

Anil Vs. State

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Court : Delhi

Decided On : Dec-14-2010

Judge : P.K.Bhasin .J.

Acts : Indian Penal Code,(IPC) - Section 363, 376; Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 164, 313

Appeal No. : Crl. Appeal 496 OF 2007

Appellant : Anil

Respondent : State

Advocate for Def. : Mr. Pawan Behl, , Adv.

Advocate for Pet/Ap. : Mr. A.J. Bhambani; Ms. Nisha Bhambani, Adv.

Judgement :

1. This appeal is filed by the accused-appellant challenging his conviction under Sections 363 and 376 of the Indian Penal Code(IPC in short) vide judgment dated 3rd March, 2007 passed by Additional Sessions Judge, Rohini as also the order of the same date whereby the accused- appellant was sentenced to undergo rigorous imprisonment for ten years and also to fine of Rs. 2000/-, with a default stipulation, under Section 376 IPC.

2. The prosecution case, briefly stated, is that on 15th December, 2005 PW-2 went to the police station Keshav Puram at about 1 a.m. and lodged a report that his

five years old daughter(PW-3) had left the house at 8.30 p.m. for going to his shop but thereafter had not returned back. He had searched her but could not trace her. He expressed his suspicion that somebody had enticed away his daughter. Accordingly the police registered a case u/s 363 IPC vide FIR No. 632. Then the police also tried to trace out the girl alongwith the complainant but she was not found. When the complainant(PW-2) returned back to his house in the morning at about 5.30 a.m. his missing daughter was seen standing outside her house. At that time there was some injury on her lips and she was also bleeding from her vagina. She was however not in fit state of mind to say anything. Then at about 8.45 a.m. PW-2 alongwith his wife(PW-1) and their daughter(PW-3) went to the police station where on seeing the condition of the girl child the police got her sent to the hospital for medical examination where she had to be admitted. The doctor who examined PW- 3 noted in the MLC, Ex.PW-4/A : "suspected H/O sexual assault. The female child went missing on 14/12/05 at 8.30 p.m. & was recovered on 15/12/05 at 5.30 a.m.". The doctor found contusion over both upper and lower lips. The girl was then referred to gynaecologist(PW-4) who examined her and found the upper lips of the girl child swollen. Secondary sexual characters were not developed. Hymen was found torn and third degree perineal tear was present, which was stitched by the surgeon under general anaesthesia. Posterior fourchette was also torn. Hymen admitted one finger and there was some discharge mixed with blood. Present Vaginal smear slide was prepared and sealed and given to the police as also the trouser of the prosecutrix which she was wearing at that time. The gynaecologist(PW-4) also recorded in the MLC that according to the mother of the child the child had come home naked and had not taken bath but at the time of her medical examination she was wearing trousers on which some discharge was seen.

3. In view of the medical report of the girl the police made it a case of rape also by adding Section 376 IPC in the case diary.

4. As per the further prosecution case, the police recorded the statement of the prosecutrix on 17th December,2005 when she told the police that she had been taken to some place beyond the railway line by the accused, who was living in their neighbourhood near the Mother Dairy booth from where they(PW-3 and her

family) used to buy milk, and there he had raped her after removing her ghagri and kachhi and had then left her on the rail track.

5. Then the search for the accused started but he could not be found. He was arrested on 19.12.2005 in another case of rape registered vide FIR 640/05 at the Keshav Puram police station and in that case while in police custody he made a disclosure statement in which he confessed that he had raped the daughter of the complainant of the present case also on the night of 14th/15th December,2005. Then he was arrested in the present case also.

6. The statement of the prosecutrix was also got recorded by the police under section 164 Cr.P.C. on 4th January,2006. During investigation, the trouser of the prosecutrix and her vaginal swab were sent to the Forensic Science Laboratory(FSL) and as per the FSL report human semen and blood was detected on the trouser of the prosecutrix which was sealed after her medical examination on 15th December,2005.

7. After the completion of the investigation the challan was filed in the court of Metropolitan Magistrate concerned who committed the case to the Court of Sessions. Charges under Sections 363 and 376 IPC were framed against the accused-appellant by the Sessions Court to which he pleaded not guilty and claimed to be tried. To prove its case the prosecution examined ten witnesses.

8. The appellant when examined under Section 313 Cr.P.C. denied all the allegations alleged against him and pleaded his innocence. Regarding the circumstance of bleeding from the vagina of the prosecutrix he stated that the bleeding was due to fall while she was playing. He however did not lead any evidence in defence.

9. The trial Court accepted the testimony of the prosecutrix and relying upon the same and the medical evidence held the accused guilty for the offences of kidnapping and rape but he was awarded sentence only for the offence of rape and surprisingly not for the offence of kidnapping. The accused felt aggrieved and that is how this appeal came to be filed in this Court.

10. I have heard Mr. Pawan Bahl, learned additional public prosecutor for the State and Mr. A.J. Bhambani, learned counsel for the appellant, and have also gone through the prosecution evidence and the impugned judgment.

11. It was submitted by the learned counsel for the appellant that the conviction of the appellant cannot be sustained since the prosecution had not been able to prove its case beyond reasonable doubt. He contended that the trial Court should not have accepted the testimony of the prosecutrix because she had made contradictory statements and there was no corroboration also of her evidence. It was also contended that during her examination-in-chief the prosecutrix had deposed that she had been beaten by Anil in the jungle and her underwear had been removed and he had done nothing else with her. However, it was only when the public prosecutor had been permitted to put a leading question to her that she pointed out towards the accused and had nodded her head in affirmative after she was asked by the prosecutor as to whether the accused had done wrong with her after putting off her clothes and his own clothes and that showed that that part of her statement was not her voluntary statement. Learned counsel also argued that no reliance could be placed on the FSL report since the human semen and the blood was found on the trouser which admittedly the prosecutrix was not wearing either at the time when she left her home on the night of the incident or at the time when she came back in the morning of 15th December and it was only when she was taken to the police station that she must have been made to wear trouser by her mother and, therefore, the presence of semen and blood on that trouser is of no significance particularly when no semen was detected on the vaginal swab of the prosecutrix. Another submission made was that, in fact, even the identity of the accused had not been established inasmuch as according to the father of the prosecutrix she had told to him that she had been raped by one Lallu but the prosecution had failed to establish that the accused appellant was known as Lallu also.

12. On the other hand, learned additional public prosecutor supported the judgment of the trial Court and submitted that there was no infirmity in the prosecution case justifying no interference in this appeal by this Court.

13. From the medical evidence it is more than apparent that the prosecutrix was, in fact, sexually assaulted. The question is whether the prosecution has been able to establish that it was the accused appellant who had raped her, as has been held by the learned trial Judge. In order to find answer to this question I have carefully gone through the evidence of the prosecutrix(PW-3). In her examination-in-chief she had claimed that she was taken to jungle by the accused Anil where she was bitten on her lips by him and her underwear had also been removed and further that the accused had beaten her also and done wrong with her after putting off her clothes and also his own clothes. Although she did not claim specifically as to what actually had been done to her by the accused but the medical evidence clearly shows that she had been raped. In her cross-examination, the prosecutrix had stated that when she had come back home her parents had asked her as to what had happened to her and then she had narrated to them what had happened to her and further that she had also told them about the name Anil. The mother of the prosecutrix had also stated in her cross-examination that her statement was recorded by the police on the day when her daughter was admitted in hospital and further that before that her daughter had narrated to her everything at home. Thus, the statement of the prosecutrix is corroborated by her mother also.

14. Nothing could be elicited in the cross-examination of the prosecutrix which could throw any kind of doubt about the truthfulness of her statement where she had implicated the accused appellant. Her statement that the accused had taken her to a jungle, in fact, was not even challenged in her cross examination. The accused appellant was admittedly living in the neighbourhood of the complainants family. So, there cannot be any doubt about his identity, as was the submission of Mr. Bhambani. PW-1 had no doubt claimed first that his daughter had told him that Lallu had taken her to a jungle but later on he also claimed that his daughter had told him that Anil had taken her to a jungle. That does not amount to any kind of inconsistency and the prosecution was not required to prove that the accused was known as Lallu also. The accused appellant himself had taken the stand in his statement under Section 313 Cr.P.C. that the prosecutrix had fallen down while playing and due to that fall she was bleeding. The learned trial Court has rejected that defence on the ground that the prosecutrix could not be expected to be playing at night and I am in full agreement with that reasoning of the learned trial

Judge. That statement of the accused appellant, in fact, strengthens the prosecution case that it was he only who had taken away the girl child and had done something to her which had resulted into bleeding from her vagina. The bleeding could have been only because of his having had sexual intercourse with her forcibly which had also resulted into her hymen getting torn. I am, therefore, of the view that the statement of the prosecutrix, which is fully corroborated by medical evidence, through the statement of the gynaecologist (PW-4), was sufficient to hold the accused - appellant guilty.

15. Since immediately on the return of the prosecutrix to her home she was bleeding the blood on the trouser which she might have been made to wear by her mother before taking her to the police station might have got blood stained because of the bleeding from the vagina and the presence of human semen on her trouser further strengthens the prosecution case. And just because the prosecutrix had claimed in answer to a leading question put by the prosecutor with the permission of the Court that the accused Anil had done wrong with her after putting off her clothes and his own clothes it cannot be said that that was not a truthful statement. It was not even suggested to the prosecutrix that she had been tutored by her parents to falsely implicate the accused and the accused has also not claimed that there was any enmity between him and the complainant side. So, false implication is ruled out.

15. I, therefore, do not find any merit in this appeal which is accordingly dismissed.

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