

Sakshi. Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/906623

Court : Delhi

Decided On : Nov-26-2010

Judge : Shiv Narayan Dhingra, J

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 109, 363, 366, 376; Code of Criminal Procedure (CrPC) (CRPC) - Section 372

Appeal No. : Crl. Appeal No.1189/2010

Appellant : Sakshi.

Respondent : State and ors.

Advocate for Def. : Mr. Sunil Sharma, Adv.

Advocate for Pet/Ap. : Mr. Ravinder Chadha; Mr. Jagdish Prasad, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. This first appeal under Section 372 Cr.P.C has been preferred by the appellant against a judgment of acquittal dated 20th July, 2010 passed by learned ASJ, New Delhi in case FIR No.1154 of 2006 under Sections 363/366/376/109 read with Section 34 IPC police station Nazafgarh.

2. The complainant had married with her cousin Akshay aged around 21 years on 16th February 2006 at Arya Samaj Temple at Yamuna Bazar, Delhi and filed an affidavit at the time of marriage before the Pandit at Arya Samaj Temple that she was above 18 years of age. This marriage was performed by her without consent or knowledge of her parents, although the parents of the boy knew about this marriage. It is her own case that the marriage was consummated at her in-laws house and thereafter she along with her husband went to Shimla. Her parents were informed about the marriage after one month of the marriage and her father threatened to complain against Akshay and his parents to the police. However, on the assurances given by the parents of Akshay that she would be kept as his legally wedded wife, her father did not report the matter to police. From 1st April 2006 she and her husband Akshay Kumar started living in a tenanted accommodation at Faridabad, Haryana. They lived there up to 16th June 2006 and it is her own case that they lived there as husband and wife till 16th June, 2006. It seems that the marriage did not click and she approached CAW Cell against her husband and in-laws. A petition for declaring the marriage as null and void was also filed. On 22nd December 2006, she filed the present FIR alleging therein that she had not given her consent at the time of marriage but she was threatened by accused Akshay Kumar that if she did marry him, he will commit suicide and implicate her and her parents and under this threat she had to marry Akshay. She also stated that she was minor and the affidavit filed by her was a false affidavit prepared at the behest of accused Akshay.

3. The trial court after recording evidence and after considering all the facts came to conclusion that her complaint before CAW Cell filed in July 2006 against Akshay Kumar and his parents showed that till 18th July 2006 she treated accused Akshay Kumar as her husband and this relation was also accepted by her parents. Her only grievance till 18th July 2006 was that she was being subjected to cruelty for more dowries by accused persons. Even in her subsequent complaint dated 26th November 2006 made to SHO PS Nazafgarh, her allegations were that accused married her under a conspiracy to extract money from her parents. She nowhere contended that before taking her to Tis Hazari Courts or Temple, accused Akshay Kumar had threatened her that he would commit suicide and implicate her and her parents if she did not agree to marry him or that she agreed to marry the accused

Akshay Kumar only under threat. It has also come in evidence that she had met an advocate at Tis Hazari before going to Arya Samaj Temple for preparing her affidavit. In her affidavit, she gave her age as 19 years. The trial court observed that the plea taken by the complainant that she agreed to marry Akshay Kumar under a threat was not believable. Her contention that her father was not agreeable to the marriage was also belied as PW-5 Panditji, who conducted marriage ceremonies deposed that Kanyadan of the girl (her) was performed by her father. This witness was not cross examined on this aspect. Her own witness also stated that Kanyadan was performed by her father. Thus, her entire story that she got married to the accused without consent of her parents in a stealthy manner fell apart before the learned trial court and the trial court found that it was not a case of her enticing away by the accused out of the custody of her parents but it was a case where her parents had married her to the accused. Although the marriage was void because of the spinda relations with accused, but that would not convert a void marriage into a rape. The learned trial court, therefore, acquitted the accused/respondent.

4. It is argued by the counsel for the appellant that the appellant was minor at the time of marriage as she was born on 6th August 1990 and the marriage had taken place on 16th February 2006 and, therefore, even if there was consent of the girl in the marriage still the marriage being void marriage, the accused/ respondent Akshay Kumar was guilty of rape. I consider that this argument must fail. No doubt consent of a minor girl is no consent in the eyes of law where sexual intercourse is done with a minor by the person with the consent of the minor and it amounts to rape. However, this sexual intercourse must be when parties are not married. This is clear from a bare perusal of Section 376 IPC where intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape. In the case in hand, even if we go by the arguments of the counsel for appellant that she was born on 6 th August 1990, she was above 15 years of age on the date of marriage. The marriage was attended by her parents. Sexual intercourse by her husband with her was therefore not rape.

5. In view of my foregoing discussion, I do not find any force in this appeal. The appeal is hereby dismissed.

