

Charan Singh Vs. State

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Court : Delhi

Decided On : Dec-05-2014

Judge : Pratibha Rani

Appellant : Charan Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

02. 12.2014 Pronounced on :

05. 12.2014 % + CRL.A. 1357/2012 CHARAN SINGH Through : Appellant Mr.Deepak Vohra, Advocate. Versus STATE Through : Respondent Mr.Neeraj Kumar Singh, APP for the State. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

1. The Appellant Charan Singh has spent almost five years in judicial custody apparently for the reason that he happened to fall in love with a girl who was Muslim. The girl was also in love with the Appellant and perhaps fearing opposition from the family to their intention to get married, she preferred to leave her home to marry the Appellant and live a contended life with the Appellant in his village. They had plans to educate their children despite the fact that they were illiterate persons residing in jhuggi cluster. However, their dreams could not come true as after her recovery from the village of the Appellant, though initially she wanted to live with

the Appellant as his wife, however, during trial may be under family pressure, she preferred to depose against him resulting into his conviction for committing the offences Punishable under Sections 363/366/376/377 IPC.

2. Feeling aggrieved by his conviction and sentence awarded to him for committing the offence punishable under Sections 363/366/376/377 IPC vide impugned judgment and order on sentence dated 31.03.2012 and 07.04.2012 respectively, the Appellant Charan Singh has preferred this appeal. On being convicted for committing the offence punishable under Sections 363/366/376/377 IPC, the Appellant has been sentenced as under : U/Section 363 IPC : U/Section 366 IPC : U/Section 376 IPC : U/Section 377 IPC :

3. to undergo RI for three years with fine Rs.1000/- and in default to undergo SI for days. to undergo RI for three years with fine Rs.1000/- and in default to undergo SI for days. to undergo RI for seven years with fine Rs.2000/- and in default to undergo SI for days. to undergo RI for three years with fine Rs.2000/- and in default, to undergo SI for days. of 15 of 15 of 15 of 15 This is not for the first time that these run away marriages by the girls on the verge of attaining the consenting age or age of majority has drawn the attention of this Court. A Division Bench of this Court had already considered the various social human aspects in such cases. In the case of Manish Singh vs. State, Govt. of NCT AIR2006 Delhi 37 it was observed as under :

Run Away Marriages' are manifestation of a generational change due to variety of factors, including increased interaction between the sexes, with young boys and girls attaining maturity rapidly. It is a complex problem with inter play of social, economic, religious, caste, educational factors, including sex education and vulnerability and backwardness of the weaker sex having its impact. The Child Marriage Restraint Act, 1929 as well as relevant provisions of the Hindu Marriage Act are social legislations aimed at protection and development of the vulnerable sex and have to be interpreted and worked accordingly. The consequences of considering such marriages as void or voidable need to be evaluated since the State as well as the social reformists who have not been successful to change the mindset of the people tuned to early marriages. By an estimate, prevalence of

child marriages in the major States of West Bengal, Rajasthan, Bihar and Madhya Pradesh varies from 56 to 59%. Moreover, it is also to be noted that any adverse fall out of any law that makes such underage marriages as void or voidable would be borne by none other than the women and their progeny.

4. The case FIR No.58/2010 under Sections 363/366/376/377 IPC was registered at PS Nihal Vihar on the basis of statement Ex.PW2/A made by Mr.Rafiq Khan - father of the Prosecutrix on 23.03.2010 which is to the effect that he used to repair cycles. His daughter S (name of the Prosecutrix withheld to conceal her identity) aged about 15 years had left home at about 8.30 am on 22.03.2010 on her cycle to work in House No.52, N.P. Apartment, H-3 Block, Vikas Puri, Delhi but she failed to report there. He tried to make search for his daughter at his own level but could not trace her. He also expressed suspicion on a boy namely Charan, who also used to reside near his Jhuggi and was also missing. After registration of FIR, search was made for the missing girl as well accused Charan. Both of them were recovered from Village Gohand at the instance of the Complainant. Statement of the Prosecutrix under section 164 Cr.P.C. was also got recorded. Exhibits were sent to FSL and after completion of investigation, chargesheet was filed.

5. Needless to state that the Appellant/Accused pleaded not guilty to the charges framed against him. The Prosecution has examined 10 witnesses to prove its case. However, during his examination under Section 313 Cr.P.C., the Appellant pleaded innocence but believing the testimony of the Prosecutrix and other material witnesses, learned Trial Court has convicted the Appellant for committing the offences punishable under Sections 363/366/376/377 IPC and sentenced him in the manner stated above.

6. The Appellant is aggrieved by the impugned judgment and order on sentence for the reason that the Prosecutrix was in love with him. They got married and thereafter they had physical relations as husband and wife. His grievance is that even in her statement recorded under Section 164 Cr.P.C., the Prosecutrix stated before learned MM about these facts but during trial when she was examined as PW-1, being under the influence of her parents, she deposed against the appellant under fear and pressure of her family. He further submitted that since it is a case

where the Prosecutrix had left the house and custody of her parents of her own, married the Appellant/Accused of her own sweet will and she being above 15 years of age at the time of entering into physical relations with him as his wife, no offence under any of the Sections under which he has been convicted, can be said to have been made out against him, hence he deserves to be acquitted.

7. On behalf of State, Mr. Neeraj Kumar Singh, learned APP submitted that the Prosecutrix had not acquired the age of majority at the time of leaving the custody of her parents as well as at the time of marrying the accused. Learned APP further submitted that there is no proof of marriage of the accused with the Prosecutrix and in the facts and circumstances, it is not open to the accused to contend that he had physical relations with the Prosecutrix as his wife. He submitted that the finding by learned Addl. Session Judge, in the given facts and circumstances, may not be interfered with for the reason that the Prosecutrix was a minor and had not acquired the consenting age for entering into physical relations with the Appellant, hence the appeal may be dismissed.

8. I have considered the submissions and carefully gone through the record. In this case two questions arise for consideration: (i) The Age of the Prosecutrix (ii) If the Prosecutrix had voluntarily accompanied the Appellant to his village, married him and lived as his wife till she was recovered, could the Appellant be convicted for committing the offence punishable under Sections 363/366/377 IPC.

9. In this case testimony of the father of the Prosecutrix who is complainant in this case as well as the testimony of the Prosecutrix at different stages as well the medical evidence needs to be considered by the Court.

10. The FIR in this case has been registered on the basis of statement of Shri Rafiq Khan, father of the Prosecutrix wherein after mentioning that his daughter aged about 15 years has not reached at workplace, he suspected a boy, namely, Charan Singh (Appellant) to be the person who had enticed away his daughter. This establishes that the Prosecutrix and the Appellant were having some kind of affair. Thus, the act of the Prosecutrix in leaving the house on the pretext going to work in a Kothi No.52 where she was working as a maid servant, but not reaching there prove that she had left the house voluntarily to join the company of the

Appellant. The father was having the knowledge of her involvement with the Appellant Charan Singh and due to this reason he was suspected to be person with whom she had gone.

11. The complainant has been examined as PW-2. He has stated that he does the job of cycle repair. He has 9 children out of which 5 are daughters and 4 are sons. He stated that his daughter is 13 years old. She left home on 22.03.2010 at about 8.30 a.m. for going to work in Kothi No.52, Vikaspuri and generally she used to return at 5.00 p.m. but on that day at about 9.00 a.m. he received a phone call from that house that his daughter has not reached there. He along with his wife searched her but could not find her. Thereafter, they reported the matter to the police vide missing report Ex. PW2/A and suspected Charan Singh, as he was also missing from his Jhuggi since morning. He has further stated that Shankar Dada made a call to his acquaintance and informed that his daughter was at the house of Shankar Dada in the village of accused Charan Singh. After 5-6 days, he along with police officials, visited the house of accused Charan Singh i.e. Village Gohand, PS Jharaiya, U.P. and from there both Charan Singh and the Prosecutrix were recovered. They were brought to Delhi where they were medically examined and statement of her daughter was recorded. During his cross-examination when he was questioned as to for how many years he was married, he stated that his first child was born on the very first year of the marriage and all his children were born with a gap of one year. He has also given the age of his latest daughter to be 17 years old. However, he could not tell the year of his marriage or date of birth of any of his child.

12. PW-1 - the Prosecutrix, after her recovery, was produced before learned MM for getting her statement recorded under Section 164 Cr.P.C. Her statement has been recorded by the learned MM on 31.3.2010. Learned MM has questioned in detail about the age, qualification, siblings and the nature of the job she was doing as well as the nature of the job of her father. She has also been questioned as to whether she had been tutored by anyone. All these questions have been answered by the Prosecutrix in a manner which shows that she was making her statement before learned MM voluntarily, giving all the details required to be answered by her. Certain questions and answers put to her reveal that on that

date she was not willing to accompany her family. She wanted to go with the Appellant and live with him but she was under fear that she could be killed by her parents. The two questions which reveal her state of mind are as under: Q.No.8. Ans. Why you have come to the Court?. I have come here to be free. I want to go with the boy. I do not want to go with my mother and father. They would kill me. Q.No.9. Whether police uncle has told you as to what statement you have to make?. Whenever I am alone police uncle says that I should speak truth before the Court but when my mother and father are there he said that I should told the Court that the boy had gagged my mouth and taken me. Ans. Q. No.10. Ans. Whether you will speak as per your conscious or as advised by police uncle?. I will go with my conscious. Q. No.11. Ans. What your conscious say?. My conscious tells me to go with the boy. Q. No.13. Whether Charan Singh has told you what she should speak?. No. My mother was shouting on me but I will tell the truth. Ans.

13. After satisfying himself that the Prosecutrix was in fit state of mind to depose her statement on oath, her statement under Section 164 Cr.P.C. has been recorded. In her statement under Section 164 Cr.P.C., she has stated that when she was going on her cycle and passing through Jhuggi No.5 she saw Charan Singh standing there. She questioned him whether he was going to his village and when he replied in affirmative, she asked him to take her also and he agreed to marry her and said that they will build a house in village, earn their livelihood and live there. He also said that whenever they get children they will educate them and whatever they could earn through agricultural income they would survive on that. He also informed her that his parents have agreed to their marriage. She accompanied him to his village in U.P. by overnight journey. She left her cycle near his Jhuggi. First they hired a tempo, then boarded a train and next day they reached at his village and then went to the house of the sister of the Appellant where his sister, her husband and their three children were present. The Prosecutrix expressed her desire to wear saree which was provided to her. Thereafter they married and also celebrated their first night.

14. She was questioned by learned MM about the act done during first time which has also been explained in detail by the Prosecutrix and stated that thereafter they were apprehended from the village and brought back to Delhi and she again

expressed her desire as under:MAIN APNE PATI KE SAATH JAANA CHAHTI HOON UNHE CHHOD DIYA JAAYE. 15. The Prosecutrix was also medically examined and as per MLC she has given her age to be 19 years and having physical relations with consent.

16. When the Prosecutrix was examined as PW-1 during trial of this case, at that time she was with her parents and her statement has been recorded on 20.11.2010 and 3.1.2011 but by that time instead of increasing her age she preferred to give her age as about 13/14 years. During her statement before the Court she stated that the accused persuaded her and took her to some unknown place where he committed rape on her. She has also stated that while she was going to work in Kohti No.52, her cycle tyre got punctured and when she was walking on road, Charan Singh put some cloth on her mouth as a result of which she became unconscious and when she gained consciousness, she found herself to be in his sisters house. Thereafter, he asked her to have sex with him. When she refused, he threatened that he would kill her parents, brothers and sisters. Thereafter, he forcefully had sexually intercourse with her. She was kept in the house of the sister of the Appellant Charan Singh for 2-3 days but due to fear of police his sister turn them out and then Charan Singh brought her to his mothers house. There again she was kept for 3 days but his mother kept them separately. When the police came accused asked her to mention her age to be 19 years or he would kill her family. She has also stated that during her stay in the house of sister of the accused he also used to have oral sex. In her crossexamination she had denied the suggestion that she had gone with the Charan Singh of her own. She has stated that she was under fear and threat from the accused so she did not tell any fellow passenger that she was taken forcefully.

17. In the instant case, the ossification test of the Prosecutrix was also got conducted as per which bony age of the Prosecutrix was 12 to 14 years on the date of her examination. Not much reliance can be placed on the ossification test report for the reason that even as per father of the Prosecutrix, at the time of leaving the house, she was 15 years of age. PW-2 Mohd. Rafiq Khan - father of the Prosecutrix in his deposition before the Court much after the date of occurrence, he had given the age of Prosecutrix to be 15 years which cannot be

accepted especially when PW-2 Mohd. Rafiq Khan stated that : ..I cannot tell as to in which year or how many years before today I got married. My first child out of nine children were born on the very first year of the marriage. Vol. my all the children were born after gap of one year. My eldest daughter Nazma is not married yet. I do know the age of my eldest daughter. Vol. The age of my eldest daughter Nazma is 17 years. I cannot say whether I am married for last 19 or 20 years 18. So even if the first child is presumed to have born 18-19 years ago, the age of the Prosecutrix comes to be above 16 years at the time of her elopement.

19. It may be noted here that when the Prosecutrix was examined under Section 164 Cr PC by learned MM, she narrated all the facts truthfully which is clear from the various questions and answers recorded hereinbefore. But when the Prosecutrix was examined as PW-1 in the Court, she took complete U turn may be under the influence of her parents. Her deposition in the Court that she was made unconscious and then taken to U.P. in itself is highly improbable as it is difficult for the Appellant to carry an unconscious teenage girl in public transport during an overnight journey. This in itself shows that while appearing before the Court, she preferred to tell the lines as suggested by her family. Thus, there are material contradictions in the testimony of the Prosecutrix. It may also be noted that on the day she left home, her father came to know through Shankar Dada that she was present in the village in the house of Shankar Dada and Appellant was named as suspect in the FIR itself, which further lends credence to the contention raised by the Appellant that they were in love and she married him. Even if it is assumed for the sake of arguments that the Prosecutrix was 15 years of age at the time of entering into physical relation with the Appellant in the name of Suhaag Raat, sexual intercourse with a wife above 15 years of age, cannot be termed as rape as per Exception (2) to Section 375 IPC which provides that Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

20. The Prosecutrix in this case was a girl who was working as maid servant in a Kothi and on the date of occurrence, she herself left her cycle near Jhuggi No.5 and accompanied the Appellant to his village. She herself expressed her desire to wear sari, marry the accused and enter into physical relations with the Appellant

as his wife. She remained with Appellant for about a week till she was recovered by the police. Not only that, even at the time of making statement under Section 164 Cr PC, she had only one desire i.e. to live with her husband i.e. the Appellant.

21. In view of the substantial improvements made by the Prosecutrix while being examined as PW-1, it is not possible to maintain the conviction of the Appellant for committing the offence punishable under Sections 363/366/376/377 IPC. It may be added that it is not uncommon in runaway marriage that during trial under pressure of the family, the Prosecutrix is often compelled to make statement against accused to secure his conviction so as to keep the boy away from her life. In the instant case also, the same appears to have happened. Learned Trial Court failed to take note of the fact that not only as per MLC Ex.PW3/B but also at subsequent stage in her statement under Section 164 Cr PC Ex.PW1/A, the Prosecutrix categorically stated that she had left the house of her own, married the Appellant and had physical relations with him as his wife. In that circumstance, there was no sufficient evidence against the Appellant to convict him for committing the offences punishable under Sections 363/366/376/377 IPC and hence, he deserves to be acquitted.

22. Resultantly, the appeal is allowed. The Appellant is acquitted of the charges framed against him.

23. Copy of the order be sent to the concerned Jail Superintendent with direction to release the Appellant forthwith, if not wanted in any other case. Copy of the order be also given dasti to learned counsel for the Appellant under the signatures of Court Master. TCR be sent back alongwith copy of this order. CrI.M.B. No.1041/2014 (Suspension of sentence) Since the appeal has been allowed, the present application has become infructuous and the same is accordingly dismissed. (PRATIBHA RANI) JUDGE DECEMBER05 2014 st/pg

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