
(2012) 01 DEL CK 0244

In the Delhi High Court

Case No : Criminal Appeal No. 535 of 2006

Rajesh Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 186 DLT 644

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Rakhi Dubey, for the Appellant; Sunil Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—This appeal has been moved by the accused, Rajesh Sharma, against the judgment and order dated 11th May, 2006 and 17th May, 2006 wherein the appellant and the co-accused, Atma Ram, were convicted u/s 376 IPC and were sentenced to rigorous imprisonment for seven years along with a fine of Rs. 1,000/-, in default of which they were to undergo further rigorous imprisonment for one month.

2. The case against the accused, which resulted from a complaint made by Smt. Raj Laxmi, wife of the accused, is to the effect that their daughter Anuradha, aged about 11 years, was raped by the appellant as well as the co-accused Atma Ram, who is also the appellant's friend.

3. The case of the prosecution is that the on 27th September, 2002, Smt. Raj Laxmi, wife of the accused, along with her daughter Anuradha, aged about 11 years, went to P.P. Palam Colony and informed the police that her husband, the accused, and his friend Atma Ram, the co-accused, had raped her minor daughter. The police thereafter recorded the statement of the prosecutrix/victim, Anuradha, to the effect that her father was a habitual drunkard and 3-4 months earlier her father had consumed liquor and had raped her. She further stated that

a week later her father again raped her and this time his friend Atma Ram also raped her. The victim also stated that about 10-12 days prior to the complaint, she was once again raped. However, it was only on 26th September, 2002 when the victim's mother had come to attend the shradh of her grandfather that she disclosed these facts to her mother. It was then that the victim, accompanied by her mother, came to the police station to make a complaint against her father and his friend Atma Ram. On the statement of the victim, FIR No. 670/2002 was registered at police station Dabri u/s 376/34 IPC. In support of its case, the prosecution examined 14 witnesses in all, including the wife of the accused who is also the mother of the victim.

4. At the trial, the accused, Rajesh Sharma, as well the co-accused Atma Ram were convicted u/s 376 IPC vide judgment dated 11th May, 2006 and sentenced to rigorous imprisonment for seven years along with a fine of Rs. 1,000/-, in default of which they were to undergo further rigorous imprisonment for one month vide order dated 17th May, 2006.

5. It is against the abovementioned judgment and order that the appellant has preferred the instant appeal praying that the impugned orders be set aside and the appellant be acquitted. Counsel for the appellant contends that the trial court failed to appreciate that the main witness adduced by the prosecution, Smt. Raj Laxmi, is an interested witness as a dispute regarding property had been going on between her and her in-laws and this very dispute is the main motive behind the implication of the appellant in the present case. Counsel further states that the trial court failed to appreciate that it is the duty of the prosecution to prove the guilt beyond all reasonable doubt and not of the defence to prove its innocence.

6. There is no rule of law that the testimony of the victim cannot be relied upon without corroboration in material particulars. Infact, it is now a well settled proposition of law that conviction in a case of rape can be based solely upon the uncorroborated evidence of the prosecutrix, which should not be rejected on the basis of minor discrepancies and contradictions, unless it is shown that her testimony is unreliable. In the case of Hari Om Vs. State (N.C.T), , it was held as under:

The court cannot treat the testimony of the prosecutrix in a rape at par with that of an accomplice in a crime which requires corroboration and no infirmity is attached to the testimony of a victim of such a heinous crime. In fact, it would only be adding insult to the injury if the court insists on corroboration of her testimony, even in the absence of circumstances which would warrant adoption of such a course of action.

7. Further, the statement of Smt. Raj Laxmi, mother of the victim, also does not suffer from any discrepancy. Hence, the contention of the appellant that Smt. Raj Laxmi is an interested witness and therefore her testimony should not be relied upon, does not hold true. The Supreme Court in State of Himachal Pradesh Vs.

Asha Ram, had held that :

It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to.

8. Counsel for the appellant has failed to suggest any reason as to why the victim should not be believed or why she would falsely implicate the appellant who is her own father. Under the circumstances, I do not find any reason to disbelieve the testimony of either the victim or her mother. Hence, I do not find any infirmity with the judgment and order by the trial court as the prosecution has established the guilt of the accused beyond all reasonable doubts.

9. Moreover, the appeal filed by the co-accused, Atma Ram, has already been dismissed by this Court on 13th May, 2009 holding that the testimony of the prosecutrix/victim and her mother inspire utmost confidence and the trial court has rightly relied upon it. In that view of the matter, counsel for the appellant does not seriously contest the impugned judgment.

10. Counsel for the appellant, however, prays that the sentence of the appellant be reduced. u/s 376 (1) IPC, the offence of rape is punishable with imprisonment for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and the accused shall also be liable to pay fine. Further, the proviso to section 376 (1) IPC states that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

11. In support of its submission for reduction of the sentence, counsel for the appellant relies on a copy of the order of this Court in CrI. A 723/2008 decided on 9.12.2010. However, the facts of that case are different. There, the appellant had a family comprising of his wife, children and aged parents who were totally dependent upon him. On the other hand, in the present case, the estranged wife of the appellant along with her other children had been living with her brother even prior to the commission of the offence. Again, the appellant's widowed mother has also expired.

12. Rape is one of the most heinous crimes imaginable. It is not only a crime against the victim, but in fact, it is a crime against the entire society. A rape victim not only suffers physical harm, but she also suffers immense psychological trauma. It is for this reason that the Supreme Court has time and again emphasized the importance of dealing with such matters sternly and severely and it is only when adequate and special reasons are shown that the court may reduce the sentence. In the present case, the trial court had sentenced the appellant to rigorous imprisonment of seven years, which is the minimum prescribed punishment. Moreover, the counsel has failed to show any such adequate and special reasons which may justify reducing the sentence.

13. However, in the present case, what makes this heinous crime even more shocking is the fact that the person accused of raping an innocent 11 year old girl is none other than her own father. In the case of *Siriya @ Shri Lal Vs. State of Madhya Pradesh*, , the appellant was accused of raping his 13 year old daughter. The trial court found him guilty of the offence and accordingly sentenced him to imprisonment for life and fine of Rs. 1,000/- with default stipulation before the Madhya Pradesh High Court. The appellant thereafter approached the High Court, where his appeal was dismissed. The Supreme Court, while affirming the decision of the trial court and the High Court, observed as follows:

The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes an unpardonable act. It is not only a loathsome sin, but also abhorrent. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father.

Further, the Supreme Court, while deciding whether any leniency in sentence is called for, held that the "accused"s lustful acts have indelible scar not only physically but also emotionally on the victim. No sympathy or leniency is called for.?

14. Again, in *State of Rajasthan Vs. Om Prakash*, , the accused was charged of raping an eight year old girl. The Additional District and Sessions Judge found him guilty and imposed rigorous imprisonment of seven years and fine of Rs. 1,000/- and in default of payment of fine to further undergo six months rigorous imprisonment. The High Court, however, gave the accused the benefit of doubt and acquitted him. Finally, the Supreme Court set aside the judgment of the High Court and restored that of the trial court and held that :

Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for.

15. In view of the above judgments and looking to the circumstances, specially to the fact that the victim is the daughter of the accused himself, I am not inclined to reduce the sentence in any manner.

16. For the foregoing reasons, I do not find any merit in this appeal and the appeal is, accordingly, dismissed.