

Raja Ram Vs. State

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Court : Delhi

Decided On : Nov-09-2004

Reported in : 116(2005)DLT436; 2005(79)DRJ54

Judge : R.C. Chopra, J.

Acts : Indian Penal Code (IPC) - Sections 366 and 376; Code of Criminal Procedure (CrPC) - Sections 164, 173 and 313

Appeal No. : Crl A 53/2003

Appellant : Raja Ram

Respondent : State

Advocate for Def. : Sunil K. Kapoor, Adv.

Advocate for Pet/Ap. : O.N. Vohra, Adv

Judgement :

R.C. Chopra, J.

1. The appellant was tried under Section 366/376 IPC on the allegations that on 23.4.2001, he had kidnapped Kumari Malti, aged about 14 years, from the lawful guardianship of his father and thereafter committed rape upon her between 23rd April, 2001 and 27th June, 2001. Vide a judgment dated 23.10.2002, the appellant

was convicted under Section 366 as well as 376 IPC. On 26.10.2002, he was sentenced to undergo imprisonment for four years and a fine of Rs.1,000/- under Section 366 IPC. He was sentenced to undergo imprisonment for seven years and a fine of Rs.1,000/- under Section 376 IPC. In default of payment of fine, he was directed to undergo four months SI.

2. I have heard learned counsel for the appellant and learned counsel for the State. I have gone through the impugned judgment and Trial Court file.

3. In support of its allegations, the prosecution examined PW-1 Dr. Sandeep, a Radiologist from AIIMS, who had examined the prosecutrix for determining her bony age. He proved his report Ex.PW-1/A according to which, her age was between 10 to 15.8 years. In his cross-examination, he admitted that two years variation was possible on either side. He stated that he had not seen the victim and his report was based on examination of x-ray plates only. PW-2 Dr. Varun Dixit had examined the appellant and found that he was capable of committing sexual intercourse. PW-3 Malti, the prosecutrix, did not support the prosecution case. She stated that she wanted to marry the appellant and had told this fact to her parents but they wanted to marry her to someone else.

4. On 23.4.2001, she ran away from her house and thereafter, the appellant, who had met her while going to his duty, took her to Ghaziabad and thereafter Hathras where they stayed in a hotel for two days. On 26.4.2001, she married the appellant in a temple and thereafter, remained with him for about 2+ months. In her cross-examination by learned APP, she denied that she was wrongly giving her age as 18 years to save the appellant. She stated that she went with the appellant of her own free will and had left her parents' house voluntarily. She also stated that the accused had sexual intercourse with her consent only. She further added that she had run away from her house under the fear that her parents would marry her to someone else and in case she refused, they would beat her. She stated that she was not willing to go back to her parents. It is pointed out by learned counsel for the appellant that till date, the prosecutrix is living in Nari Niketan and has not gone back to her parent's house.

5. PW-4 Head Constable Ranbir Singh proved the FIR Ex.PW-4/A, PW-5 Ms. Vimla Kumari, MM proved the 164 Cr.PC statement of the prosecutrix Ex.PW-3/A, PW-6 Dr. Abhijit proved the MLC of the prosecutrix Ex.PW-6/A, PW-7 Constable Laxman Singh had taken the Ruka to PS for recording of the formal FIR, PW-8 Vipin had taken the prosecutrix to AIIMS for her medical examination, PW-9 Constable Ramesh had gone to Hathras along with I.O. and had brought the prosecutrix from there to Delhi, PW-10 Dr. V.K. Goel, Assistant Director, Biology had carried out blood and semen examination and proved his reports Ex.PW-10/A and 10/B and PW-11 SI Sanjeev Sharma is the Investigating Officer of the case.

6. The appellant was examined under Section 313 Cr.PC. He denied the prosecution case and stated that he had married the prosecutrix with her consent. He also stated that the prosecutrix was a major. DW-1 Roshan Lal deposed that he knew the prosecutrix as well as her family as they were his tenants. He stated that the parents of the prosecutrix were aware of the love affair between the appellant and prosecutrix. He also stated that the parents of the prosecutrix used to compel her and beat her to work as a maid servant and as such she was not happy.

7. The learned Trial Judge, after considering the evidence on record, held that on the date of the incident, the age of the prosecutrix was less than 16 years and as such, her consent in the matter of going with the appellant or having sexual intercourse with him was not relevant. It is pertinent to note that even learned Trial Judge did not return a definite finding in regard to the age of the prosecutrix and held that in all probability, she was less than 16 years of age. The learned Trial Judge came to the conclusion that the appellant was guilty of kidnapping and raping the prosecutrix.

8. Learned counsel for the appellant has vehemently argued that the prosecution has failed to prove on record that on the date of the incident, the prosecutrix was less than 18 years of age. He also submits that the testimony of prosecutrix and the facts and circumstances proved on record clearly show that the prosecutrix was in love with the appellant and since her parents were trying to marry her to someone else, she abandoned her house and thereafter married the appellant

voluntarily. It is contended that the sexual intercourse between the appellant and the prosecutrix after their marriage does not constitute an offence under Section 376 IPC as the prosecutrix was above 16 years of age. Learned counsel for the State, however, opposes the submissions mainly on the ground that there is nothing to prove on record that on the date of the incident, the prosecutrix was 16 years or above and as such, learned Trial Judge had rightly convicted the appellant.

9. After considering the submissions made by learned counsel for the parties and going through the evidence on record, this Court finds that on the basis of the testimony of PW-1 Dr. Sandeep, a Radiologist from AIIMS, it does not stand proved on record beyond reasonable doubt that on the date of the incident, the prosecutrix was below 16 years of age. PW-1 categorically stated that the bony age of the prosecutrix was found to be between 10 to 15.8 years. If it could be 15.8 years, it could be 16 years also. Moreover, even PW-1 admitted that variation of 2 years on either side was also possible. He also admitted that he had not seen the prosecutrix and was giving his opinion on the basis of X-Ray plates only. This fact seriously erodes the evidentiary value of statement of PW-1 for the reason that in case he had examined the prosecutrix and noted the features of her physical developments he would have been in a better position to form opinion regarding her bony age. thereforee, it cannot be said that the prosecution had proved beyond reasonable doubt that on the date of incident, the prosecutrix was less than 16 or 18 years of age.

10. Moreover, neither the father nor the mother of the prosecutrix were produced before the Trial Court to depose about the age of the prosecutrix. They were the best witnesses to depose about the age of prosecutrix. The father was cited as a witness in the report under Section 173 Cr.PC and as such, his non-production calls for an adverse inference against the prosecution case. Not only this, the prosecution had not collected or produced any birth certificate or school certificate of the prosecutrix to establish that on the date of incident, her age was less than 16 or 18 years. In view of the statement of PW-1 Dr. Sandeep, thereforee, this Court is not in a position to hold that on the date of the incident, the age of the prosecutrix was less than 18 years. If she could be 15.8 years then by adding

margin of 2 years she could be 18 years also on the date of incident.

11. In case the age of the prosecutrix on the date of the incident was 16 years or more and she voluntarily abandoned her house to solemnize her marriage with the appellant and thereafter had sexual intercourse with him as his wife, no offence stands made out against the appellant. The testimonies of the prosecutrix, PW-3 and the defense witness, DW-1 clearly establish on record that the prosecutrix was not happy with her parents as they were trying to marry her to someone else and they used to give her beatings also. The evidence of PW-1 clearly indicates that the prosecutrix could be 18 years or so at the time of incident. Had the father of the prosecutrix been examined before the Trial Court, he could have stated something favorably to the appellant on this question and as such, this court has no hesitation in holding that the learned Trial Judge had no justification for holding the appellant guilty under Section 366 or 376 IPC.

12. The record shows that not only in her statement under Section 164 Cr.PC but thereafter also, the prosecutrix was not willing to go back to her parents' house and was staying in Nari Niketan. This lends further assurance to the conclusion that the prosecutrix was not kidnapped by the appellant but had voluntarily abandoned her parents house with a view to avoid her marriage against her wishes. It has also come in the statement of PW-3, prosecutrix, that after she left her house, she met the appellant while he was going for his duty, which shows that after abandoning the guardianship, the prosecutrix herself contacted the appellant and thereafter, they married and started living as husband and wife. Before their apprehension at Hathras, the prosecutrix lived with the appellant as his wife for about 2+ months. She never complained and till date, has no complaint that the appellant had kidnapped her or had committed sexual intercourse with her against her consent. She appears to be deeply in love with the appellant and till date refusing to go to her parents house. therefore, no offence whatsoever is made out against the appellant.

13. In the result, this Court is of the considered view that the impugned conviction and sentence of the appellant under Sections 366/376 IPC cannot be sustained. The appeal is accepted, conviction and sentence is set aside and appellant is

acquitted.

14. He be released forthwith, if not required in any other case.

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