
(2013) 05 RAJ CK 0103

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 276 of 2006

Smt. Anita

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 366, 375, 376

Citation : (2013) 05 RAJ CK 0103

Hon'ble Judges : Amitava Roy, C.J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; Alka Bhatnagar, Public Prosecutor and Mr. V.S. Shekhawat for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The judgment and order dated 16.12.2005 passed by the learned Additional Sessions Judge (Fast Track) No. 2, Jaipur City, Jaipur rendered in Sessions Case No. 63/2005 acquitting the respondent No. 2 of the charge under Sections 376 and 366 of the Indian Penal Code is the subject matter of assailment in the present revision petition. I have heard Mr. A.K. Jain, learned counsel for the petitioner, Ms. Alka Bhatnagar, Public Prosecutor for the State and Mr. V.S. Shekhawat, learned counsel for the respondent No. 2.

2. On 14.10.2004, an FIR was lodged by Suresh Kumar Lakhera with Police Station, Kanota, District Jaipur alleging that since 12.10.2004, his wife Anita, aged about 23 years, had left their house without leaving any information, taking alongwith her their two years old daughter. The FIR further disclosed that the informant had searched for her for two days and had strong suspicion that Dharamveer Regar (the respondent No. 2) had enticed away his wife. On the FIR, the police registered a criminal case and on completion of the investigation, laid charge-sheet against the respondent No. 2 under the aforementioned sections of law. Meanwhile, the prosecutrix had returned to the house of her father and was

produced at the police station. At the trial, the respondent No. 2 denied the charge, whereupon the prosecution examined several witnesses including the victim as PW-6. In his statement u/s 313 Cr.P.C., the respondent No. 2 denied the charge of abduction and rape and asserted that the prosecutrix had accompanied him on her own volition, and that, he did not use any undue influence or force on her. The learned trial court, on a consideration of the evidence on record by the judgment and order impugned herein, acquitted the respondent No. 2.

3. The learned counsel for the review petitioner has emphatically argued that the grounds on which the learned trial court exonerated the respondent No. 2 are frivolous and perverse and thus, the impugned judgment and order warrants interference in the interest of justice. According to the learned counsel, having regard to the evidence of the prosecutrix, PW-6 as a whole, the charge of abduction and rape against the respondent No. 2 stood proved beyond all reasonable doubt. Mr. Jain insisted that the minor omissions in the testimony of the victim being wholly inconsequential, the learned trial court erred in law and on facts in recording the acquittal of the respondent No. 2. The learned counsel, in particular, emphasized on the fact that as the prosecutrix had been throughout kept under constant threat by the respondent No. 2 to eliminate her minor child she, by no means, could be construed to be a consenting party, and thus, the view taken by the learned trial court being wholly impermissible in the face of the evidence on record, the acquittal of the respondent No. 2 ought to be interfered with. To buttress his arguments, Mr. Jain placed reliance on the decisions of the Apex Court in Criminal Appeal No. 376/2010 (Swaroop Singh Vs. State of M.P.) and Criminal Appeal No. 1156/2010 (Dilip Vs. State of Madhya Pradesh).

4. In reply, Mr. Shekhawat has maintained that as the testimony of the prosecutrix, PW-6 revealed, in no uncertain terms, that she had voluntarily accompanied the respondent No. 2 and had rendered her company during their stay together, the learned trial court rightly construed her consent, and in that view of the matter, the impugned judgment and order of acquittal being valid in law, does not call for any interference. Referring to the omissions on the part of the prosecutrix, amongst others, in her statement u/s 164 Cr.P.C. indicating want of any culpable mind or act of the respondent No. 2 to secure her company, the learned counsel has urged that as the view taken by the learned trial court on the basis of the evidence on record is a plausible one, in absence of any overwhelming consideration to the contrary, no interference with the impugned judgment and order is permissible in law. He argued further that the prosecutrix having candidly admitted that she alongwith the respondent No. 2 had travelled from one place to the other by public transport and had stayed at various places, and that, she did not raise any hue and cry for being retrieved from the captivity of the respondent No. 2, the learned trial court had rightly, adjudging that she had voluntarily accompanied him, rejected the charge of abduction and rape.

5. That since 12.10.2004 till 21.10.2004, the prosecutrix was in the company and custody of the respondent No. 2, is a fact well demonstrated by the evidence on record. She, in her statement on oath, stated that on 12.10.2004, while she was on her way home from her shop, she met the respondent No. 2, who offered her "prasad" and on consuming the same, she felt dizzy, for which she returned to her shop. A little later, when she was again proceeding towards her house, she met the respondent No. 2 and having told him that she was unwell, he took her minor child in his arms and offered to provide her some medication. On this, she accompanied him and both of them, in a car, travelled upto Jaipur. According to the prosecutrix, it was then, when she had enquired as to why she was brought to Jaipur, that the respondent No. 2 threatened her to remain quiet, else he would eliminate the child. The prosecutrix stated that they thereafter, went from Jaipur to Ajmer, where they put up in a room, and in course of their stay there, the respondent No. 2 committed forcible intercourse with her and also did assault her. She stated that they thereafter, travelled together to Jaipur and then to Delhi, from where they eventually, came to Ahmedabad via Ajmer. The prosecutrix alleged that during her stay, the respondent No. 2 continued to rape her, and on all occasions, intimidated her that in case of any resistance, her child would be murdered. She however, admitted that at Ahmedabad, the respondent No. 2 had his relations, and that, they informed his father that both of them were staying there. She also conceded that on receiving this information, the father of the respondent No. 2 and Paternal Uncle (phupha) did arrive at Ahmedabad. She also disclosed that the respondent No. 2's father asked her to marry him (the respondent No. 2) alleging however, that he threatened to kill her, if she refused. The prosecutrix stated that on this, she gave her consent to marry so as to avert the situation and to secure her release and return to her parents. The prosecutrix testified that she thereafter, was bought to Jaipur by the relatives of the respondent No. 2, including his paternal aunt, and eventually, was restored to her father. The witness stated amongst others, about her production at the police station, seizure of her wearing apparels and also her medication examination.

6. In cross-examination this witness stated that she knew the respondent No. 2 from a year back, and that, he used to visit her parents at times. She claimed to have stated before the police that the respondent No. 2 had offered medication to her, but expressed ignorance as to why the same was not recorded. She admitted, in clear terms, that during 12.10.2004 to 21.10.2004, she travelled with the respondent No. 2 in bus and train, amongst others, with lady passengers. She stated as well that during her stay at Ahmedabad, the relatives of respondent No. 2 provided her clothes. She claimed to have disclosed to the police that the respondent No. 2 had been carrying a knife with him, but admitted that she did not remember as to whether she disclosed this fact also in her statement u/s 164 Cr.P.C. According to her, she did not suffer any injury in course of forcible sexual intercourse. She admitted that though at times, the respondent No. 2, while travelling by bus and train, used to disembark to bring

food, she did not complain to her lady co-passengers that she had been enticed away by him and was tortured.

7. PW-4, the father of the prosecutrix, in his statement, deposed that on receiving the information that her whereabouts were not known after she had gone missing from her house, he went to the house of the respondent No. 2 and met his father, who disclosed that both of them (the prosecutrix and the respondent No. 2) were with his relatives at Ahmedabad. The witness stated that thereafter the respondent No. 2's father also went to Ahmedabad and brought them back therefrom. This witness however, stated that the prosecutrix had disclosed to him that the respondent No. 2 had forcibly taken her and her child and had kept her with him under the threat of doing harm to the baby. She also alleged that the respondent No. 2 had committed rape on her.

8. The prosecution also examined Dr. Santosh Pareek, PW-5, who had conducted medical examination of the prosecutrix. In her deposition, she stated that in course of the examination, no injury was found on the body and the private parts of the victim. She stated however, that her wearing apparels and her vaginal swab had been forwarded for forensic science examination. She proved the medical report as Ex. P-4 which inter alia contained the opinion that the prosecutrix was habituated to intercourse. The Forensic Examination Report Ex. P-5 disclosed presence of semen in the wearing apparels of the prosecutrix. Her vaginal swab however, did not indicate the existence of semen.

9. The learned trial court in acquitting the respondent No. 2 recorded the following findings:-

(1) The prosecutrix did not, in her statement u/s 164 Cr.P.C., disclose that the respondent No. 2 had offered medication to her.

(2) Her version that she, on being requested by the respondent No. 2, had handed over her child to him, is unacceptable.

(3) That she accompanied the respondent No. 2 with her child from Jaipur to Ajmer and elsewhere, was suggestive of the fact that she had voluntarily accompanied him.

(4) She did not state that she had been removed by the respondent No. 2 in an unconscious state in a vehicle or that she was not in a state to resist such an act.

(5) Though both of them were travelling by public transport, she did not complain to her co-passengers against him.

(6) Though the prosecutrix alleged that she was constantly kept under threat by the respondent No. 2 that her child would be murdered, and that, he also wielded a knife, she, in her statement u/s 164 Cr.P.C., did not disclose about such weapon.

(7) Though the prosecutrix during her stay with the respondent No. 2 had opportunities of complaining or abandoning his company, she did not do so.

(8) Having regard to the frequency of sexual intercourses allegedly committed by the respondent No. 2 on her, she ought to have suffered bodily injuries, which she did not.

(9) She did not complain about the offending acts of the respondent No. 2 to his relatives while her stay at Ahmedabad.

10. On a cumulative consideration of the facts and circumstances of the case, neither the factors noticed by the learned trial court nor its ultimate conclusion can be discarded as absurd, preposterous or perverse. No doubt, conviction for the kind of offence involved can be founded on the sole testimony of the prosecutrix even without corroboration, and that, as has been observed by the Hon"ble Apex Court in Swaroop Singh Vs. State of M.P. (supra), her evidence should be evaluated with required sensitivity. That the attendant facts and circumstances of each case would assuredly have a bearing on such analysis has however been noticed with approval by the Hon"ble Apex Court in Dilip Vs. State of Madhya Pradesh (supra). In State of Himachal Pradesh Vs. Mango Ram, the Hon"ble Apex Court has observed that the absence or otherwise of consent, for the purpose of Section 375 IPC, is to be ascertained on a careful study of all relevant circumstances.

11. Having regard to the totality of the evidence on record, I do not feel persuaded to hold that the conclusion of acquittal is against the weight of the evidence on record, so as to repudiate the same to be patently illegal and opposed to the basics of evaluation of the evidence of a prosecutrix qua charge of abduction and rape. To reiterate, the circumstances taken note of by the learned trial court and acted upon to render the impugned judgment and order have been culled out from the evidence on record, and thus, cannot be brushed aside to be non est as well. The view taken by the learned trial court is a plausible one and having regard to the constricted scope of interference with an order of acquittal, the impugned decision does not call for annulment. The revision petition thus, is bereft of merit and is rejected.