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Vinod Kumar Vs. State

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Court : Delhi

Decided On : Mar-05-2013

Judge : S. P. Garg

Appellant : Vinod Kumar

Respondent : State

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

1. t March, 2013 DECIDED ON :

5. h March, 2013 + CRL.A. 761/2000 VINOD KUMAR Through : ....Appellant Mr.Yogesh Swaroop, Advocate with Mr.Vijay Kumar, Advocate. versus STATE Through : .Respondent Mr.M.N.Dudeja, APP with Mr.Hemant Kumar, Advocate. SI Vikrant Sharma, PS GTB Enclave. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant- Vinod Kuamr impugns judgment dated 13.11.2000 and order on sentence dated 14.11.2000 in Sessions Case No.33/2000 arising out of FIR No.55/1999 PS M.S.Park by which he was held guilty for committing offences punishable under Sections 363/366/376 IPC and sentenced to undergo SI for seven years with total fine ` 3,000/-.

2. Allegations against the accused were that on 04.03.1999 at about 12.15 P.M. he kidnapped prosecutrix X (assumed name), age 16 years when she was alone

at her House No.4/8, Gali No.4, Jagjeevan Nagar, Shahdara, Delhi. He committed rape upon her till she remained in his custody at Delhi and Meerut. During the course of investigation, statement of the prosecutrix was recorded under Section 164 Cr.P.C. She was medically examined. Birth certificate showing her date of birth as 15.03.1983 was collected. Statements of the witnesses conversant with the facts were recorded. On completion of investigation, a charge-sheet was submitted against the accused. The prosecution examined sixteen witnesses. In his 313 Cr.P.C. statement, the accused pleaded false implication. DW-1 (Dr.Sunil Kumar Dhawan), DW-2 (Sudhir Kumar) and DW-3 (Kamla) stepped in his defence. On appreciating the evidence and taking into consideration contentions of the parties, the Trial Court, by the impugned judgment convicted and sentenced the appellant as mentioned above. Being aggrieved, he has preferred the appeal.

3. On scrutinising the Trial Court record and the evidence produced before it, it reveals that the prosecutrix was known to the accused for about one year prior to the incident and they were acquainted with each other. The accused used to visit her home. On the day of incident, the prosecutrix was alone accompanied the accused. From the circumstances brought on record, it appears that the accused and the prosecutrix were in deep love and she accompanied him with her free consent without informing her parents. The prosecutrix remained in the company of the accused for four days and at no stage, she raised hue and cry. She did not resist sex with her. She was not alone in the place where she remained with the accused. She did not complain kidnapping and sexual assault. When her father lodged complaint with the police the accuseds father brought both of them to Delhi and produced before the police. In her medical examination, no injuries were found on her body to show if physical relationship was established without her consent. The accused produced number of documents on record to show that the prosecutrix had voluntarily performed marriage with him. DW-2 (Sudhir Kumar) proved petition No.22/1999 filed by the prosecutrix against the accused under Section 125 Cr.P.C. on 28.02.1999, wherein she admitted her marriage with the accused. In her cross-examination, she admitted that petition (Ex.PW-2/DA) contains her signatures at point A. She signed the said documents twenty days prior to the incident. She had travelled with the accused to Meerut but at no stage, raised any alarm complaining her forcible abduction. Apparently, the prosecutrix

was a consenting party throughout.

4. To infer the guilt of the accused, age of the prosecutrix is very crucial. The prosecutrix and her parents claimed that X was below sixteen years on the date of incident and her date of birth as recorded in MCD was 15.02.1983. PW-9 (Sewak Ram Sharma), Sub Registrar, Birth & Death, Shahdara, Delhi was examined who deposed that vide Sl.No.144 birth of a female baby was reported where the date of birth was recorded as 15.02.1983. The entry did not contain the name of the child. He admitted in the cross-examination that the entries at Sl.No.141 to 143 were made on the same day and name of the child was mentioned under each entry. It is not very clear as to which female baby the entry pertains. The parents of the prosecutrix admitted that they were having two other daughters namely Pooja and Bharti who were younger to X. She was eldest in the family. There was gap of about two years in the birth of each daughter. The prosecution did not collect birth certificates of the other two daughters Pooja and Bharti to compare the age of the prosecutrix with them. Counsel for the appellant has good reasons to doubt the birth certificate if it really pertains to the prosecutrix X.

5. Admitted position is that X had studied in a school. X admitted that she studied up to 6th standard. However, the date of birth recorded in the school record was not collected for the reasons unknown. The accused specifically claimed that the X has attended a school at Ghonda. PW-2 X admitted this assertion in the cross-examination though her parents denied it. The accused examined DW-3 (Smt.Kamla), Head Mistress MCD Primary School Arvind Nagar-I, Delhi. She brought admission register containing entry No. 3070 dated 12.08.1987 pertaining to the prosecutrix X, where her date of birth was recorded as 01.08.1982. It also contained her fathers name as Rajender Kumar. She further stated that on 28.09.1988, her name was struck of when she was student of 1 st class. The relevant certificate issued by the school is Ex.DW-3/A. PW-4 (Rajender Kumar) in the cross-examination also admitted that date of birth of her daughter was 01.08.1982. Apparently, the prosecution witnesses falsely claimed that the actual date of birth of prosecutrix was 15.03.1983. The accused even examined DW-1 (Dr.Sunil Kumar Dhawan) who on the basis of ossification report opined in Ex.DW-1/A that the prosecutrix was more than eighteen years on 04.03.1999. From these

cogent statements, it can safely be ascertained that the prosecutrix was above sixteen years of age on the date of incident.

6. The prosecutrix had accompanied the accused with her free consent and the prosecution measurably failed to establish that she was enticed by the accused or that she was made to smell any intoxicating substance. The prosecutrix was on the verge of attaining majority and was well aware of the consequence of her acts.

7. In the light of above discussion and considering the facts and circumstances of the case, conviction and the sentence of the appellant cannot be sustained. The appeal is allowed and the conviction and sentence of the appellant are set aside. The bail bond and surety bond of the appellant stand discharged.

8. The Trial Court record be sent back forthwith. (S.P.GARG) JUDGE MARCH 05 2013 tr

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