

(2016) 05 DEL CK 0219

In the Delhi High Court

Case No : Criminal Appeal No. 749 of 2014

Prahlad @ Pahalad @ Pappu

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2016) 3 JCC 2143

Hon'ble Judges : Mr. Sunil Gaur, J.

Bench : Single Bench

Advocate : Mr. Ankur Sood, Delhi High Court Legal Services Committee's Panel Advocate, for the Appellant; Mr. Vinod Diwakar, Addl. Public Prosecutor with S.I. Sahiram, Advocate, for the Respondent/State

Final Decision : Dismissed

Judgement

Mr. Sunil Gaur, J.—For the offence of kidnapping a minor school going girl and raping her, the appellant stands convicted and sentenced to RI for seven years with fine and default clause. In addition to the aforesaid sentence inflicted upon appellant for the offence of rape, he has been also sentenced to RI for four years and fine with default clause for the offence of kidnapping and the sentences awarded to appellant have been directed by the trial court to run concurrently.

2. The factual matrix of this case, as spelt out by the prosecutrix and noted in the impugned judgment, is as under: -

"PW4 is prosecutrix herself who deposed that in the year 2010 she was studying in 5th class. On 25.09.2010 when she was going to her school accused asked her to sit on his bike on the pretext of leaving her to her school. She refused but on his insisting she sat on the bike. Accused took her to a bus and left bike there. Accused took her by bus and thereafter changed another bus and took her to the house of his sister in law (bhabi). Accused asked her to marry him which she

refused. Thereafter, accused committed rape upon the prosecutrix, intimidated her not to reveal anybody about the rape otherwise he will kill her. Accused left her at his sister in laws house and went away. She cried a lot but the accused did not hear. Thereafter, bhabi of accused brought her and left her at Pragati Maidan and gave her Rs. 25/-. When she was weeping at Pragati Maidan, one lady met her and she narrated the entire story who took her to her house from where she ("X") made a phone call to her mother. Her mother along with police personnel came there and took her to AIIMS Hospital where she was medically examined and her undergarments were taken by the doctor. Her statement Ex.PW1/B was also got recorded before the judge. She stated that she had not told about the rape to the said judge because the accused intimidated her to get her brothers killed and accused had even sent some persons/boys to kill her brothers, even till date the said persons came to their place and threatened her brothers due to which her brothers are not able to attend their duty/work. Her statement was recorded by the IO and accused was identified by the witness in the court. Case property was shown to the witness and was correctly identified by her."

3. The version of the prosecutrix is sought to be corroborated by the evidence of her mother (PW-3), who had lodged the FIR regarding missing of the prosecutrix. Apart from the medical evidence, which comprises of evidence of Dr. Praveen Kumar (PW-11), who had prepared the MLC of the prosecutrix and Dr. Kamlesh Kumar (PW-5), who had medically examined the appellant, there is evidence of formal witnesses. Trial court has taken into consideration the evidence on record, the stand of appellant-accused and the deposition of two witnesses got examined by him in his defence and has, thereafter, proceeded to convict the accused for the offences under Sections 363/366/376 of IPC vide impugned judgment of 22nd February, 2014. The conviction and the sentence awarded to appellant, as noted herein above, are under challenge in this appeal.

4. According to appellant's counsel, the prosecutrix had disclosed about alleged rape to her mother after 2 or 3 days, but had not disclosed about it when her statement under Section 164 Cr.P.C. was recorded and for the first time, before the court she had falsely alleged that she was raped by the appellant. According to appellant, to avoid repayment of loan of Rs.10,000/-, mother of prosecutrix has falsely implicated him in the instant case.

5. It was contended on behalf of appellant that the evidence of prosecutrix is unreliable as she had not raised any alarm and the medical evidence does not prove the offence of rape and so, appellant deserves acquittal. To contend so, learned counsel for appellant had sought to highlight the contradictions in the evidence of the prosecutrix vis-a-vis her statement under Section 164 of Cr.P.C. and as to what she had stated at the time of her medical examination. The contradictions highlighted are reproduced in a tabular form as under:-

Section 164 Statement (27.9.2010)

Statement during medical report (26.9.2010)

Statement made before the Trial Court (21.12.2012)

Only appellant kidnapped.

3 kidnappers

Only appellant kidnapped.

Appellant said he will take her on excursion No force used.

Lost consciousness as something was put on her face and only woke up when she was being rescued.

Appellant said he will drop her to school. No force used.

Appellant kidnapped her in an auto.

Lost consciousness and hence not aware.

Appellant kidnapped her on his motorcycle.

No reference to seek help on the bus.

Lost consciousness till she was rescued.

Tried to ask for help on the bus, but appellant convinced conductor that he was taking her to school.

6. While relying upon afore noted contradictions, it was contended by learned counsel for appellant that there are gaping holes in the prosecution case, which render conviction of appellant wholly illegal. Thus, it was pointed out by learned counsel for appellant that prosecutrix has given contradictory statements, that is, initial version of prosecutrix being kidnapped by three persons and later on this version was diluted by squarely blaming the appellant for taking away the prosecutrix on excursion.

7. On the other hand, Mr. Vinod Diwakar, learned Additional Public Prosecutor for respondent-State, had vehemently contended that there is sketchy cross-examination of prosecutrix and her mother (PW-3), which does not demolish the prosecution case in any way and that the medical evidence sufficiently corroborates the prosecution version, which justifies the conviction of appellant and so, this appeal deserves to be dismissed.

8. Upon considering the submissions advanced and on perusal of the evidence on record as well as impugned judgment, I find that prosecutrix is a school going girl, who was studying in 5th class and as per school record, she was aged 12 ? years. However, medical evidence indicates that prosecutrix was aged 15 years.

9. Upon scrutiny of the evidence of material witnesses i.e. prosecutrix and her mother, I find that they have not been cross-examined on the age aspect. Therefore, it has to be taken that the trial court has rightly opined that prosecutrix was a minor girl of 14 or 15 years. It is no doubt that the prosecutrix

had not levelled any allegations of rape against appellant in her statement under Section 164 of Cr.P.C.. It is equally true that prosecutrix had initially stated at the time of her medical examination that she was kidnapped by three persons whereas in her statement under Section 164 of Cr.P.C., prosecutrix had stated that she was taken away by the appellant-accused on his bike on the pretext of dropping her at the school. Even mother (PW-3) of the prosecutrix has stated in her evidence that the prosecutrix had informed her aunt (Mausi) about rape being committed upon her by the appellant.

10. Pertinently, it is nobody's case that prosecutrix's aunt had disclosed about rape being committed upon prosecutrix to her mother. In any case, there is no pointed cross-examination of either the mother of the prosecutrix or the prosecutrix herself on the so-called infirmities pointed out by appellant's counsel.

11. The belated stand of appellant of false implication to avoid repayment of loan of Rs. 10,000/- and the evidence of Vinod Kumar (DW-1) regarding appellant being with him at the work-site of Ghaziabad on 29th September, 2010 and that of Ms. Anita Gupta (DW-2) regarding one lady Beena getting an affidavit attested, is of no consequence because the defence version has not been put to the material prosecution witnesses. Relevantly, appellant's afore noted defence ought to have been disclosed in his statement under Section 313 Cr.P.C., but for reasons best known to appellant, except bald denial, there is nothing in appellant's statement under Section 313 of Cr.P.C..

12. It is cardinal rule of evidence that a witness cannot be condemned unless the incriminating material is put to the witness in cross-examination. Having not cross-examined the material prosecution witness on the so-called infirmities pointed out by appellant's counsel, I find that the prosecution case cannot be dented on account of so-called infirmities. Otherwise also, it has come in the evidence of the prosecutrix that she was threatened by appellant-accused that if she tells the truth, then he would kill the brothers of the prosecutrix.

13. In this background, the conduct of the prosecutrix not levelling allegation of rape in the first instance sounds probable. The substratum of the prosecution case put forth by the prosecutrix and her mother stands substantially corroborated from the medical evidence, which clearly shows that the prosecutrix was subjected to rape. The story of false implication put forth by the appellant is quite improbable on the face of it and is out rightly discarded.

14. Consequentially, finding no illegality or infirmity in the impugned conviction of the appellant, this appeal is dismissed as I find that the sentence imposed upon the appellant is the minimum sentence for the heinous offence of rape of a minor girl.

15. Before parting with this judgment, this Court places on record its appreciation for the able assistance rendered by Mr. Ankur Sood, Delhi High Court Legal Services Committee's Panel Advocate. As this appeal has been filed through Jail, therefore, the appellant be apprised of this judgment forthwith

through concerned Jail Superintendent.