

Mohd. Ashraf Vs. State of the Nct of Delhi

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Court : Delhi

Decided On : Mar-14-2013

Judge : G.P. Mittal

Appellant : Mohd. Ashraf

Respondent : State of the Nct of Delhi

Advocate for Def. : Ms. Rajdipa Behura

Advocate for Pet/Ap. : Mr. A.J. Bhambhani, Ms. Nisha Bhambhani, Mr. Apurv Chandolia, Ms. Lakshita Sethi

Judgement :

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

14. h March, 2013 + CRL.A. 1270/2012 MOHD. ASHRAF Appellant Through: Mr. A.J.

Bhambhani with Ms. Nisha Bhambhani, Mr. Apurv Chandolia & Ms. Lakshita Sethi, Advocates versus STATE OF THE NCT OF DELHI Through: Respondent Ms. Rajdipa Behura, APP along with SI Girraj Singh. P.S. Badarpur CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. This Appeal is directed against a judgment dated 24.08.2012 and an order on sentence dated 27.08.2012 passed by the learned Additional Sessions Judge(ASJ) in Sessions Case No.117/2006 FIR No.464/2005 P.S. Badarpur

whereby the Appellant was held guilty for the offence punishable under Section 363 IPC and was sentenced to undergo RI for 04 years and to pay a fine of `5,000/- or in default to undergo SI for three months.

2. The case of the prosecution can be extracted from paras 2 and 3 of the impugned judgment which is read as under:

2. The facts of the case, in brief, are that the prosecutrix had gone missing from her house not K-20, Saurabh Vihar, Badarpur, New Delhi in the night of 31.05.2005 and 01.06.2005 when she alongwith her other family members was sleeping on the roof of her house. She was found missing in the morning at about 05.00 AM on 01.06.2005 and when she could not be traced out by her family members, the matter was reported to the police by her father Shri Mahender Singh vide DD No.16B Ex.PW15/A dated 02.06.2005 while stating that she was last seen by him at about 12.30 AM on 01.06.2005. Since prosecutrix could not be traced about, subsequently the statement Ex.PW1/B of his father was recorded by the IO/PW17 SI Mohinder Singh Dahiya (ASI at that time) on 07.06.2005 and rukka Ex.PW17/A was endorsed thereon and the FIR of this case Ex.PW10/A was registered under Section 363 IPC against unknown person.

3. The investigation was undertaken by the above IO/SI himself and the site plan Ex.PW17/B was prepared by him and efforts were made to search the prosecutrix through the messages sent to the Missing Persons Squad and publications in the local newspapers. The prosecutrix was ultimately recovered from the House No.64, Village Meethapur, Badarpur, New Delhi on 27.11.2005 on the basis of some secret information and the memo Ex.PW1/A regarding her recovery was prepared, which is also witnessed by her father/complainant. Besides her statement under Section 161 Cr.P.C. recorded by the IO/PW17, her statement under Section 164 Cr.P.C. Ex.PW4/A was also got recorded on 01.12.2005 in which she had stated that she was in love with one boy named Ashraf and she had started residing with her after leaving her house and she was apprehended by the police when they were going to marry. She was also got medically examined from the AIIMS hospital vide MLC Ex.PW14/A. The IO/PW17 had also collected one certificate Ex.PW5/A from the Sarvodya Kanya Vidyalaya, Molarband,

Badarpur, New Delhi and as per the above certificate, the date of birth of the prosecutrix recorded in the school record was 10.08.1989. Since her hymen was found to be torn in the above medical examination, Sections 366 and 376 IPC were added in the case and her vaginal swab seized vide seizure memo Ex.PW8/A was sent to FSL for analysis.

3. Although, in her statement under Section 164 Cr.P.C., the prosecutrix had stated that she was in love with the Appellant, had started residing with him after leaving her house and was apprehended by the police when they were going to perform marriage, however, in her deposition in Court, she took a U turn and stated that the accused had enticed her. She deposed that she asked the accused to marry her, but instead of performing the marriage the Appellant committed rape on her.

4. On appreciation of evidence, the learned ASJ found that the prosecutrix was aged about 16 years and that the sexual intercourse was committed on her with her consent. Thus, the Appellant was acquitted of the charge for the offence punishable under Sections 366 and 376 IPC. The State has not preferred any Appeal against the said finding. The Appellant was, however, convicted for an offence punishable under Section 363 IPC on the ground that the prosecutrix was kidnapped from the lawful guardianship of her parents and was sentenced to undergo rigorous imprisonment for four years.

5. The learned counsel for the Appellant, on his instructions, states that the finding on conviction under Section 363 IPC is not challenged by him. The Appellant was sentenced to undergo RI for four years, as against this the Appellant has already undergone a sentence of 03 years 05 months and 28 days as on 05.03.2013. Thus, he has already undergone the sentence for more than 03 years and 06 months and has earned a remission of about two months, therefore, completing his sentence of about 03 years and 08 months. He states that keeping in view the fact that the prosecutrix was not a small child, although less than 18 years (but more than 16 years) and since she had accompanied the Appellant of her own free will, a lenient view may be taken in the matter of awarding sentence and the Appellant may be released on the sentence which he has already undergone.

6. The learned APP opposes the request for releasing the Appellant on the sentence already undergone.

7. I have considered the facts and circumstances of the case. It is not in dispute that the learned ASJ on appreciation of evidence found that the prosecutrix had accompanied the Appellant of her own free will, yet the offence under Section 363 IPC was made out as the prosecutrix was taken out of the lawful guardianship of her parents. In the facts and circumstances, I am of the view that the interest of justice would be met if the Appellant is sentenced to undergo imprisonment for the period already undergone by him. It goes without saying that the Appellant shall pay the fine of `5,000/-, if not already paid, and in default he shall undergo SI for three months as directed by the learned ASJ.

8. The Appeal is disposed of in above terms.

9. A copy of the judgment be transmitted to the Superintendent Jail concerned for information. (G.P. MITTAL) JUDGE MARCH 14 2013 pst

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