

\$~R-43

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th December, 2018

+ CRL.A. 296/2002

HASMEET KHAN

..... Appellant

Through: Mr. Alok Sinha, Mr. Naresh
Bansal, Mr. Kamal Aggarwal,
Advts. alongwith appellant in
person.

versus

NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was arrested on 03.08.1997 in the wake of the first information report (FIR) no. 590/1997 registered by police station Seelampur at 3.10 p.m. on 02.08.1997, on the statement (Ex.PW-2/A) of the prosecutrix (PW-2) and on the basis of evidence gathered the appellant was sent for trial before the court of sessions (in Sessions case no. 150/2001) on the charge for offences punishable under Sections 376/506- II of Indian Penal Code, 1860 (IPC), the charges having been framed on 20.03.2001. On the conclusion of the said trial, by judgment dated 16.03.2002, he was held guilty and convicted, as charged, on both counts. By order dated 18.03.2002, the court of Sessions awarded rigorous imprisonment for seven years with fine of

Rs. 10,000/-, in default whereof he would undergo simple imprisonment for one year, under Section 376 IPC and rigorous imprisonment for three years with fine of Rs. 2,000/-, in default whereof he would undergo simple imprisonment for three months, under Section 506 -II IPC. The benefit of set off under Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was accorded and both the substantive sentences were directed to run concurrently.

2. The said judgment and order on sentence were challenged by the present appeal which came up for hearing on 12.04.2002. The appeal has remained pending ever since, it having been put in the list of 'regulars' from which it has come up for final hearing.

3. At the outset, the learned counsel appearing with the appellant, who is present in person, submitted that the appellant does not wish to challenge the judgment on merits, he fairly admitting his guilt on both the said charges, the same having been brought out clearly by the cogent evidence of the prosecution witnesses, particularly, the evidence of the prosecutrix (PW-2) and that of her husband (PW-3), he submitting that the case relates to 1997, i.e. 20 years ago from now. He submitting that the appellant does not have any past criminal record nor has he been involved in any other criminal activity ever since. It was submitted that he is a married person with a grown up family including six children, the eldest being also married. He also submitted that the appellant has shifted his base from Delhi to his native village in District Etah (Uttar Pradesh) where he now earns his

livelihood from cultivation. The prayer is for the rigour of the imprisonment to be reduced.

4. The admission of guilt by the appellant notwithstanding it is incumbent upon this Court to satisfy itself as to the correctness of the judgment rendered by the trial court returning the finding of guilty against the appellant. From this perspective, the entire evidence has been perused and re-appreciated.

5. The prosecutrix was a woman married for three years prior to the incident. She and her husband were living in a room on the upper floor of the building where they had taken the premises on rent, her husband being engaged in the business of hawking bakery items on his bicycle. It appears that similar was the business of the appellant, he also being a resident of the same area. On 02.08.1997, the husband of the prosecutrix had left home at about 05.30 hours early in the morning. The prosecutrix feeling unwell was sleeping. The husband had left the door closed but not bolted. The appellant, as per the deposition of PW-2 had stealthily entered into the room at about 5.45 am. and had subjected the prosecutrix to forcible sexual intercourse, he having overpowered her while she was sleeping, after the act he having extended threats to her.

6. The husband returned home sometime around 11.00 a.m. Both PW-2 and PW-3 are consistent with regard to the sequence of events that had occurred from early in the morning and from the time of return of the husband back home, when the wife (PW-2) brought the matter to his notice immediately. It is thereafter that the couple went

to the police where the FIR (Ex.PW-2/A) was lodged with promptitude. It does appear that the prosecutrix was sent for medical examination on 03.08.1997, that is after one day's delay, but then the delay had not occurred on her account. It does also appear, given the fact that she had been married for three years and would have cohabited with her husband, the examining medical doctor could not bring out any exceptional conditions confirming the sexual assault that had occurred on the previous day. It further does appear that in the medico legal report (Ex.PW-9/A) it was indicated that the prosecutrix did not suffer any external injuries but these facts do not show innocence of the appellant. Given the consistent version of the prosecutrix from the word go, right through the stage of investigation, when her statement under Section 164 Cr.P.C. (Ex.PW-11/D) was recorded and in the court deposition and there is no defence theory why her testimony should be disbelieved. Her evidence has a ring of truth and there is no reason why she would falsely implicate the appellant in a charge of this nature.

7. Given the above facts and circumstances, as indeed the admission now made by the appellant before this Court, the finding of guilty on merits are hereby affirmed and the judgment suffering from no error is upheld.

8. Indeed, the criminal law process has taken a long time to reach this stage of appeal being decided, twenty one years having passed. The appellant does not have any past criminal antecedents. The State has not shown any other criminal record during the subsequent period.

The nominal roll dated 03.07.2018 indicates that prior to the suspension of sentence being granted under Section 389 Cr.P.C., by order dated 28.08.2006, the appellant had undergone incarceration for four years and five months. The nominal roll also shows that during the said period, the appellant had earned remission on account of good conduct for one year, three months and five days, the remaining substantive sentence being only for a period of one year, three months and twenty five days.

9. In the above facts and circumstances, this Court finds adequate reasons to reduce the sentence to the period of detention already undergone. The fine imposed, however, would continue to be part of the punishment. It is noted that a part of the fine amount is to go in terms of the order of the trial court, as compensation to the prosecutrix.

10. The appellant, on being asked, submitted that he had already deposited fine amount. A copy of this judgment shall be sent to the trial court which shall verify the factum of deposit of the fine and take all necessary steps for the follow up action in that regard including the payment of compensation to the prosecutrix. Should there be any deficiency, or default on the part of the appellant, all consequences including he to be arrested and taken in custody to suffer the imprisonment in default shall be undertaken. The appellant is directed to assist the trial court in this regard.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 05, 2018/nk

