

Razzi Ahmed @ Razzi Vs. the State

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Court : Delhi

Decided On : Mar-18-2013

Judge : P.K.Bhasin

Appellant : Razzi Ahmed @ Razzi

Respondent : The State

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

Advocate for Pet/Ap. : Mr. Manish Kumar Khanna

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL.A. 302/2004 Date of Decision:

18. h March, 2013 + # ! RAZZI AHMED @ RAZZI Appellant Through: Mr. Manish Kumar Khanna, Advocate versus \$ * THE STATE Respondent Through: Mr. M.N. Dudeja, APP for the State CORAM: HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K.BHASIN, J: The appellant had been convicted for the commission of the offences punishable under Sections 366 and 376 of the Indian Penal Code('IPC' for short) by the learned Additional Sessions Judge vide judgment dated 1st October, 2003 and vide order dated 6th October, 2003 he had been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for six months u/s 376 IPC and rigorous imprisonment for five years and fine of Rs.2,000/- , in default

to undergo simple imprisonment of two months u/s 366 IPC. Both the substantive sentences of imprisonment were ordered to run concurrently. Feeling aggrieved by his conviction the present appeal had been filed by the appellant-convict.

2. The relevant facts leading to the conviction of the appellant are that on 3rd January,2001 PW-5 Shiv Raj Singh went to the police station Seelampur at about 6.10 p.m. and lodged a report with the police to the effect that that day at about 7.30 a.m. his daughter(PW-2) who was about 14 years old had gone to her school but did not return back home. He expressed no suspicion against anyone and requested the police to trace out his daughter. That report was recorded vide DD No. 20-A(Ex.PW-2/A). On 5th January,2001 PW-5 once again went to the police and reported that he had come to know that his daughter had been taken away by the appellant herein and one Shaukat and so action should be taken against them. On that, the police registered an FIR under Section 363 IPC(Ex.PW-2/B). Thereafter search for the missing daughter of PW-5 started by the police and finally she was traced out from Bihar on 12th January,2001 alongwith the appellant-convict. The appellant-convict was arrested same day. During investigation the statement(Ex.PW-3/A) of the victim girl(PW-3) was got recorded by the investigating officer on 17th January,2001 under Section under Section 164 Cr.P.C. in which she claimed herself to be 14 years old and alleged that on 3rd January,2001 she had been forcibly taken away to Bihar by the appellant-convict by showing her a knife. She was taken to a hotel in Darbhanga where she was kept till 12 th January,2001 and she was raped every night by the appellant-convict after showing her a knife.

3. The prosecutrix was got medically examined on her being recovered and brought back to Delhi on 13 th January,2001 vide MLC Ex.P3-13/A in which her age mentioned was 14 years. The police had collected a certificate from the school where the prosecutrix had studied and according to that certificate, Ex.PW-1/A, her date of birth was 1st April,1986 and the same date was entered in the admission and withdrawl register of the school vide Ex.PW-1/B.

4. On completion of the investigation the police submitted a charge sheet against the appellant-convict only since nothing incriminating could be found against the

other person Shaukat named by the prosecutrix in her statement under Section 164 Cr.P.C.

5. In due course the case stood committed to the Sessions Court and the trial Court vide its order dated 6th July,2001 framed charges against the appellant-convict under Sections 366 and 376 IPC. In the charge under Section 366 IPC it was mentioned that the appellant-convict had kidnapped the girl(PW-3) whose age was about 18 years. However, subsequently that charge was modified by the trial Court 18 th July,2003 and in the amended charge the prosecutrix was stated to be a minor.

6. The learned trial Court after analysing the evidence of fourteen witnesses examined by the prosecution held the appellant guilty under Sections 363/363/376 IPC vide impugned judgment dated 1 st October,2001 and vide order dated 6th October,2001 sentenced him to undergo different terms of imprisonment and fine also, as noticed already.

7. The appellant-convict then preferred the present appeal.

8. The star prosecution witness in such like cases is invariably always the victim of rape herself and the present case is no exception. The prosecution examined the victim of rape as PW-3 and relying upon her testimony the learned trial Court convicted the appellant. This is what the victim of rape deposed before the trial Court:On 3.1.2001, I was going to my school. I had come out from house at about 7 a.m. (statement is being recorded in camera). Near the park, Rajiv was already there. He showed me a knife and asked to accompany him, or otherwise he will kill my brother and myself. Thereafter he took me in a TSR and took me to railway station via Khajoori. Thereafter, he took me to Darbangah(Bihar). We arrived there at 3.00 p.m. He kept me in a hotel. The accused raped me there without my consent. He raped me 3/4-5 times. Thereafter, the accused did not have money, therefore, we returned to our house. The money with the accused had finished and he came out of the hotel and my father identified us when we were coming out of the hotel at Darbhanga. Accused present in the court used to work in the Hotel of Sohabib. I did not know him earlier. I had seen him in the hotel of Sohabib. I was also examined by Magistrate. (At this stage sealed envelope allowed to be

opened). My statement is Ex. PW 3/A which bears my signatures at Point-A. I was medically examined.

9. In the cross-examination of the prosecutrix a suggestion was given to her on behalf of the accused that she had consented to all that but she categorically denied having been a consenting party to the whole affair. She, in fact, even in her cross-examination stated that she had not raised any objection when the appellant-convict had met her in the morning of 3rd January, 2001 since he had shown her a knife. No suggestion was given to her that he had not shown her knife at any time. Learned counsel for the appellant-convict found himself in a difficult situation while arguing this appeal in view of the fact that a suggestion was put to the prosecutrix in her cross-examination that everything had happened with her consent. So, the appellant-convict was not disputing having had sexual intercourse with the prosecutrix as was being claimed by her. The prosecutrix had been claiming that she could not offer any resistance at any time because the appellant-convict had been doing everything by showing her knife and also by extending threats that she as well as her brother would be killed by him in case she does not accompany him.

10. In my view, the statement of the prosecutrix by itself was sufficient to convict the appellant-convict without any corroboration though her testimony before the Court got full corroboration also from her statement under Section 164 Cr.P.C.

11. During his statement under Section 313 Cr.P.C. for the first time the appellant-convict had taken a plea in defence that he had been falsely implicated by the father of the prosecutrix (PW-5) as he (appellant-convict) was a tenant in a part of his house and he wanted to get the house vacated from him under pressure and, three witnesses, including brother of the appellant-convict, were also examined to substantiate that defence plea but none of those defence witnesses could really substantiate that plea and based on their bald statements that father of the prosecutrix wanted the appellant-convict to vacate the tenanted premises and so he had falsely implicated him it cannot be accepted that PW-5 would have used his daughter to say that she had been repeatedly raped by the appellant-convict. That plea even otherwise cannot be accepted since it was not even put to either

the father of the prosecutrix or to prosecutrix herself in cross-examination.

12. Another plea taken by the appellant-convict during his statement under Section 313 Cr.P.C. was that, in fact, the prosecutrix had eloped with one Rajiv. The defence witnesses had also deposed to that effect. They had claimed that Rajiv was the nephew of the father of the prosecutrix and that Rajiv was also living in his house and instead of implicating Rajiv, the appellant-convict was implicated. It appears that this defence plea was taken since in her examination-in-chief the prosecutrix(PW-3) had stated that on the day of the incident when she was going to her school and had reached near the park Rajiv was already there and he showed her a knife and asked her to accompany her. However, typing of the name Rajiv appears to be a mistake since the appellant accused is also known as Rajji and the names Rajji and Rajiv sound similar because of which it got typed as Rajiv instead of Rajji and the appellant-convict wanted to press into service that typing mistake at the fag end of the trial. That was clearly an after-thought which is evident from the fact that even this defence plea was not put to either the prosecutrix or her father in their cross-examination. As noticed already, the suggestion given to the prosecutrix was that everything had happened with her consent and not that she had eloped with some Rajiv or that she was apprehended while roaming with that Rajiv in Bihar.

13. This defence plea that the prosecutrix had eloped with one Rajiv is even otherwise not acceptable since nowhere in the crossexamination of the prosecutrix, her father or even of the police witnesses(PWs 2 and

8) who had apprehended the appellant-convicted from Bihar with the prosecutrix in his company it was put to them that the appellant-convict was not apprehended from Bihar alongwith the prosecutrix as was being claimed by each one of them. PW-2 Head Constable Khazan Singh, in fact, was not even cross-examined at all. So, the defence story that the prosecutrix had eloped with one Rajiv, which plea in any case does not even appear to have been taken in the trial Court, is liable to be rejected.

14. The effort of the learned counsel was to convince the Court that the prosecutrix was a consenting party and that was evident from the fact that if at all

she had been forcibly taken away from Delhi by the appellant-convict she could have very well raised hue and cry at least during her stay in the hotel in Bihar where she was allegedly confined and raped repeatedly but nothing of the sort was done by her. However, in my view, she had offered sufficient explanation for her remaining in the custody of the appellant accused and suffering the sexual assaults of the appellant-convict silently.

15. I am also of the view that even if it were to be accepted that the prosecutrix was a consenting party that would not save the appellant-convict since she was less than fifteen years of age in January, 2001. The prosecution has proved her date of birth to be 1 st April, 1986 from the records of the school where she had studied. The record to that effect was produced by PW-1, who was employed in the school where the prosecutrix had studied, and she was not cross-examined at all on behalf of the appellant-convict. So, the fact that the prosecution had not examined the person who had actually made the entries in school records will also not help the appellant-convict and prosecution case in that regard shall not get affected, as was also the submission of the learned counsel for the appellant-convict. Even otherwise, the prosecutrix herself had all along been claiming to be of about fourteen years of age during the relevant period and it was not even suggested to her in cross-examination that she was a major in January, 2001. No such suggestion was given even to her father (PW-5) also in his cross-examination or even to her mother (PW-7). Therefore, it stood proved beyond any doubt that in January, 2001 the prosecutrix was below the age of fifteen years of age and, therefore, her consent, if at all it was there, for going with the appellant-convict and surrendering her body before him was immaterial and inconsequential.

16. It was contended on behalf of the appellant accused that initially when charge for the offence under Section 366 IPC was framed the age of the prosecutrix was stated in the charge to be 18 years and so the trial of the appellant-convict went on considering the age of the prosecutrix to be 18 years. However, when the case was at the stage of final arguments, the charge was altered and the prosecutrix was shown to be minor. So, the alteration, according to the learned counsel for the appellant, was prejudicial to his interest as suggestion during the cross examination of the prosecutrix was put to her that she was a consenting party.

There is no merit in this contention advanced by the learned counsel for the accused as after alteration of charge, he did not make any request to the trial Court for recalling of any witness. It was also contended that as per the ossification test of the prosecutrix got conducted by the trial Court on 15th November, 2002 her age was opined to be between 18-20 years and so she was not a minor on the date of the incident. However, in my view this argument also cannot be accepted in view of the unchallenged statement of PW-1 that the prosecutrix's date of birth was 01.04.1986 as per her school records as also of PWs 2, 5 and 7.

17. Another argument advanced by the learned counsel for the appellant was that there was no recovery of the burqa which the prosecutrix had claimed to have been wearing at the time when she was taken from Delhi to Bihar by the accused and also the knife used by the accused and so the prosecution case became doubtful. I do not find force in this submission of the learned counsel also as non recovery of knife and the burqa cannot throw any doubt on the wholly trustworthy testimony of the prosecutrix.

18. It is needless to state that the learned Additional Prosecutor had fully supported the trial Courts decision on the point of guilt of the appellant-convict as well as punishment awarded to him.

19. This Court, thus, finds no fault with the decision of the trial Court holding the appellant-convict guilty of the offences punishable under Sections 366 and 376 IPC.

20. In the end, learned counsel for the appellant-convict had also submitted that since the accused was a very young boy in January, 2001 he should be now let off with a lighter punishment. He had led evidence in defence that his date of birth was 2nd January, 1984 and he is a married man with four children to support. Since the appellant-convict committed very grave offences there is no justification whatsoever for letting him off with lesser period of imprisonment. For his conviction for the offence of rape of a minor girl, he was awarded the minimum sentence of imprisonment provided by the legislature and he should consider himself to be lucky not to have been awarded longer period of stay in jail. The appellant-convict

certainly knew what he was doing with the minor girl and those inhuman acts of his must have had serious impact on her, physical as well as emotional and which scars cannot get washed off throughout her life. If the Courts start getting sympathetic towards persons who commit such serious offences and spoil the lives of young girls for the satisfaction of their sexual lust more and more persons having such like tendencies would get encouraged and more and more young girls would become their prey. So, I am not inclined to show any sympathy to the appellant-convict in the matter of punishment also.

21. This appeal being devoid of any merit is, therefore, dismissed. The appellant-convict shall be taken into custody to serve the unspent portion of his sentences of imprisonment since during the pendency of this appeal the sentences of imprisonment were suspended by this Court. P.K. BHASIN, J March 18, 2013

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