

Sajjan Lal Vs. State

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Court : Delhi

Decided On : Feb-08-2013

Judge : Indermeet Kaur

Appellant : Sajjan Lal

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment Reserved on :05.02.2013 Judgment Delivered on:

08. 02.2013 CrI. A.162/2000 SAJJAN LAL Through: Appellant Ms. Charu Verma, Adv. with appellant in person. Versus STATE Through: Respondent Mr. Manoj Ohri, APP. ASI Devendar Singh, Narcotics Cell. SI Somil Sharma, PS Gokal Puri, Delhi. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1. The sole accused had been convicted for the offence under Section 376 read with Sections 365 & 342 of the Indian Penal Code (IPC). He had been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/-; in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 376 of the IPC. For the offence under Section 365 of the IPC, he had been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and for the offence under Section 342 of the IPC, he had been sentenced to undergo rigorous imprisonment for six months.

2. The version as set up by the prosecution is that on 31.03.1998 one M (name undisclosed) at about 12 noon (aged about 13 years) was attending to her household chores along with her mother. Accused Sajjan Lal who was residing in their neighbourhood reached there. M enquired from him whether he had a newspaper to which he replied that he would ascertain the same from Ashok. M accompanied accused Sajjan to the house of Ashok where as soon as she reached there accused Ashok closed the door of the room and committed rape upon her. The co-accused Sajjan Lal also raped her. The act was repeated. While doing so, her mouth was gagged. Blood was also oozing out from her private part; she reached home. On inquiry by her mother, the incident was revealed to her. Matter was then reported to the police and the aforementioned FIR was registered.

3. Upon investigation, chargesheet was filed. Co-accused Ashok was found to be a juvenile and was tried under the Juvenile Justice Act before the Juvenile Court. Charge under Sections 376/365/342/34 of the IPC was framed against the accused.

4. M being the star witness of the prosecution was examined as PW-4. She has reiterated her version as set up by the prosecution. On oath she has deposed that accused Sajjan had taken her to the house of accused Ashok and after striping her clothes, he committed rape upon her along with the co-accused Ashok; she started bleeding from her private parts; her underwear was taken into possession. In her crossexamination, she has stated that accused Sajjan was known to her two months prior to the date of the incident and his house was also known to her. She has admitted that although she cannot read a newspaper but the newspaper was needed by her to spread it in the almirahas; she denied the suggestion that accused persons had not committed rape upon her.

5. The statement of her mother was recorded as PW-5. She was the complainant; her version is also that accused Sajjan was known to them being in their neighbourhood i.e. in the house opposite to their house and he often used to purchase goods from them on credit. She denied the suggestion that accused has been falsely implicated.

6. The rukka Ex. PW-7/A was prepared and the FIR Ex. PW-7/B was registered on the same day. Medical examination of PW-4 was conducted by Dr. Preeti Bhardwaj PW-2 on 01.05.1989. The hymen was found torn and bruised but no bleeding was present at the time of examination. No sign of external injury was noted. PW-3 Dr. V.K. Jain had medically examined the accused; he had reported that there was nothing to suggest that accused was incompetent to have sex.

7. On behalf of the appellant it has been argued that the MLC has named only Ashok and name of Sajjan does not appear in the MLC; the incident had occurred at 12.00 Noon when admittedly the prosecutrix used to be in school between 7.00 AM to 1.00 PM. There is no report of the CFSL; the age of the victim has also not been verified. Submission is that the appellant has been falsely implicated for the reason that money was owed by the appellant to the mother of the prosecutrix and they having had an altercation some time ago on this point the accused has been falsely embroiled and to substantiate this submission attention has been drawn to cross-examination of PW-2 and PW-4 where suggestion to this effect had been given by the learned defence counsel.

8. Arguments have been countered.

9. The star witness of the prosecution is PW-4. She was aged 12 years on the date of her deposition and under Section 118 of the Indian Evidence Act there is no bar on the age of the deposition of the witness; the only condition being that the witness must be able to understand the import of what she so states on oath. PW-4 has specifically stated that at about 12.00 Noon on the fateful day when she was sitting at their shop the accused Sajjan came to the shop and on her enquiry as to whether he had a newspaper he took her to the house of Ashok where she was raped by both Ashok and the appellant. She was bleeding from her private parts; she came back home where her mother noticed her weeping and a police complaint was lodged. The record shows that Rukka was taken at 6.00 PM on the same day and the FIR was registered thereafter. The statement of the prosecutrix under Section 164 of the Cr.P.C. Ex. PW1/A was also got recorded on the following day i.e. 01.4.1998 wherein the same role i.e. that the accused Sajjan Lal and Ashok Kumar had committed rape upon her person had been attributed. This

was after a specific inquiry made by the learned Magistrate (PW1) that the witness was capable of understanding the questions put to her and she was in a fit state of mind to give the said statement. This version of PW-4 (Ex.PW1/A) was reaffirmed by her deposition on oath. Although a suggestion has been given to the witness that there were some money dealing of the accused Sajjan Lal with the mother of PW-4 but the same had been vehemently denied. She has stated that she had come home from school early as she had not paid the fee for which her teacher had sent her home; this version was also corroborated by PW-5 10. The mother of the prosecutrix Ram Murty was examined as PW-5. She had four children. She had deposed that on the fateful day at about 12.00 Noon she saw her daughter was crying; she appeared frightened; there was blood on her legs. On inquiry, a complaint was lodged with the police. Version of PW-5 matches and corroborates the version of PW-4. She had also denied the suggestion that because of an altercation with Sajjan 10-12 days prior to the incident he was falsely framed in this case.

11. The MLC Ex.PW-2/A reflects the history of rape by two boys one of whom was identified as Ashok Kumar. Hymen was bruised at 4O clock position and torn at 5O clock position. Bleeding was also noted. Merely because there was no external injury would not detract from the veracity of the MLC which is a valuable medical evidence affirming the fact that the hymen of the victim was torn. Bleeding was also noticed; history charts also refer to the incident where the name of co-accused Ashok has specifically been mentioned. The history chart details a rape committed upon the victim by two persons.

12. Prosecution in view of this ocular testimony of PW4 corroborated by the version of her mother as also the medical evidence has been able to establish its case to the hilt. There was no reason for the accused persons to have been falsely implicated. The conviction calls for no interference.

13. Section 376 of the IPC prescribes a minimum punishment for rape which shall not be less than seven years but may extend for life or to 10 years and the convict shall also be liable to pay fine. The victim, even as per the case of the prosecution, is between 13 to 14 years of age. The sentence inflicted upon the accused is the

minimum sentence. It calls for no interference.

14. This Court has been informed that the convict has already undergone some part of his sentence as an under trial. Benefit of Section 428 of the Cr.P.C. be granted to him.

15. The appeal being devoid of any merit is accordingly dismissed. FEBRUARY 08 2013 A/nandan/rb Crl. Appeal No. 162/2000

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