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Divya Vs. State & Anr

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Court : Delhi

Decided On : Dec-08-2014

Judge : Mukta Gupta

Appellant : Divya

Respondent : State & Anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision: December 08, 2014 + CRL.A. 1677/2014 DIVYA Represented by: ..... Appellant Mr.Ashwani Sharma, Advocate. versus STATE & ANR Represented by: ..... Respondents Ms.Aashaa Tiwari, APP for the State with Inspector Raj Rani Sharma, Now in PCR. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) Crl.M.A.No.19003/2014 (Exemption) Allowed. CRL.A. 1677/2014 and Crl.M.A.No.19002/2014 (Delay) 1. The appellant prefers this appeal against the judgment of the learned Trial Court dated July 08, 2014 whereby the respondent No.2 has been acquitted of the charges under Sections 363/336/34 IPC, 376 IPC, 342 IPC and 506 IPC.

2. A missing report dated March 17, 2011 was lodged by Sushil Kumar, father of D stating that his daughter had gone with his sister PW-9 by Metro and thereafter she went missing. Same day PW-9 also made a complaint that on March 16, 2010

she along with the prosecutrix boarded the Metro from Laxmi Nagar to go to Bangla Sahib Gurudwara. D got down from Metro at Rama Krishna Ashram Metro Station but PW-9 could not and when she got down at Jhandewalan Metro Station and returned at Rama Krishna Ashram Metro Station she could not find D. She returned home and informed her brother PW-2 who got lodged the complaint. On March 19, 2011 D reached her home and thus her statement was recorded and she was medically examined. D stated that after alighting at Rama Krishna Ashram Metro station she returned to Rajiv Chowk Metro Station but being scared of getting scolded she made a call to respondent No.2 who used to reside in the same street. Respondent No.2 came to Connaught Place after 20-25 minutes and from there he took her to Meerut at his aunts place. It is the allegation of D that at Meerut respondent No.2 had forcibly sex with her. On March 19, 2011 when respondent No.2 came to know from his uncle that father of D had lodged a complaint he brought D to Delhi and left her at Laxmi Nagar Metro Station.

3. As per the prosecution the date of birth of D is January 03, 1996. Thus on the date of incident i.e. March 16, 2011 she was a minor and her consent was immaterial. D in the witness box reiterated her version as recorded in her statements under Section 161 Cr.P.C and 164 Cr.P.C with addition that in her statement under Section 164 Cr.P.C she stated that respondent No.2 had sex with her 9-10 times during night which she reiterated in the witness box. As per the MLC of the prosecutrix her hymen was intact and the FSL report Ex.PW-13/D gave negative of semen from the vaginal swabs and cervical collection.

4. In the defence Dr.Uday K.Sinha from IHBAS was examined as DW-1 who proved that the prosecutrix was suffering from Conduct Disorder. She was in the habit of telling lies, low self-esteem, stealing from school and runs away from home when scolded by the parents. As per Dr.Uday K.Sinha children with this problem are able to understand everything but they are not able to control their problem behaviour.

5. The learned Trial Court fully conscious of the settled law that to constitute an offence of rape slight penetration is enough however, in view of the statement of the prosecutrix that respondent No.2 continuously raped her number of times

during one night and one day when he was with her held that under such circumstance it is unbelievable that the hymen of the prosecutrix could have remained intact. Thus, in view of the medical evidence, the FSL report and the defence evidence, the learned Trial Court acquitted the respondent No.2.

6. We find no reason to come to a contrary conclusion for the reason that though it is well settled that the conviction can be based on the sole testimony of the prosecutrix as she is not an accomplice however the said testimony should be reliable. Evidence has been led that the prosecutrix was suffering from Conduct Disorder as noted above. Further her version that she was repeatedly subjected to sex is not fortified by her MLC which shows hymen intact. Even the FSL report does not support her version. In view of the evidence on record, we cannot hold that the finding of the learned Trial Court is perverse and requires interference.

7. Consequently, the appeal is dismissed and so is the application seeking condonation of delay.

8. T.C.R. be returned. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER08 2014/vn

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