

Keshav @ Paviter Vs. State

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Court : Delhi

Decided On : Dec-13-2000

Reported in : 2001CriLJ1201

Judge : R.S. Sodhi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374; Indian Penal Code (IPC) - Sections 366

Appeal No. : Criminal Appeal No. 596 of 2000

Appellant : Keshav @ Paviter

Respondent : State

Advocate for Def. : M.S. Butalia, Adv.

Advocate for Pet/Ap. : K.B. Andley and; Roopesh Sharma, Advs

Judgement :

R.S. Sodhi, J.

1. This Criminal Appeal No. 596/2000 is directed against the judgment and order dated 12.9.2000 of the learned Additional Sessions Judge in Sessions Case No. 59/98 arising out of FIR No. 100/96, Police Station, Seema puri, under Sections 363/366/376 IPC whereby the learned Judge has convicted the appellant under

Section 366 IPC and sentenced him to RI for three years and a fine of Rs. 1,000/- and in default of payment of fine a further RI for two months.

2. Brief facts, as placed by the prosecution, are that on 23.1.1996 Smt. Kalawati, wife of Lal Singh lodged a report with Police Post GTB Hospital that her two daughters, namely, Sapna and Lata, were missing. On the basis of this report an FIR No. 100/96, Police Station, Seema Puri was registered. The complainant on 22.2.1996 informed the police that she suspected Azul for having allured and taken away her daughters as Azul was also missing from that date. During investigation, Lata was recovered along with Siddiq Hussain from his house, X-171, Tagore Gali, Ram Nagar, Gandhi Nagar, Delhi. In her statement under Section 164 Cr.P.C. recorded on 27.2.1996 the prosecutrix stated that Azul and Keshav, the appellant herein, who were residing in her neighborhood used to write threatening letters to the girls and on 23.1.1996 when she and her mother and sister had gone to take medicine, Azul and Keshav were also present with them in the hospital and forced her and her sister to sit with them in a three-wheeler scooter where after all of them went to Seema Puri and stayed there for two days where the accused is stated to have done nothing wrong with her. therefore, Keshav and Azul went away along with Sapna and Lata was left to find shelter for herself. Lata approached Renu Chaudhary who got her married to Siddiq Hussain where after the prosecutrix began living with Siddiq Hussain as his wife of her own free will and consent.

3. On the basis of this statement, charges against the appellant and Siddiq Hussain were framed under Sections 366/34 IPC. Siddiq Hussain was acquitted of all charges since he had married Lata and was residing with her of her own sweet will. However, the Court held the appellant herein guilty of having taken away Lata for forcing her into a marriage or sexual intercourse. The trial court also held that Lata was not a minor but was a girl of about 20-25 years of age.

4. The prosecution, in order to prove its case, examined as many as 13 witnesses most of them of a formal nature. It is the case of the appellant before me that the prosecution has not been able to prove any threat of coercion while taking Lata away from her mother and that it was a voluntary act on behalf of Lata and her

sister who accompanied the accused persons and while her sister Sapna has set up matrimonial home with Azul and Lata has set up her matrimonial home with Siddiq Hussain. There is absolutely no act of omission or commission of the appellant that could bring him within the mischief of Section 366. It is also the case of the appellant that the prosecution has not shown as to whether there was any attempt made by the appellant either to force the prosecutrix into a marriage or subject her to sexual intercourse and, therefore, the fact that Lata was staying with the appellant under these conditions is indicative enough of the fact that Lata as also Sapna accompanied the appellant and Azul of their own free will. Further, that Lata is not a minor but a girl of about 20 years, no offence is made out. Even the offence of abduction implicate with intent of knowledge that Lata would be compelled to marry any person against her will or may be forced or seduced into illicit intercourse as required by Section 366 IPC is not made out.

5. From the evidence on record and primarily from the statement of Lata it appears that both the girls voluntarily accompanied the appellant and Azul where after Azul and Sapna left Lata and the appellant at Ghaziabad wherefrom Lata got married to Siddiq Hussain voluntarily of her own free will and that the appellant, at no point of time, made any attempt to force Lata to do any act against her will, This being the situation, it is hardly fair to convict the appellant on the basis of probabilities and possibilities. The learned trial Judge, in order to bring about the conviction, has pre-supposed as follows :

'There is yet another way of looking at the matter. The prosecutrix was aged about 18 years and accused was 24 years and both were of vulnerable age. The only purpose of taking her away could be to misuse her for the purpose of marriage of sexual intercourse. The accused have not attributed any other purpose for which she was taken. Thus the legitimate inference, can be that accused Azul and Keshav abducted prosecutrix Lata and her sister Sapna with intention or Knowledge to compel them to marry.'

6. Basing his judgment on the aforesaid supposition he has gone on to justify the conviction under Section 366 IPC. According to me, with all respect to the learned trial Judge, the approach appears to be erroneous. One must not hesitate to give

the devil his dues and every act ought not to be viewed to an act of dishonesty giving rise to criminal intent justifying the conviction.

7. Having given my careful thought to the statement of the prosecutrix, I am of the considered view that the appellant herein deserves to be acquitted of the charge under Section 366 IPC as necessary ingredients to substantiate such a charge are absent. In this view of the matter, I acquit the appellant and set aside the orders dated 12.9.2000 and 13.9.2000. The bail bond and surety bond shall stand discharged.

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