
(2001) 08 DEL CK 0047
In the Delhi High Court
Case No : Criminal R.No. 616 of 2000

Allahanoor @ Kallu

APPELLANT

Vs

N.C.T. of Delhi

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 397
Penal Code, 1860 (IPC) — Section 346, 366, 376(2), 498(A)

Citation : (2001) 93 DLT 321 : (2001) 2 DMC 426 : (2001) 59 DRJ 837

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Mr. R.K. Jain, for the Appellant; Ms. Richa Kapur, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—This revision petition u/s 397 Cr.P.C. is directed against the order dated 25.9.2000, passed by the Court of Smt. Sunita Gupta, ASJ, Delhi, framing of charge u/s 366 and 376(2)(g) of the IPC, against the petitioner in case FIR No. 82/98, P.S. Hari Nagar.

2. Prosecution's allegations are that on 12.2.1998, Smt. Laxmi Devi lodged a report at Police Station Hari Nagar, alleging that her daughter Kusum was married to Rajesh S/o Shiv Nandan, on 9.10.1997. After the marriage her father-in-law, started harassing her daughter for dowry (gold kangan) and she was sent back. On 16.1.1998, she was taken back but her in-laws continued to harass her. After 28th January, 1998, she went to the matrimonial home of her daughter. Her daughter was not found there. Her son-in-law, Rajesh informed her that his father Shiv Nandan had gone with Kusum on the previous night without informing him. Complainant searched for her daughter but she could not be found. Ultimately on 12th February, 1998, she reported the matter to the police and initially a case under Sections 498-A/346 IPC was registered.

3. On 2nd February, 1999 Kusum was recovered by the police. In her statement

u/s 161 Cr.P.C., she stated that she was married to Rajesh and was being harassed. Petitioner used to live near their house. He took her from there, assuring her that he would drop her at her mother's house. However, petitioner left her on the road. Then she was taken by Rajinder, who kept her as his wife and committed rape upon her against her wishes several times. She in her statement u/s 164 Cr.P.C. stated that the petitioner did not do anything wrong with her. Petitioner was arrested on 14th September, 1999. Supplementary statement of Kusum was recorded on 15th September, 1999 wherein she alleged that she could not give complete statement earlier because she was confused. She stated that her father-in-law had sold her to Kallu (petitioner), who used to reside near her Jhuggi at Shubash Nagar. Petitioner took her in a three wheeler scooter, who along with his two other companions, whom she did not know raped her near bushes. After investigation, challan was filed against the accused persons including the petitioner.

4. Learned counsel for the petitioner argued that till 14th September, 1999, when petitioner was arrested, there was no material against him to warrant his arrest and that the prosecutrix's supplementary statement recorded on 15th September, 1999 is liable to be ignored and no charge on the basis of such supplementary statement could be framed. Learned APP for State argued to the contrary.

5. From the statements under Sections 161 and 164 Cr.P.C., it is clear that prosecutrix was married to one Rajesh; she was being harassed by her in-laws; petitioner used to live near their house in the Jhuggi; petitioner brought her on a three wheeler scooter/tempo assuring that he would take her to her mother. Instead of doing that, she was dropped on the road from where she was taken by Rajinder, who forcibly kept her as his wife. The conduct of the petitioner thus cannot be said to be free from suspicion. If the allegations are true, petitioner will have to explain why prosecutrix was not dropped at her mother's house? Why the petitioner did not inform the police or her mother immediately? In this case, report was lodged with the police on 12th February, 1998, and prosecutrix was recovered on 2nd February, 1999. Petitioner could have at least informed the police during this period. In view of the allegations contained in the supplementary statement of the prosecutrix read in conjunction with her earlier statement, it cannot be said that no case for framing the charge against the petitioner is made out. Reference can be made to the recent decision of the Supreme Court in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, .

6. For the foregoing reasons, I do not find any merit in the petition and the same is dismissed. Any observation made herein shall not affect the merits of the case.