

(2013) 05 DEL CK 0418

Delhi High Court

Case No: Criminal A. 961 of 2009

Rajesh Kumar Tyagi @ Chotu

APPELLANT

Vs

The State (Govt. of NCT)

RESPONDENT

Date of Decision: May 29, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164
- Penal Code, 1860 (IPC) - Section 34, 363, 366A, 373, 376

Citation: (2014) 1 JCC 312 : (2013) 3 JCC 1676**Hon'ble Judges:** G.P. Mittal, J**Bench:** Single Bench**Advocate:** Sumeet Verma, for the Appellant; Rajdipa Behura, Additional Public Prosecutor, for the Respondent**Final Decision:** Dismissed

Judgement

G.P. Mittal, J.

The Appellant impugns a judgment dated 03.07.2009 and order on sentence dated 08.07.2009 passed by the learned Additional Sessions Judge (ASJ) whereby he was convicted for the offence punishable under Sections 373/376 IPC and was sentenced to undergo RI for two years and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo SI for one month for the offence punishable u/s 373 IPC and to undergo RI for seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo SI for six months for the offence punishable u/s 376 IPC. As per the case of the prosecution on 21.07.2003 two girls "R" and "H" (names withheld this being a case u/s 376 IPC) were found missing from their respective homes in Jahangirpuri. It was informed that the girls were seen and had gone with one Nazma Khatun (also convicted by the impugned judgment). On 24.07.2003 on the basis of the report lodged by the Complainant an FIR No. 434/2003 u/s 363/366-A/34 IPC was registered with regard to the incident. The father of the girl "R" also contacted one NGO "STOP". The STOP's workers Nagina and Shaboo along

with police officials went to village Basia, District Muradabad. The girls were rescued and brought to Delhi. They were medically examined. Statement of the two girls were recorded by the police. They were also examined u/s 164 Cr.P.C. The girls informed the police that they were upset by being rebuked by their fathers. Accused Nazma Khatun had approached them and allured them to her house. Accused Nazma and her husband Mohd. Azad took them to various places and ultimately prosecutrix "H" was sold to the Appellant for Rs. 5,000/-. The Appellant raped her 2-3 times a day for 6-7 days.

2. The learned ASJ on appreciation of evidence found the Appellant guilty for the offence punishable u/s 373/376 IPC and convicted and sentenced him as stated earlier.

3. The only contention raised by the learned counsel for the Appellant is that the Appellant had married the prosecutrix "H" and, therefore, it cannot be said that the Appellant was guilty for the offence punishable under Sections 373/376 IPC. While dealing with the Appellant, the Trial Court held as under:-

13. As regards to accused Rajesh Kumar Tyagi @ Chotu, the prosecution is required to establish that he had purchased/procured Haseena (a minor girl) from co-accused Nazma and Mohd. Azad for the sum of Rs. 7,000/- and also committed rape upon her.

PW7 Haseena while corroborating the story of prosecution has specifically stated that the accused Mohd. Azad forcibly took her with them on the threats that if she does not accompany them her parents would be killed. She was taken along with Rehana to Basia village, where the accused persons Mohd. Azad and Nazma sold her to accused Chhotu (Rajesh) in Rs. 7,000/-. Accused Rajesh raped her 2/3 times a day upto 6/7 days against her will and without her consent while threatening her to kill her parents.

PW1, the prosecutrix Rehana also confirmed that accused Nazma after alluring had taken her to her house, where accused Mohd. Azad was also found present along with the other prosecutrix Haseena. From there, they both were taken to Basia village where she was sold by them to another person. She has also specifically stated that Haseena was also sold by the said accused persons for Rs. 7,000/- to accused Chottu @ Rajesh.

PW2 & PW3 Nagina and Saboo, the social workers from STOP organization has also supported the story of prosecution. They along with the father of Rehana and police officials went to village Basia Distt. Muradabad where Rehana was found and recovered from the house of village Pradhan. The accused Mohd. Azad, Nzama and Chottu were also arrested and later on prosecutrix Haseena was also rescued from the house of accused Chhotu. Both these witnesses with stood the cross examination without any contradiction. In their respective statements recorded u/s. 164 Cr.P.C., the prosecutrix(s) had supported their statements given U/s. 161 Cr.P.C. They had also withstood their cross examination without any contradiction and

nothing material had come up to disregard their testimony in their cross examination. They had clearly named the accused Rajesh alongwith other accused persons and the role played by him. The MLC of the Haseena confirms that the hymen was torn and there was alleged history of rape which further corroborates with the testimony of the said witness. The ossification test report shows that the prosecutrix Haseena was 17 years of age, hence a minor, and the accused was failed to bring any evidence in contrary.

Moreover, the accused has also been failed to establish that the sexual relations established by him with the girl Haseena was consented. Whereas, the girl in her testimony has specifically deposed that she had been sold and was sexually assaulted by the accused without her consent. Thus it is established that the accused Rajesh Kumar Tyagi @ Chotu had procured/purchased the minor girl Haseena from the co-accused Nazma and Mohd. Azad for the amount of Rs. 7,000/- and thereafter, he had committed rape upon her without her consent. The factum of rape has been corroborated by the medical evidence. Moreover, there is no motive on the part of the victim or her parent to falsely implicate the accused as in the tradition bound non-permissive society of India the parents would be more conscious of the danger of being ostracized by the society or being looked down by the society and would want to avoid publicity on account of the fear of social stigma on the family name and family honour. Thus, accused Rajesh Kumar Tyagi @ Chotu is liable to hold guilty for the offences punishable U/Sec. 373/376 IPC. He is held guilty and accordingly convicted.

4. The learned counsel for the Appellant has taken me through the cross-examination of PW-7 prosecutrix "H" and urged that the prosecutrix admitted that she was married to accused Chhotu at his house and he also put sindoor in her hair parting. This part of PW-7's testimony in cross-examination cannot be read in isolation and has to be read along with examination in chief and the cross examination conducted on behalf of the Appellant. The prosecutrix in her cross examination clearly stated that the Appellant used to commit rape on her 2-3 times daily for 6-7 days at the instance of co-accused Mohd. Azad. She stated that at the time the sexual intercourse was committed only the Appellant used to be in the room. She added that she refused to have sexual intercourse with the Appellant but he (the Appellant) insisted. She admitted that Sindoor was put in her hair and it was shown that she had married the Appellant but she stated that no other ceremony took place with regard to marriage. She also denied the suggestion that the Appellant used to have sexual intercourse with her in the capacity of her lawful husband. Thus, she was quite categorical that she was not lawfully married and the alleged marriage was not with her consent. Thus taking away of the girl "H" from Delhi by co-accused Nazma and others was established. The girl was recovered from the house of the Appellant. The Appellant was arrested from his house. Thus, the finding reached by the learned ASJ that the prosecutrix was sold to the Appellant and that the Appellant committed sexual intercourse with her without her (the

prosecutrix"s) consent cannot be faulted.

5. The Appeal is devoid of any merit; the same is accordingly dismissed.

6. A perusal of the nominal roll reveals that the Appellant has already has already been released from the jail after serving the sentence including the period of remission. A copy of the order be transmitted to the Trial Court.