

Ajay Pal Vs. State

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Court : Delhi

Decided On : Nov-28-2003

Reported in : 2004IAD(Delhi)273; 108(2003)DLT742; 2004(72)DRJ202; 2004(1)JCC25

Judge : O.P. Dwivedi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376(2)

Appeal No. : Crl. Appeal 188/2003

Appellant : Ajay Pal

Respondent : State

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

Advocate for Pet/Ap. : Panna Lal Sangal, Adv

Disposition : Appeal dismissed

Judgement :

O.P. Dwivedi, J.

1. This appeal is directed against the judgment dated 30.01.2003 and order on sentence dated 15.2.2003 whereby the appellant was convicted u/s 376(2)(f) IPC and sentenced to undergo RI for 10 years and a fine of Rs. 10,000/- in default

thereof to further undergo RI for two months.

2. Briefly stated facts leading to this appeal are that on intervening night of 18/19 of February 1998 Smt. Shashi Bala along with her daughter Ginni, aged about 8 years, approached PP Vijay Vihar, P.S Mangol Puri where SI Rajesh Rathi, i.e in this case, recorded her statement. In her statement Shashi Bala told the Police that on 18.2.98 at about 9.00 pm when she was ironing clothes in her house her minor daughter Ginni, aged about 8 years went out of the house to play. When she did not return for quite sometime she sent her son Sunny to trace the girl. Sunny come back home at 9.30 pm and told his mother that Ginni was not visible in the neighborhood. Thereupon, complainant Shashi Bala herself went out in search of Ginni. When she reached in front of premised No. C-10/66, Sector 5, Rohini, which is a plastic factory, she heard the cries of Ginni from the inside. She knocked at the door which was closed from inside. On her repeated knocking at the door the accused came out and started running but she raised alarm whereupon some people from the neighborhood came and caught hold of him. Ginni was present in the factory. On being asked Ginni told her that accused had committed rape upon her on the point of knife and under threat of death. Ginni was sent for medical examination which was conducted by Dr. Poonam Lal of DDU Hospital at about 1.05 am on 19.2.95. On medical examination scratch marks were noticed on her cheeks and nasal bridge. There was abrasion on the right forearm. On local examination there were bruises on labia majora. There was abrasions on inner margin of labia minora genetalia. Hymen was torn and it was a fresh tear. This was suggestive of recent rape. Doctor took into possession under garments of Ginni which she wore at the time of incident and she also prepared slides from inside of vagina with swab stick for forensic examination. SI Rajesh Rathi made his endorsement on the statement of Shashibala and got the case registered vide FIR No. 162/98 u/s 376/342/506 IPC. He went to the spot and prepared a site plan of the place of occurrence i.e factory premises No. C-10/66, Sector 5, Rohini, and also seized small knife for cutting vegetable and one bedding which was found in the room. The accused who was produced before Police by the complainant & some other public men was arrested. He was got medically examined and after completing investigations the challan was filed in the court.

3. On 16.3.99 a charge under section 376 IPC was framed against the accused. Accused pleaded not guilty to the same and claimed trial. To prove its case, prosecution examined eleven witnesses namely Dr. Poonam Lal, Senior Resident DDU Hospital, PW-1; H.C. Pawan Singh, PW-2; Sh. J.C. Vashisht, PW-3; H.C. Naresh Kumar, PW-4; Ct. Manoj Kumar, PW-5; Victim Ginni, PW-6; Ms. Shashi Bala, PW-7; Sh. Darshan Kumar, PW-8; H.Const. Satbir Singh, PW-9; Ct. Raj Kumar, PW-10; S.I Rajesh Rathi, PW-11. In his examination, the accused/appellant Ajay Pal u/s 313 Cr.P.C, denied his involvement in the case. defense put up by the accused was that he was falsely implicated because he advanced a loan of Rs.20,000/- to the complainant Shashi Bala who refused to repay the same on demand and also threatened to implicate him in some false case if he persisted in the demand. However, he led no evidence in his defense. After considering the material on record, learned Additional Sessions Judge accepted the testimony of Ginni and her mother Shashi Bala as truthful and accordingly convicted the appellant u/s 376 (2)(f) IPC and sentenced him to undergo RI for 10 years. Feeling aggrieved appellant has preferred this appeal.

4. In her examination-in-chief recorded on 3.8.2000 Ginni who was aged about 8 years had fully described the incident indicating that the accused appellant is the same person who had committed rape on her. Her version in this regard is fully corroborated by the testimony of her mother Shashi Bala who repeatedly knocked at the door on hearing cries of her daughter. It is the accused/appellant who opened the door and tried to run away but was caught by the public men and was handed over to the police. This fact has been corroborated by statement of Ct. Raj Kumar, PW-10 and SI Rajesh Rathi, PW-11. Medical evidence also fully corroborated the allegation of rape. Dr. Poonam Lal, Senior Resident, who examined Ginni on the intervening night of 18/19.2.1998 found following injuries on her person :-

'No H/O LOC/Convulsion/ENT Bleeding/Vomiting. O/C Pt. is conscious & oriented. Pulse 88/min Pupils: B/L NSDRBP: 120/84 mmtlg S/E Chest) CVS) Clinically NAD PLA) LE * Scratch mark over Lt cheek.Scratch mark over nasal bridge.Abrasion over Rt forearm Anal region; thighs stained ----- Adv. ASD Refer to DOD gyn. Undergarments to be sealed. Vaginal smear to be made &

sealed. 19/2/98 Pt is 8 year old female has come H/c sexual assault. Child is giving detailed H/o sexual intercourse by the neighbour. Pt. Conscious, oriented, anxious. Pulse 88/m BP 120/34 Scratch marks on cheeks & nasal bridge. Abrasion on right forearm. P/A soft, undergarments soaked c urine & stool which pt. Local enemn of genitalia passed during the act. Bruises on labia majera, sticky secretion on thighs. Abrasions on inner margin of labia minera. Hymen torn (fresh) genitalia are hyperemine. Slides made from inside of vagina c swab stick. Sticky secretion mopped c normal saline & slides made. Rx 1. Syp Ibugsim plus ITSF TFS 2.Undergarmentsto be sealed & slide to be sealed & sent for forensic examination. CC to Dr.Ripudaman Kaur Dr.Barjinder Singh Sd/- Pooran Lal, SR Undergarments sealed & signed.'

5. Scratches/abrasions found on different portions of her body including private parts clearly indicates that girl was sexually assaulted. During investigation the under garments of the girl as well of the appellant, slides made from inside of vagina swab stick and bedding recovered from the factory were sent to the FSL for forensic examination and the report Ex.PW- 11/B, 11/C were received a perusal whereof shows that human semen was detected on the pajami the underwear of Ginni as well as on the vaginal slides and the bed sheet. On serological examination human semen of AB group was detected on the under wear of the girl also on the blanket. This further lends support to the statement of the prosecutrix that it is the accused who committed rape on Ginni. The presence of human semen in vaginal swabs shows that sexual act was consummated. Under the circumstances, I find no cogent reason to take exception to any part of the statement of the girl.

6. Learned counsel for the appellant laid great emphasis on her cross examination dated 16.8.2001 wherein Ginni has stated that she has forgotten the description of the person who committed rape on her and that in further cross examination by the learned counsel for the State she denied the suggestion that accused appellant is the same person who committed rape on her. In the very next sentence she stated that she could not recall whether accused is the same person or not. From this statement of the prosecutrix, learned counsel for the appellant strongly urged that on the basis of such a shaky statement it is not possible to fix the identity of the

culprit with certainty and even the slightest doubt about the identity of culprit would entitle the appellant for benefit of doubt. Having considered the submission of the learned counsel for the appellant in the light of the material on record, I find myself unable to subscribe to his views. In her examination in chief dated 3.8.2000, Ginni has clearly implicated the accused appellant. In her cross examination dated 16.8.2001 which was recorded a year later she appeared to convey the impression that she is not sure whether the appellant is the same person who raped her. The possibility of the girl having been threatened in the meanwhile cannot be ruled out. Any way she does not completely exonerate the accused in her cross examination dated 16.8.2001. All that she pleads is failure of memory. The plea of appellant's counsel for extending benefit of doubt to the appellant could carry some justification had there been no other evidence to link the accused with the crime. The accused was caught on the spot when he opened the door on repeated knocks by Shashi Bala. He was caught hold by the public men when he was running and was produced before the police. It is nobody's case that somebody else was found inside the factory where Ginni was raped. The presence of the accused in the factory at the time of the incident is further proved from the statement of the factory owner Darshan Kumar, PW-8 who deposed that the accused had taken the keys of the factory from his house on the day of incident on the pretext of taking bath and rest and later on he came to know that accused had raped the girl and was handed over to the police. Factory was searched by the police and in search one vegetable cutting knives, P-2 and one blanket having a cover described as bed-sheet, Ex P3 were seized by the police. In cross examination, he stated that accused used to work in his factory but he left the work a week before the incident. This does not help the accused. In cross examination, PW-8, states that in those days factory was lying closed for a week because there was no sufficient work. It may be that accused did not come to the factory for some days due to insufficient work but the fact that he was present in the factory on the day of incident is amply proved from the statement of his employer Darshan Kumar, PW-8.

7. Learned counsel for the appellant next contended that in her cross examination Shashi Bala has given the name of some public men namely Chhabra, Bajpai, Kiran and Neelu who gathered on the spot when she raised alarm but prosecution

has not examined any of them as witness. In fact none of them has been cited as witness in the challan. If some other public witnesses regarding presence of the accused at the spot at the time of incident were available the prosecution should have examined them as witnesses. However, failure of the police in this regard will not be sufficient to discard the testimony of complainant Shashi Bala, PW-7 and employer Darshan Kumar, PW-8. On careful consideration of material on record, I find no cogent reason to take a different view in the matter to the one taken by learned Additional Sessions Judge. The evidence on record shows beyond reasonable doubt that it is the accused and non-else who committed rape on Ginni on the alleged date, time and place.

8. Learned counsel for the appellant next contended that at the most the case of attempted rape is made out. Reliance was placed on the decision of apex Court in the case of Ramcharan Vs . State of M.P : (2001)10SCC108 . A perusal of the said judgment shows that in that case evidence of Doctor indicated that the rape attempted on the victim did not succeed in full measure. Hence, the conviction was altered to one under Section 376 read with section 511 IPC and the sentence was reduced to half. Clearly the appellant cannot take advantage of the said judgment because in the present case evidence clearly indicates that the accused had completed the act of sexual intercourse which culminated in the ejaculation of semen. This fact is clearly borne out from the CFSL report Ex.PW-11/B & C as also from the MLC exhibited as PW-1/A. A perusal of the record shows that there were bruises on labia majora and minora. . Sticky secretions were present on thighs. There were abrasions on inner margin of labia minora and the genitalia were hyperemic. Hymen was torn and it was a fresh tear which clearly shows that penetration had taken place which is sufficient to complete the offense of rape.

9. Having considered the submission of learned counsel for the appellant and the material on record, I have no hesitation in confirming the verdict of learned Additional Sessions Judge whereby the accused was convicted for having committed offense punishable u/s 376(2)(f) IPC. On the point of sentence learned counsel for the appellant pleaded for leniency. Section 376(2)(f) IPC provides minimum 10 years sentence for rape of a girl below 12 years of age. Such sentence may be extended to life imprisonment. While awarding the sentence

learned Additional Sessions Judge had awarded the minimum sentence provided for the offense. No mitigating factors have been brought on record. The plea taken by the accused in his statement u/s 313 Cr.P.C that he had paid and demanded back money from the complainant was not even put to the complainant in the cross examination. In the case of State of Rajasthan v. Om Prakash 3 (2002) SLT 484 the Apex court while rejecting the plea of leniency in the matter of sentence for offence of child rape in para 20 observed that having played with the life of child, the appellant does not deserve any leniency. No special circumstances have been shown to exist warranting reduction of sentence in the instant case.

10. In the result this appeal fails and is hereby dismissed.

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