



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

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Date of Decision: 05.03.2024

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CRL.A. 920/2001

MAHESH

..... Appellant

Through: Mr. Neeraj Chaudhari, Mr. Shishir Mathur, Ms. Muskan Tyagi, Ms. Deeparghia Datta,, Advocates with appellant in person.

Versus

THE STATE, NCT OF DELHI.

..... Respondent

Through: Mr. Laksh Khanna, APP for State with SI Reena PS Anand Vihar, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been instituted under Section 374 Cr.P.C. seeking setting aside of the judgment of conviction dated 28.09.2001 and order on sentence dated 23.10.2001 passed by the learned Sessions Court in FIR No.6/2000 registered under Sections 363/376 IPC at PS Anand Vihar, Delhi.

While the appellant was charged under Section 363/376 IPC, vide the impugned judgment, he was convicted only for the offence under Section 363 IPC and sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.5,000/-. In case of failure to pay the fine, he was directed to undergo further rigorous imprisonment for one and a half years. The appellant was also granted benefit of Section 428 Cr.PC as regards the



incarceration undergone as an under-trial. Pertinently, appellant's acquittal under Section 376 IPC has not been challenged by the State.

2. The factual matrix of the prosecution case as noted by the learned Trial Court is extracted hereunder:

"1. The facts germane to the prosecution case are these. Prosecutrix 'R' aged about 8 years resides with her family in jhuggi bearing no. xxx. On the night falling between 5th and 6th January, 2000, R was sleeping in her jhuggi with her parents and two other sisters. At about 2.30 am, Smt. 'K', mother of 'R', got up because her door was knocked at. She found that her daughter 'R' was missing. She apprised her husband 'N' of this fact. Smt. 'K' and 'N' came out of the jhuggi. They found that their daughter was crying outside the jhuggi. She told them that one man whose name and address she did not know, had raped her, had run away and that she could identify him if he was produced before her. The police was informed. HC Bodhan Lal of PCR arrived at the spot and moved the girl and her parents to SDN Hospital. SI Ashok Kumar also came to the spot where nobody met him and, therefore, he went to SDN Hospital. SI Ashok Kumar wanted to record the statement of R but she was scared. She did not make any statement. SI Ashok Kumar recorded the statement of Smt. 'K', endorsed the complaint and sent the same through constable Jaipal Singh for getting this case registered.

2. Supplementary statement of Smt. 'K' was recorded on the same day i.e. on 6th January, 2000. She explained that previously her daughter was scared and at the time of making the supplementary statement the condition of her daughter 'R' had improved and she had disclosed that accused Mahesh, who used to visit their house and who had visited their house two days earlier had taken away her and raped her in a park. It also transpired that accused Mahesh had a rickshaw garage near the jhuggi of 'N'. 'R' also made a statement in this context. 'A', sister of 'R', also disclosed that she had seen accused Mahesh taking away her sister. She explained that accused had threatened her and, therefore, she had slept. However, statement



of 'A' under Section 161 Cr.PC was recorded on 04.07.2000."

3. In trial, the prosecution examined total of 19 witnesses. The complainant/victim of the case was examined as PW-1. She deposed that on the date of the incident, the appellant had taken her to a place where they usually go to ease themselves, whereafter he had given her fist blows and caused injuries on *'the place from where she urinates'*, which led to bleeding. The mother of the victim was examined as PW-2. She deposed that on the day of the incident, her daughter had informed her of the beatings given by the appellant. The victim was bleeding from her private part which had also stained her frock and *pajami*. Father of the victim was examined as PW-12 and he supported the version of his wife/PW-2. Sister of the victim appeared as PW-16 and deposed that on the day of the incident, she had seen the appellant taking away her sister. Dr. Rawani, SDN Hospital, who had examined the victim, was examined as PW-7 and he proved the MLC of the victim (Ex.PW-7/A). Dr. Sazure, SMO, SDN Hospital, who had also medically examined the victim appeared as PW-8. The victim's date of birth was proved through school records provided by the Head Mistress of the concerned school. As per the school records, the date of birth of the victim was 16.11.1983.

4. The trial court came to the conclusion that on a perusal of the testimony of the victim as well as her parents, no allegations surfaced qua the offence of 'rape'. The incident statedly took place on the intervening night of 05.01.2000/06.01.2000, whereas the statements of the victim and her mother were recorded immediately two days thereafter. It was also concluded that the delay in naming the appellant as accused is explainable



from the testimony of other witnesses, who had stated that the victim was continuously crying and on account of nervousness, could not give her statement immediately.

5. Coming to the offence under Section 363 IPC, it is discernible from the statement of victim coupled with the statement of her sister, who had categorically stated that she had seen the appellant taking away her sister. The testimony remain unchallenged during the trial and established the commission of the offence under Section 363 IPC. Even before this Court, the appellant could not point out any material or contradiction which would make the testimonies. On the contrary, during the course of submissions, learned counsel for the appellant, on instructions from the appellant, rather stated that the appellant does not wish to challenge his conviction under Section 363 IPC and pray that the order on sentence be modified to the period already undergone by him. He further states that the offence relates back to the year 2000, when the appellant was aged around 18 years and he is not involved in any other case. The appellant also claims to be the sole bread-earner of his family.

6. Nominal roll of the appellant as on 21.11.2002/03.02.2024 has been placed on record, as per which the appellant has already undergone incarceration of 2 years, 3 months and 11 days with remission of 4 months and 7 days.

7. Considering that the appellant himself was aged around 18 years at the time of the incident and that he is not found involved in any other case, this Court, while maintaining the order of conviction, modifies the appellant's sentence to the period already undergone by him however, subject to payment of fine, if not already paid. In case the fine remained



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unpaid, the appellant shall undergo default sentence. His bail bonds are cancelled and surety is discharged.

8. The appeal is disposed of in above terms with the aforesaid modification in the order on sentence.

9. Let a copy of this judgment be communicated to the concerned Jail Superintendent as well as to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 5, 2024/rd