

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. No.377/2013

Date of Decision 23.08.2013

IN THE MATTER OF :
STATE

..... Petitioner

Through : Mr. Saleem Ahmed, ASC with
Ms. Charu Dalal, Advocate and ASI Vijay Pal.

versus

ANIL BHARDWAJ

..... Respondent

Through : Nemo

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. The present petition has been filed by the petitioner/State under Section 378 Cr.P.C. praying *inter alia* for grant of leave to assail the judgment dated 20.10.2010 passed by the learned ASJ in SC No.67/2001, arising out of case FIR No.222/2000 lodged by the father of the deceased prosecutrix under Sections 306/363/366/376 IPC with PS Alipur, Delhi and case FIR No.221/2000 under Sections 309/306 IPC with PS Nabi Karim, Delhi on information received from the accused respondent.

2. The brief facts of the case as culled out from the impugned judgment are that on 10.6.2000, a case of kidnapping was registered at PS Alipur, Delhi at the instance of the complainant, Ashok Kumar,

(father of the prosecutrix) against the respondent herein on the ground that he had lured his daughter, who had accompanied the respondent from her house to her school for rechecking the class XII paper and she had not returned till late in the night. The police had tried to search for the prosecutrix but all efforts were fruitless till 23.7.2000. On 23.7.2000, a DD entry was registered at PS Alipur, Delhi to the effect that after consuming some poisonous substance, the respondent herein and the prosecutrix were brought to RML Hospital from a hotel by the name of Lal Haveli at Nabi Karim by its Manager (PW-3) and case FIR No.221/2000 was registered under Section 309 IPC on the statement of the respondent and the prosecutrix who breathed her last in the hospital in the wee hours on 23.7.2000.

3. On completion of the investigation, charge-sheet was filed against the respondent under Sections 306/363/366/376 IPC and the case was committed to the Sessions Court on 9.11.2000.

4. On 20.11.2007, charges were framed against the respondent under Sections 363/366/417/306 IPC. The prosecution examined 36 witnesses in all, including PW-6 and PW-9, witnesses from the school where the prosecutrix was studying, PW-12/father of the deceased prosecutrix, PW-13/grandfather of the deceased prosecutrix, PW-

3/Manager of the hotel from where the prosecutrix and the respondent were brought to the hospital, PW-15/the doctor who had attended to the prosecutrix when she was admitted in the hospital, PW26/SI Rajbir Singh and PW-30/SI Dayanand.

5. After examining the evidence produced by the prosecution and taking into consideration the evidence placed on record the trial court concluded that the prosecution had not been able to prove the offence under Sections 363/366/417/306 IPC against the respondent and he was acquitted.

6. Learned ASC for the State assails the impugned judgment on the ground that the sessions court had failed to take into consideration the fact that the deceased prosecutrix was a minor aged 17½ years on the date of the incident and as per her school certificate, her date of birth was 15.12.1982. He seeks to substantiate the aforesaid submission by referring to the school records produced by PW-9/the accountant of the school. He states that the trial court had failed to take into consideration the testimonies of PW-12 and PW-13, father and grandfather respectively of the deceased prosecutrix, who had stated that the deceased had made a dying declaration to them in the hospital, wherein she had clearly stated that she was harassed by the respondent, who had raped her and forced her to marry him.

7. Lastly, learned counsel draws the attention of this Court to the deposition of PW-15/the doctor who was attending to the prosecutrix, to state that when PW-15 had examined the prosecutrix in RML Hospital at 12.30 AM in the night, she was in a semi-conscious state and she had told him that she had taken a tablet of some poison. He submits that if the prosecutrix was conscious enough to make such a statement to the doctor, then the testimonies of her father and grandfather that she had made a dying declaration ought not to have been discounted by the trial court. Based on the aforesaid submission, learned counsel seeks leave to file an appeal against the impugned judgment.

8. The Court has considered the submissions made by learned ASC for the petitioner/State and has examined the impugned judgment in the light of the arguments addressed by him. A perusal of the impugned judgment reveals that the date of birth of the prosecutrix, i.e., 15.12.1982 as recorded in the school certificate and in the Withdrawal/Admission Register produced by PW-9, was not supported by her birth certificate as the said witness had volunteered that the same was unavailable in their records. In fact, PW-9 had stated that the prosecutrix was admitted in the school in class XI on the basis of the mark sheet and certificate issued by the CBSE.

9. The trial court had rightly observed that the certificate of birth of the deceased, issued by the MCD, could have been very well collected or obtained by the prosecution which would have established her correct age, but the same was not done. In such circumstances, in the opinion of this Court, there is no error in the findings returned by the trial court that the prosecution had not been able to prove that the age of the prosecutrix was 17½ years at the time of the incident or that her date of birth was 15.12.1982 as alleged.

10. Further, the trial court held that the prosecution had not been able to establish that the respondent had enticed the prosecutrix without her consent for the reason that the girl's father (PW-12), at whose instance FIR No.222/2000 was got registered, had himself informed the police that his daughter had accompanied the respondent to her school to recheck her class XII paper. Thus, the offence under Section 363 IPC was not established against the respondent.

11. As regards the offence under Section 366 and 417 IPC, the sessions court had relied on the deposition of PW-3, i.e., Manager of the hotel where the prosecutrix and the respondent had stayed. PW-3 had stated in his testimony that the prosecutrix had disclosed herself to be the daughter of Ashok Kumar (PW-12) and he had denied that she had told him that the respondent had kidnapped her on a false

promise to marry her. Based on the above testimony, it was held that the offences under Section 366 and 417 IPC were also not proved against the respondent.

12. Coming to the alleged dying declaration of the prosecutrix, referred to by the learned ASC, a perusal of the impugned judgment reveals that the trial court had referred to the deposition of S.I. Dayanand PW-30 that stood corroborated by the deposition of S.I. Rajbir PW-26, which made it apparent that the prosecutrix was unfit for recording her statement at 1.30 AM on 23.7.2000. It was observed that according to the attending doctor PW-15, he had examined the prosecutrix at 12.30 AM in the night and at that time, she was in a semi-conscious state and she had told him that she had consumed a tablet of some poison and felt restless and nauseous thereafter. He had deposed that he had examined the prosecutrix and she had expired at about 4.30 AM on 23.7.2000.

13. The submission of the learned ASC for the petitioner/State that the trial court had erred in failing to lay any credence on the deposition of PW-12 and PW-13 despite there being sufficient evidence on record to point out that the deceased had made a dying declaration, is not borne out from a perusal of the impugned judgment, which reveals that the doctor (PW-15), who is an

independent witness and had attended to the prosecutrix, had specifically stated in his testimony that at 12.30 AM in the night, she was found in a semi-conscious state.

14. When she was semi-conscious, had she wanted, the prosecutrix could have very well informed the doctor that she had been raped by the respondent or that he had made a false promise to marry her, but she did not do so. The trial court cannot be faulted in discounting the statements of PW-12 and PW-13 (father and grandfather of the deceased) and observing that they had tried to improve their case so as to make out a false case against the respondent.

15. Further, PW-19, the younger son of the Manager of the hotel where the prosecutrix and the respondent had stayed, also did not support the case of the prosecution. The trial court held that the prosecutrix had not disclosed anything to PW-19 to the effect that she had married the respondent against the wishes of her family or she had consumed poison at the instance of the respondent. In the given facts, it was observed that there was a clear contradiction between the deposition of PW-19 on the one hand and PW-12 and PW-13 on the other hand, and it was highly unbelievable that the prosecutrix was fully conscious and she had disclosed different facts to different persons in the same duration.

16. Even PW-26/SI Rajbir Singh had deposed that when he had reached the hospital at midnight, he found that the prosecutrix was unfit to make any statement and therefore, he had not recorded any statement in the duration of his stay in the hospital till 4.30 AM on 23.7.2000 and the family members of the parties had not arrived there till 2:00 AM. In his cross-examination, PW-26 had categorically stated that the prosecutrix had not given any statement as she was not fit to do so and PW-12 and PW-13 had also not given any statement to him. PW-30/SI Dayanand had also corroborated the statement of PW-26. Similarly, the MLC of the prosecutrix also revealed that she was unfit for recording her statement till 1.30 AM in the night. On the contrary, PW-12 and PW-13 had deposed in their testimonies that they had reached the hospital at 12.30 PM in the night intervening 22/23.7.2000, which had not been supported by the testimony of PW-26/SI Rajbir Singh, an independent witness.

17. The above sequence of events amply demonstrate that the prosecutrix had remained unfit for recording her statement right upto 4.00 AM and she had expired at 4.30 AM on the same day. Thus, the trial court had rightly observed that there was no opinion of any doctor till about 2.00 AM in the night or till the death of the prosecutrix at 4.30 AM, that she was in a fit or conscious state for making any

statement. Therefore, the claim of the prosecution that the prosecutrix had made a dying declaration in the presence of PW-12 and PW-13 was justifiably turned down as being implausible.

18. The deposition of PW-3, the Manager of the hotel where the respondent stayed along with the prosecutrix reveals that he had also not supported the case of the prosecution or the allegations that the prosecutrix had told him that the respondent had purchased sulphas tablet from Gorakhpur and he had pressurized her not to leave his company or that the respondent had compelled her to consume tablet. In the above facts and circumstances, the trial court was justified in observing that the prosecution had not been able to prove the offence against the respondent under Section 306 IPC and concluded that the respondent had not abetted the prosecutrix to consume the sulphas tablets to commit suicide.

19. Records reveal that the trial court had adversely commented on the deposition of PW-12 and held that he had improved upon the case of the prosecution so as to implicate the respondent and therefore, his deposition was held to be unreliable, apart from being in contradiction to the MLC of the prosecutrix and the deposition of the two independent witnesses, PW-26/SI Rajbir Singh and PW-30/SI Dayanand.

20. In the given facts and circumstances of the present case where the trial court has carefully examined the entire evidence, both ocular and medical, brought before it and arrived at a conclusion that the prosecution has not been able to make out a case against the respondent under Sections 306/363/366/376 IPC, this Court has not noticed any legal infirmity, mis-appreciation/non-appreciation of the evidence or perversity in the findings returned in the impugned judgment that can entitle the petitioner/State to seek leave to assail the same by preferring an appeal. Rather, this Court is of the opinion that the trial court has taken into consideration all the relevant facts and duly considered the evidence in the right perspective to arrive at the only conclusion that is possible which is that the prosecution has failed to make out a case against the respondent and consequently he had to be acquitted.

21. Leave is therefore declined and the present petition is dismissed.

HIMA KOHLI, J

AUGUST 23, 2013

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