



2024:DHC:6581



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

% Reserved on : 08.08.2024
Pronounced on : 29.08.2024

+ **CRL. A. 914/2002**

IQBAL AHMED.

..... Appellants

Through: Mr. M.A. Inayati, Mr. Shoaib Khan
and Mr. Furkan Ali Mirza,
Advocates.

Versus

THE STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Aashneet Singh, APP for State
with SI Vivek Tomar PS NFC, New
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 06.09.2002 and order on sentence dated 19.10.2002 passed by learned ASJ, New Delhi in Sessions Case No. 01/2001 arising out of FIR No.449/2000 registered under Sections 366/363/376 IPC at P.S. New Friends Colony, New Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 366/342/376 IPC and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 376 IPC with a fine of Rs.500/- in default whereof, he was directed to undergo further imprisonment for 3 months. For the offence punishable under Section 366



IPC, the appellant was directed to undergo rigorous imprisonment for 3 years alongwith fine of Rs.500/- in default whereof, he was directed to further undergo imprisonment for 3 months. Lastly, for the offence under Section 342 IPC, the appellant was directed to undergo rigorous imprisonment for 3 months with a fine of Rs 500/-, in default whereof, he was directed to undergo further imprisonment for 1 month. The said sentences were directed to run concurrently.

2. The facts, as noted by the Trial Court, are as under:-

“On 12.9.00 one Nabijan, father of the prosecutrix lodged a report at PS New friends colony which was taken flown by SI Girish Jain. Contents of the report were that the complainant Nabijan was living with his family in a house 444, Zakir Nagar, Jamia college near pink Hostel. His daughter Pyar Bano was aged around 15 years and complainant further provided her description like round face about 4 feet height and was wearing suit was missing since 10.09.2000 and earlier missing report had been given to police taken down as DD NO.23 dt.10.09.2001 at PP Jamia Nagar, Complainant now came to know that person who had taken away his daughter was Iqbal s/o Basir Ahmed who used to work as a driver with the Complainant. He further states in the complaint that day before, he received a telephone call from accused Iqbal that complaint's daughter was in his (accused's custody) but then matter should not be reported to the police otherwise complainant will have to suffer a serious loss. Complainant further states that thereafter brother at accused Iqbal came to the complainant and repeated the version earlier given by accused Iqbal and further told complainant that his daughter will be brought on Wednesday and the matter should not be reported to the police. Finally, informant complainant stated that he had every doubt his daughter has been kidnapped by Iqbal and Iqbal was already a married person”

3. Subsequent to filing of chargesheet on completion of investigation,



the accused was charged under Sections 366/376/342 IPC, to which, he pleaded not guilty and claimed trial.

4. In trial, a total of 12 witnesses were cited by the prosecution to prove its case. Prosecutrix was examined as PW2. The material witnesses, being the father and mother of the prosecutrix, were examined as PW4 and PW6 respectively. Besides the above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the accused person, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and that he had been falsely implicated in the case.

5. On behalf of the appellant, the impugned judgment has been assailed on the ground that the testimonies of the witnesses do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. It is contended that considering the two years margin to be given as per well-established principles of law, the Trial Court has erred in opining the prosecutrix to be a minor considering that the radiologist in the ossification report opined the age of the prosecutrix to be above or equal to 14.9 years but less than 15.8 years. It is further submitted that the Trial Court has failed to consider the fact that on 13.09.2000, the prosecutrix had initially disclosed to PW3/Senior Resident Gynae in the history of assault that she could not recall anything from the past three days as she was unconscious and that there were no signs of any physical injury in the MLC. There was also no disclosure as to any physical or sexual assault in the report. Learned counsel further submits that in light of the above-noted disclosure, the prosecutrix's statement u/s 164 Cr.P.C alleging sexual assault seems to be tutored by the



parents of the prosecutrix. Learned counsel further submits that the Trial Court has failed to appreciate that no evidence has been brought on record by the prosecution to suggest that the prosecutrix was ever confined by the accused at Aligarh. Learned counsel also submits in Court that during the time of the incident, the accused had been sent on a job by the father of the prosecutrix to Bijnore, UP and only gained knowledge of the incident involving the prosecutrix after his return.

6. The father of the prosecutrix, examined as PW4, has categorically supported the version given in the initial report, exhibited as Ex. PW4/C. He deposed as to receiving a telephone call from the accused stating that his daughter was with him and that the matter should not be reported to the police, threatening of dire consequences if the same was not complied with. He further states that threats were also extended by the brother of the accused *Ikhlaq Ahmed*. To a similar extent is the testimony of the mother of the prosecutrix who reiterates that the accused had made a telephone call on 11.09.2000 stating that the prosecutrix was in his custody and threatened of dire consequences if the matter was reported to the police.

The prosecutrix has deposed her age to be fifteen years and stated in her examination that she had never been to school. The only material available to the Court in order to decipher the age of the prosecutrix is the testimony of the parents of the prosecutrix and the report prepared by the radiologist. As discernible from the record, the radiologist opined the age of the prosecutrix to be above or equal to 14.9 years but less than 15.8 years. Applying the margin of error of 2 years to the present case, even if the said time period is added up to the upper age opinion of 15 years 8 months, the age of the prosecutrix would still be less than 18 years thus constituting her



a minor at the time of commission of the offence. [Ref: Jarnail Singh v. State of Haryana¹]

7. While addressing the offence of kidnapping u/s 366 IPC, the Trial Court has referred to the testimony of the prosecutrix where she had deposed that the incident occurred on the intervening night of 09.09.2000 and 10.09.2000, where the accused on the pretext of taking the keys of the family vehicle made the prosecutrix smell some substance as a result of which she became unconscious. Upon regaining consciousness, she found herself to be in Aligarh where the accused made forcible sexual relations with her. The said testimony of the prosecutrix is in line with her statement under Section 164 Cr.P.C. The occurrence of the incident is also supported by the statements of the mother and father of the prosecutrix to the extent that they received a telephone call from the accused on 11.09.2000 stating that the prosecutrix was in his custody and that the matter should not be reported to the police.

No sufficient material has been brought on record by the accused to prove that he has been falsely implicated in the present matter nor there appears to be a reason as to why the prosecutrix would falsely depose against the present appellant. In addition, the father of the prosecutrix in his cross-examination was never confronted with the contention that it was the father of the prosecutrix who had sent the accused person to Bijnore during the time of the incident, thereby the said contention is to be disregarded. Having taken the defence of *alibi*, the burden was on the appellant to prove the same in terms of Section 106 Indian Evidence Act.

¹ 2013 SCC OnLine SC 507



8. In the case of Krishan v. State of Haryana², the Apex Court has categorically observed that :-

“ 17. The further contention of the counsel to rule out rape by the accused, that the prosecutrix is habitual to sexual intercourse and there were no signs of recent forcible sexual intercourse or injuries on her body, also cannot help. It is not expected that every rape victim should have injuries on her body to prove her case..... ”

9. As per the above-stated principle, it can be inferred that the mere absence of injuries on the body of the prosecutrix is not enough to negate the assertion that sexual assault has been committed and that the absence of signs of force does not render the prosecutrix as a consenting party. In the impugned judgement, it has been noted that while in the MLC, the prosecutrix has not stated about any physical or sexual assault having been committed, however the very same report also records that the prosecutrix had been taken away to Aligarh after being made unconscious by the accused, where she was kept confined for 3 days. The prosecutrix in her chief as well as cross examination has explicitly narrated the incident of sexual assault wherein the accused used to bring her food laced with intoxicant and used to forcefully establish sexual relations with her while she was kept confined in a single room for 3 days. The same has also been corroborated with in the 164 Cr.P.C statement of the prosecutrix and the testimonies of her parents, as well as by the evidence led in Court. Considering the peculiar circumstances surrounding the incident, where the prosecutrix was kept confined for 3 days in an unconscious state, the fact that sexual assault has not been mentioned in the MLC alone cannot be held

² (2014) 13 SCC 574



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against the prosecutrix when she has consistently narrated the alleged incident in her subsequent statements before the Court. Adequate material has not been brought on record by the accused to establish as to why the prosecutrix or her parents would falsely implicate him in the said case.

10. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellants under Section 366/376/342 IPC have been conclusively proved. Consequently, the appeal fails and the appellant's conviction under Sections 366/376/342 IPC is upheld.

11. The appeal is disposed of in above terms.

12. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 29, 2024/js