

Mahabir Vs. State

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Court : Delhi

Decided On : May-11-1994

Reported in : 1994IIAD(Delhi)746; 55(1994)DLT428; 1994(29)DRJ384

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 375

Appeal No. : Criminal Appeal No. 51 of 1977

Appellant : Mahabir

Respondent : State

Advocate for Pet/Ap. : Y.R. Sharma,; S.K. Tiwari and; Mukta Gupta, Advs

Judgement :

Jaspal Singh, J.

(1) The story relates to the year 1974 and revolves around a man in his twenties carrying the name of Mahabir and a woman in her teens known as Sheela. Both were distantly related to each other and in fact knew each other quite well. On September 27, 1974 Mahabir took Sheela to Beharampur. They stayed thereforee about 15 days sharing the warmth of their bodies. When they came back her parents lost no time in taking her to the Police Station where a report stood already lodged by her mother. This saw the arrest and subsequent prosecution of

Mahabir. On August 13, 1976 he was convicted and sentenced under sections 366 and 376 of the Indian Penal Code.

(2) This appeal is by the same Mahabir.

(3) It is the statement of Sheela which holds the key. And, what does it show? It shows that she was quite friendly with Mahabir and had enjoyed his company by the bank of river Yamuna, at a restaurant and at other undisclosed places. It was she who, on the fateful day, had met Mahabir at a place known as Ashram and it was from there that they had gone to the Railway Station to board train for Berhampur. It was a long journey which ate away 'one day and night'. At Berhampur they stayed in the house of one Budhu (DW2) where they had a room and it was there that they played the game of sensuous flesh.

(4) Sheela tells us that at no stage was she a willing party and that she had rather protested and kept crying but to no avail. I find myself totally unpersuaded. She went to the Railway Station, remained standing there alone while Mahabir had gone to purchase tickets, she travelled with him for long long hours in a compartment shared by other passengers, went to the house of Budhu on a tonga which had been hired from Berhampur Railway Station and which too was shared by other passengers and yet she lodged no protest, raised no banner of revolt and made no attempt to flee. And all this while she had ample time and every opportunity to stir, stop or stay away from Mahabir.

(5) And what happened at the house of Budhu at Berhampur? She says she protested on being introduced by Mahabir as his wife. Budhu (DW-2) falsifies her. Her own conduct also takes her to the scaffold. While at Berhampur, she had gone to the Bazar to buy a saree, a petticoat and a blouse too. She had been sharing the same room with Mahabir and giving him the warmth of her body sometimes twice and sometimes even three times a night. She admits that before succumbing to the call of their bodies they used to talk and embrace each other. And, Budhu (DW-2) tells us that there never was even a whisper in protest.

(6) It is impossible to believe that she was not in the game. Nay, rather she played her role willingly and actively.

(7) It was contended by the learned counsel for the State that even if Sheela was a willing party all through, yet as she was at the relevant time, below sixteen years of age, consent on her part was of no consequence.

(8) Had Sheela really not seen the passage of sixteen summers? Let me recall the all important day. It was September 27, 1974. We have no birth certificate. Not even a school certificate. What we have on the record is the opinion of the Radiologist (Public Witness 8 Dr.A Virmani). He gives her age about 14 years and below 16 years. But then we all know it is a mere opinion leaving a margin of 1-1/2 to 2 years swinging this way or that. But then why go by that opinion when we have Sheela and her mother telling us what should be taken to be her age? Sheela was examined in court on April 19, 1976 and her mother on the very next day, that is, April 20. Sheela gives her age as 18. Her mother also assigns her the same age. If that be so, on the day of reckoning she surely had crossed the mark of 16 years. That makes her consent a live issue and since she was all along a willing party, Mahabir sails through the ordeal unscathed.

(9) Mahabir wins the appeal and as a consequence stands acquitted of the charges framed against him.

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