. Of course, he would be entitled to the period of incarceration already undergone by him. Intimation be sent to the Jail Authorities forthwith. .

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