

NiamuddIn Vs. the State

NiamuddIn Vs. the State

SooperKanoon Citation : sooperkanoon.com/954924

Court : Delhi

Decided On : Apr-25-2013

Judge : P.K.Bhasin

Appellant : Niamuddin

Respondent : The State

Advocate for Def. : Mr. M.N. Dudeja

Advocate for Pet/Ap. : Mr. S.R. Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL.A. NO.155/2004 Date of Decision:

25. h April, 2013 + # ! NIAMUDDIN Appellant Through: Mr. S.R. Sharma Advocate versus \$ * THE STATERespondent Through: Mr. M.N. Dudeja, APP CORAM: HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K.BHASIN, J: This appeal has been filed by the appellant(hereinafter to be referred as the accused) who was convicted for the commission of the offences punishable under Sections 366, 354 and 342 of the Indian Penal Code by the learned Additional Sessions Judge vide judgment dated 5th February, 2004 and sentenced to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs.1,000/- with a default stipulation for the offence u/s 342 IPC, rigorous imprisonment for a period of one and half years and fine of Rs.1,000/- with a default stipulation u/s 354 IPC

and rigorous imprisonment for two and half years and fine of Rs.5,000/- with default stipulation u/s 366 IPC vide order dated 6th February, 2004.

2. The prosecution case as noticed by the trial Court in the impugned judgment is as under:1..... It has been stated in the complaint by the prosecutrix that she is a student of Class VII in Sarvodaya School, Mehrauli. On the day of the complaint at 7.30 p.m., she had been sent by her mother to the shop of a tailor master for collection of her clothes. Tailor master told her that the clothes were not ready, therefore, he had started to return, when a boy named Nimmi, resident of Mehrauli met her on the way. He caught hold of her hand and after enticing her, took her to the first floor of a building which was under construction at Mehrauli. He asked the complainant to stay back for some time and he started kissing the complainant. He also started to pull down the underwear which the complainant was wearing; when she raised an alarm, he put his hand on her mouth. The complainant got herself freed and started running from the room. She also raised alarm at which, her mother Sunita reached there, who had set out to look for her because the complainant had been delayed. On the asking of her mother, complainant narrated the entire incident to her mother. Nami whom the complainant knew earlier ran away from the spot.....

3. After receiving the complaint of the complainant the police registered an FIR(Ex. PW-5/A) on 17th August, 1998. The police could arrest the accused only on 27th March, 2002 on getting some secret information about his whereabouts.

4. The accused was charged and tried by the Additional Sessions Judge for the offences punishable under Sections 366, 354 and 342 IPC.

5. In order to prove its case the prosecution had examined ten witnesses in all including the complainant and her mother.

6. At the time of recording the statement of the accused under Section 313 Cr.P.C. he had taken a plea that his name was not 'Nimmi' as had been claimed by the complainant in the FIR. Another plea taken by him was that after his arrest he was taken to the house of the complainant where she and her mother had told the

police that he was not the person involved in commission of the crime. He examined two witnesses also in defence.

7. The learned Additional Sessions Judge after analysing the evidence adduced by the prosecution and the accused found him guilty and convicted him. Feeling aggrieved, the accused-appellant filed the present appeal.

8. The prosecutions star witness is the complainant herself. This is what she had deposed in her examination-in-chief: On 17.8.98 I went to shop of a tailor. Name of tailor I do not remember. The shop of the tailor was situated at a small distance from my house. Tailor master was present at the spot who told me that my clothes had not been stitched yet. My mother had sent me to bring cloths of my mother. When I was coming back to my home, accused present in the court met me on the way (witness pointed out towards the accused) and asked to come towards him. Construction work was going on and some flats were under construction. The accused took me inside a flat under construction and there was no light. I covered distance of 15-20 steps of stair cases and took me in a room. The accused kissed me and he was trying to remove my pantee and at that time I was wearing skirt and pantee. I raised alarm and came out from there. Accused could not remove my pantee. I came out and ran towards my house, on the way I met my mother and I told the incident to my mother. The accused ran away from the spot after seeing my mother when I along with my mother came towards place of incident. We reported the matter to the police on 17.8.98 at 12 midnight. My complaint is Ex. PW-1/A bearing my signature at point A.

9. The mother of the complainant was examined as PW-2 and this is what she had deposed: On 17.8.98 I sent my daughter Swati aged about eleven and half years to bring my clothes from a shop near to my house from Raja Tailor. Again said it might be Sonica Tailor. The shop of that tailor was situated near my house. The shop was too near to my house but my daughter could not return till 5-7 minutes. Then I left my house for shop of tailor because distance between my house and tailor shop was one minute walking distance and on the way my daughter met me and she was frightened I asked her as to what had happened, then she told me that someone had caught hold of her, had taken her in the flats under construction.

I took my daughter towards the flat and on seeing us, accused fled away. I saw the accused present in the Court today running from the place of incident. My daughter told me the whole incident.

10. Learned counsel for the accused-appellant had submitted that even though the complainant and her mother had stated in their evidence that the accused was the culprit but still he could not have been held guilty since there are many serious infirmities in the their evidence which get highlighted in their cross-examination and those infirmities in the prosecution case render the identity of the accused as the real culprit highly doubtful.

11. Referring to the evidence of the complainant herself the learned Additional Public Prosecutor, on the other hand, had submitted, and which submission is usually made on behalf of the prosecution in such like cases, that since she had categorically named the appellant as the culprit who had kidnapped her and then played with her body parts and since she had no reason to falsely implicate him the trial Court had rightly convicted him. It was also submitted that though the evidence of the complainant did not require any corroboration but still it was duly corroborated also by her mothers evidence.

12. After carefully examining the prosecution evidence I find myself in full agreement with the submission of the learned counsel for the accused that the prosecution has not been able to establish the identity of the accused as the real culprit beyond reasonable doubt. As noticed already, the complainant had stated in the FIR that one Nammi who was resident of Mehrauli and whom she knew from before had enticed her to accompany him and had taken her to some building under construction. In cross-examination, however, she admitted in answer to the very first question put to her by the counsel for the accused that she neither knew the accused nor she knew his name. It becomes significant to notice here that the accused-appellant was not arrested immediately after the incident but after about four years on 27th March, 2002 and that too not on the pointing out of the complainant or her mother but at the instance of some police informer, as stated by PW-7 Head Constable Virender Singh who had arrested him from Ajmeri Gate(Shahganj).

13. It is not the case of the prosecution that the accused appellant was a resident of Mehrauli, as had been stated by the complainant in her complaint to the police. As per the police documents on record, including his MLC(Ex.PW-4/A) and his confessional statement, he was a resident of Ajmeri Gate and PW-3 Sub-Inspector Bharat Singh had also deposed that the accused was living in Ajmeri Gate, which area is far away from Mehrauli. The complainants mother also stated in cross examination that she did not know the accused from before. In these circumstances, the investigating officer should have immediately after arresting the accused got arranged a test identification parade to get his identity established as the culprit. He however did not do that and instead, he was taken to the house of the complainant as admitted by her mother(PW-2) in her cross-examination and she also had stated that she had identified the accused at that time. Absence of test identification parade(TIP) in these circumstances definitely casts a serious doubt about the identity of the accused as the real culprit and prosecution cannot succeed merely on the basis of dock identification of the accused. In this regard counsel for the accused had rightly placed reliance on a judgment of the Supreme Court in the case of Krishan Kumar Malik vs State of Haryana, (2011) 7 Supreme Court Cases 130.

14. In fact, the trial Judge himself also had agreed with the submission of the counsel for the accused that there was some missing link between the person Nimmi resident of Mehrauli and Naimmuddin resident of Ajmeri Gate i.e. the accused but still he ignored that infirmity in the prosecution case by observing that the investigation in that regard had not been carried out by the two investigating officers properly but benefit of their faults could not be given to the accused. In my view, this reasoning of the learned trial Judge is not sound at all. It is well settled that in criminal trials benefit of every doubt in the prosecution case has to go to the accused and not to the prosecution.

15. In my view, on the said ground alone the accused deserves to be acquitted by giving him the benefit of doubt. This appeal is accordingly allowed and the judgement dated 5th February,2004 and order dated 6th February,2004 passed by the learned Additional Sessions Judge, New Delhi are set aside and the appellant stands acquitted of all the charges for which he was tried and convicted. His bail

bonds stand discharged. P.K. BHASIN, J APRIL 25 h, 2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com