

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. L.P. No. 271/2007

Date of Decision : 07.03.2012

STATE

..... Petitioner

Through: Mr.Sunil Sharma, APP

Versus

SANJAY KUMAR & ANR

..... Respondents

Through:Mr. Harish Kumar, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is a leave to appeal filed by the State against the judgment dated 07.08.2007 passed by Sh. Bharat Parashar, the learned Additional Sessions Judge, New Delhi in respect of case SC No. 155/2006 pertaining to FIR No. 1265/2005, under Section 363/366/34 IPC and 376 IPC read with Section 109 IPC, registered by P.S. Nangloi, New Delhi.
2. Briefly stated the facts of the case leading to the filing of the present appeal are that one Shankar Shah was

residing at H. No. C-218, Nangli Vihar, Extn. Part-1, Near Shiv Mandir, Vilalge Baprola, Delhi along with his family consisting of four children and wife. The respondent no. 1/Sanjay Kumar was also residing in the said house along with his wife and a small daughter. On 23.12.2005, at about 8.00 AM one Leela daughter of Shanker Shah aged about 12 years (name of the prosecutrix has been changed) left for her school. However, when she allegedly reached near Kakrola Mor, the respondent no.1/Sanjay Kumar met her and he told her that he will get her married with his brother-in-law. It has been alleged that since Leela refused, Sanjay Kumar forcibly made her to sit in a bus and took her to Shahdara and in the way he threatened her of dire consequences. At Shahdara, Sanjay Kumar handed over the custody of the prosecutrix to his father/Om Prakash who took her to Barot in the house of his sister, where they stayed in the night. In the night, Om Prakash had sexually intercourse with the minor girl against her

wishes and consent. It has been alleged that the prosecutrix made a call from Barot to his father, however, the telephone was disconnected.

3. So far as Shankar Shah is concerned, he lodged originally a missing report about his daughter wherein he mentioned that he suspected the involvement of Sanjay Kumar/respondent no. 1 in the episode. Sanjay Kumar was apprehended by the police and during the investigation, he disclosed all the facts and took the police party to Barot and from there the prosecutrix was recovered. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded. The accused/Om Prakash was also arrested. The prosecutrix was got medically examined at Sanjay Gandhi Memorial Hospital. Their undergarments, semen and blood samples were collected and sent for examination to FSL. After completion of investigation, the charge sheet was filed under Section 363/366/376/34 IPC against both the accused persons. The prosecution has examined nine

witnesses in order to prove the case. The statement of the accused persons were recorded who denied their involvement in the commission of any offence. They also examined DW-1/Rakesh and DW-2/Naresh in support of their defence.

4. The learned Trial Court after analyzing the testimony of all these witnesses and hearing the arguments acquitted the accused persons on the ground that the prosecution was not able to prove the guilt of the accused persons beyond reasonable doubt as there was no corroboration from any scientific or medical evidence on record.
5. I have heard the learned APP as well as the learned counsel for the respondents and have also gone through the record.
6. I do not find any illegality, infirmity or impropriety or wrong appreciation of evidence arrived at by the learned Additional Sessions Judge.
7. The learned Additional Sessions has rightly concluded that the story which has been set up by the prosecution

about the kidnapping of the minor girl by Sanjay Kumar and then handing over the same to his father who was much older and alleged to have been subjected to sexual intercourse in a crowded room of his sister is highly improbable. I had called the accused to be present at the time of hearing of the appeal. He was an old person who was hardly able to stand without support. Even five years or so earlier, his position would not have so good as to imagine he could sexual intercourse. Further, this is against the normal conduct of a human being. There are number of factors which have been noticed and which persuade this Court to disbelieve the prosecution case. These points are as follows:

- (a) The prosecution case is that the prosecutrix was going to school and she was kidnapped forcibly by Sanjay Kumar and taken in a bus to Shahdara. If the prosecutrix was kidnapped then she would not have carried an extra pair of suit in her bag while going to school which has come in evidence. The

very fact that she was carrying suit clearly shows that though she was minor and she was going to her school with different set of mind to proceed somewhere else rather than going to study. The prosecution has alleged that she was forcibly taken to Shahdara. If she would have been taken forcibly there must have been resistance from the side of the prosecutrix and this must have been noticed by the number of persons, individuals in the crowded city rather than she merrily goes in a bus to Shahdara along with Sanjay Kumar.

- (b) The prosecutrix makes a call from the PCO to her father that she is in Barot, and thereafter, disconnect the telephone while as the call was traced to a PCO in Dwarka Mor itself, therefore, it clearly shows the bent of mind of the prosecutrix right from the day she left her father's house that she had something different in her mind rather than going to school.

- (c) The case of the prosecution is that the respondents threatened her and took her forcibly, but her statement under Section 164 Cr.P.C. has not stated anything about the threat having been given to her.
- (d) The next point which is highly unbelievable is the factum that Om Prakash is alleged to have committed rape after the prosecutrix was handed over by Sanjay Kumar to his father. I had an occasion to see both the accused persons in Court, especially Om Prakash was an old man with decaying health. Even at the time, when the incident is alleged to have taken place, he would have been slightly better than what he is today. The normal conduct of Sanjay Kumar would have been that in case he had kidnapped the girl or eloped with girl though he was married, he would have tried to establish physical relationship himself with the prosecutrix rather than handing over the custody of the minor child to his father, who was

much older. The story that the prosecutrix was subjected to sexual assault in one room where the sister of Om Prakash was residing is also unbelievable in as much as it has come in the evidence that there were other four more members sleeping in the room in question where the incident alleged to have been taken place.

- (e) The incident is alleged to have taken place on 23-24th December, 2005 and the prosecutrix was medically examined on 26.12.2005, the doctor opined that the hymen of the prosecutrix was found to be torn and the same was old and healed one. The appellant's undergarments have been seized and sent to the FSL and a report has been received from the FSL which does not corroborate with the testimony of the prosecutrix.

- 8. All these pieces of evidence create a reasonable doubt about the genuineness of the prosecution case. Therefore, the prosecution in my view has failed to prove

the guilt of the accused persons beyond reasonable doubt. Therefore, I give the benefit of doubt to the respondents and I do not find any ground to grant the leave to appeal in the instant case and the petition is accordingly dismissed.

V.K. SHALI, J.

MARCH 07, 2012
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