



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: July 12, 2023**

Pronounced on: September 12, 2023

+ **CRL.L.P. 603/2019**

STATE (NCT OF DELHI) Petitioner

Through: Mr. Tarang Srivastava, Additional
Public Prosecutor for State with
Inspector Omvir Dabas & SI Rinku
Bhakar

Versus

MAHADEV @ SHARAD & ANR. Respondents

Through: Mr. Dilip Singh, Mr. Amresh Yadav
& Ms. Raj Lakshmi, Advocates with
respondents in person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present leave petition has been preferred by the petitioner-State under the provisions of Section 378(1) Cr.P.C. seeking leave to appeal against the judgment dated 28.05.2019 passed by the learned trial court in FIR No.347/2008, registered at Police Station Bawana, Outer District, Delhi, whereby the respondents/accused have been acquitted of the offences punishable under Sections 363/366/376/ 377/506/ 342/34 IPC.



2. The brief facts of the present case, as narrated in the present petition, are that on 13-14.06.2006, the prosecutrix, who was studying in class VII, was going to her school. The respondent No.1/accused- Mahadev proposed her for friendship, however, when as she refused, he felt offended and one day, he forcibly put her in a car and committed rape upon her. The prosecutrix was dropped at some distance near the market and since respondent No.1/accused had threatened her of life, she felt frightened and did not disclose it to anyone, including her family members. The prosecutrix was once again dragged into the car by respondent No.1/accused while she was going to market. He took her to a deserted place and committed rape upon her. Respondent No.1/accused promised her of marriage and on this assurance, he took her to Mukundpur and kept her in illegal confinement where he daily raped her. After a week, parents of the accused came there and finding her in their house, kept her in their illegal confinement. The prosecutrix became pregnant and gave birth to a female child. She was not allowed to step out of the house. She was also raped by father of respondent No.1/accused in May, 2008, which was duly supported by his wife, respondent No.2-Jai Shree. Even one of the friends of respondent No.1-accused also committed rape upon her.

3. The prosecutrix wanted to commit suicide. However, one day while respondent No.2- Jai Shree had left the door slightly opened, the prosecutrix along with her child left the house and reached her parent's home. She disclosed the whole incident to her mother and lodged a complaint at police station Shahbad, Delhi, however, no action was taken. So, the prosecutrix filed a petition under Section 156(3) Cr.P.C. and on the directions of the



court, FIR in question was registered at the police station Shahbad, Delhi.

4. The statement of prosecutrix under Section 164 Cr.P.C. was recorded before the learned Metropolitan Magistrate. On her complaint, respondent No.1- accused was arrested. The investigation with regard to the age of the prosecutrix was carried out and she was also medically examined. On completion of the investigation, charge-sheet was filed against respondent No.1-accused Mahadev and his mother, respondent No.2-Jaishree and the case was committed to the Court of Sessions for trial.

5. The court of Sessions framed charges under Sections 363/366/376/377/506(ii) IPC and Section 344 read with Section 34 IPC against respondent No.1/accused- Mahavir. The charge under Section 342 read with Section 120-B IPC and Sections 344/34 IPC was framed against respondent No.2/accused- Jai Devi. Both the accused persons pleaded not guilty to the charges framed against them and claimed trial.

6. The prosecution examined eighteen witnesses in support of its case. Respondents- accused in their statement recorded under Section 313 Cr.P.C. denied the charges levelled against them and examined eight witnesses in support of their case.

7. In view of the evidence and material placed on record, the learned court of Sessions acquitted the respondents/accused of the charges framed against them. It is against the acquittal of respondents/accused, the present petition has been preferred by petitioner-State seeking leave to appeal against the impugned judgment.

8. The learned Additional Public Prosecutor appearing on behalf of



petitioner-State submitted that the impugned judgment is based upon presumptions and surmises and the learned trial court did not correctly consider the evidence placed on record and erroneously acquitted the respondents-accused.

9. Learned Additional Public Prosecutor for State further submitted that the learned trial court did not appreciate that at the time of alleged incident, the victim was 15 years of age, who has raised serious allegations against the accused persons. Next submitted that the learned trial court has erred in not appreciating the testimony of prosecutrix (PW-5), who has fully supported the case of prosecution even during her cross-examination by deposing that respondent No.1/accused first raped her in the year 2005 and so, at that time she was 14 years of age and therefore, claim of respondent/accused that he had consented sexual relations with prosecutrix who was his wife, deserves to be rejected; as in the year 2005 prosecutrix was not married to respondent-accused and she was a minor.

10. Next submitted that the mother of the prosecutrix (PW-10) stated that the prosecutrix was enticed by the respondent-accused; the marriage was without consent of the victim/prosecutrix and there was only exchange of garland. She also stated that the prosecutrix when visited her house with her daughter in the year 2008, she told her mother that under his instigation, she had taken the money and the jewellery from the house and he forcibly exchanged garlands with her and that respondent-accused and his parents used to beat her.

11. Conversely, learned counsel appearing on behalf of respondents submitted that the impugned judgment passed by the learned trial court is



premised upon evidence of witnesses recorded and the material placed on record; and suffers from no illegality and so, the present petition seeking leave to appeal against thereof, deserves to be dismissed.

12. This Court has gone through the impugned judgment, testimony of witnesses as well as other material placed before the learned trial court to find out as to whether a case for grant of leave to appeal is made out or not.

13. The case set up by the prosecution is that the prosecutrix was first raped by respondent No.1 in the year 2005 when she was aged around 14 years. She was enticed to leave her parents house with cash and jewellery when she was aged about 15 years; kept in illegal confinement by respondent No.1/accused and was repeatedly raped by him. She was thereafter illegally confined by the parents of respondent No.1 and was also raped by father of respondent No.1/accused, which was within the knowledge of respondent No.2-mother of the respondent No.1.

14. The prosecutrix in her statement recorded under Section 164 Cr.P.C. stated that she was forced to marry respondent No.1-accused and marriage was solemnized in a temple on 07.07.2006 by exchange of garland. Even in her complaint made to the police [recorded vide DD No.27A dated 25.04.2008] she stated that she had a quarrel with her husband and so, left her matrimonial home. Further, the prosecutrix in her application dated 30.06.2008 [EX. DW4/B] has stated that she has no grievance against her husband and in-laws and she is willing to withdraw if any such complaint has been made by anyone. Even mother of the prosecutrix (PW-10) in her statement has stated that respondent No.1-Mahadev had forcibly married her by putting garland. The copies of medical prescriptions has been placed on



record from Doctor Baba Saheb Ambedkar Hospital, Rohini, Delhi and Goel Clinic, Family Clinic and Gynecologist, to show that prosecutrix was under treatment during pregnancy and a female child was born on 02.10.2007.

15. The aforesaid evidence brought on record clearly depicts that the prosecutrix was married to respondent No.1. What is required to be seen is as to whether prosecutrix was forced to marry respondent No.1/accused.

16. On this aspect, this Court finds that Ram Avtar, father of prosecutrix, had vide application dated 05.12.2006 written to the Chowki Incharge, Shahbad Dairy (Mark-DB) has stated that *he and his wife- Raj Rani have disowned their adopted daughter Neetu, wife of Mahadev and they have disinherited her by way of publication on 03.07.2006 in newspaper Rashtriya Sahara and that they have not made any complaint against in-law of Neetu, as her in-law have not raised any demand of dowry. Also, they have no relations with Neetu or her in-laws.*

17. Even though the prosecutrix in her application dated 30.06.2008 [EX. DW4/B] has stated that she withdraws the complaint if any has been made against her in-laws, yet a copy of complaint dated 25.04.2008 made by prosecutrix to the ACP, CAW Cell, Sector-7, Rohini shows that the prosecutrix has complained that her husband and in-laws raise dowry demand and she wants to take action against them and also asserted that she wants to get separated from them.

18. Further, the counsellor Ms. Kalpana (DW-8) deposed before the trial court that respondent No.2 /accused – Jai Shree had filed a complaint against her daughter in law i.e. the prosecutrix and the dispute could not be resolved, as the prosecutrix did not want to go to her matrimonial home.



19. In our considered opinion, the prosecutrix had eloped from her parents' house with their money and jewellery with intent to marry respondent No.1-accused; got married to him by exchanging garland and out of this wedlock, the couple was blessed with a daughter on 02.10.2007. They had marital dissensions and so, prosecutrix as well as her mother-in-law took legal recourse to law. However, the prosecutrix categorically stated that she was not willing to live with respondent No.1-accused and so, filed the complaint in question.

20. There are material contradictions in the statement of the prosecutrix recorded under Sections 164 Cr.P.C. & 161 Cr.P.C. as well as her statement made before the Court, such like, before the learned Metropolitan Magistrate prosecutrix stated that she was forcibly got married to respondent No.1-accused by his family members, but before the court she was silent on marriage aspect.

21. Also, no complaint was made by the prosecutrix in the year 2005 when she was allegedly raped for the first time by accused No.1, neither to the police nor even to her parents. The prosecutrix solemnized marriage with respondent No.1-accused in a temple on 07.07.2006 and was thus, his wife and above 15 years of age.

22. Even during her pregnancy checkups, the prosecutrix was treated at Doctor Baba Saheb Ambedkar Hospital, Rohini, Delhi and Goel Clinic, Family Clinic Hospital, but did not allege commission of rape upon her. The conduct of prosecutrix depicts that she had consensual physical relationship with respondent No.1-accused. It seems prosecutrix due to matrimonial issues, has targeted her husband i.e. respondent No.1 and her mother-in-law



i.e. respondent No.2, as the complaint in question has been filed after a gap of two years and that too, when prosecutrix was already blessed with a daughter.

23. Relevantly, in the present case, no document or scientific opinion has been placed on record nor any witness has been examined by the prosecution to prove the age of the prosecutrix. Apropos, to hold the respondents guilty of the offences charged with, the overall facts and circumstances have to be examined, which in the present case do not favour the case of prosecution.

24. In the light of aforesaid, this Court is of the opinion that the prosecution has not been able to establish its case against the respondents and the learned trial court has rightly acquitted the respondents-accused giving benefit of doubt for the offences charged with.

25. Finding no merit in the present petition seeking leave to appeal against the judgment dated 28.05.2019, it is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 12, 2023

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