

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. Rev. P. No. 468 of 2006

% Date of Decision : 14.02.2008

SUNITA PETITIONER
Through: Mr. Rakesh Sherawat, Advocate

- V E R S U S -

SATVIR SINGH & ORS. RESPONDENTS
Through: Mr. Amit Ahlawat, Advocate for R-1.
Mr. Pawan Sharma, APP for R-2.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J. (ORAL)

1. On a complaint being filed by the petitioner, an FIR 754/1999 u/s 376 IPC at P.S. Nangloi, was lodged whereby the accused, respondent no.1, was alleged to have subjected the petitioner to sexual assault. The petitioner is the wife of a Police Constable while respondent no.1 is also a Police Constable. The allegation is that between 7th to 9th July, 1999 the petitioner was subjected to sexual assault against her will and consent.

2. The accused is alleged to have rung up the complainant and asked her to come near Shiv Shakti School for some work under the threat of getting her son abducted. On reaching the destination, the complainant was asked to accompany the accused under the same threat and it is alleged that the complainant was taken to a deserted place where there was only one room where the victim/petitioner was subjected to sexual assault despite objection. The complainant, however, informed her husband about the occurrence only on 19.7.1999, when the case was registered.
3. The two parties were residing in adjoining houses. The accused is stated to have developed a friendship with the husband of the complainant and used to visit the house on different pretexts even in his absence. In the statement made before the police, the complainant has alleged that even 5-6 months prior to the incident, the accused had visited her house at about 12.00 Noon on the pretext of making a telephone call and subjected her to sexual assault at revolver point. This is stated to have occurred even thereafter and on one day even the daughter of the complainant noticed the accused leaving the house after she arrived at the house.
4. Charges were framed on 13.9.2000 for offences u/s 376/506 Part II IPC against the accused and the accused pleaded not guilty and claimed trial. In terms of the judgment dated

22.3.2006 the accused was acquitted. The State did not file any appeal and the revision petition has been filed by the complainant / prosecutrix.

5. Learned counsel for the parties have been heard at length.

6. Before examining the matter on merits, it has to be kept in mind that this Court is examining the matter in exercise of revisional jurisdiction, which jurisdiction u/s 397 IPC r/w Section 401 Cr.P.C. against an acquittal order is limited. The law enunciated by the Supreme Court in Thankappan Nadar & Ors. Vs. Gopala Krishnan & Anr., (2002) 9 SCC 393 does not empower the Court exercising the revisional jurisdiction to re-appreciate evidence. There has to be a procedural illegality or a manifest error of law for this Court to interfere.

7. Learned counsel for the petitioner relied upon the judgment of the Apex Court in Visveswaran Vs. State Rep. by SDM, AIR 2003 SC 2471 to contend that on examination of evidence in cases of rape being tried u/s 376 IPC, the approach to be adopted by the Courts has to be different and the Court is not to get swayed by minor contradiction or discrepancies and defective investigation. Thus, evidence is required to be appreciated having regard to the background of the entire case and not in isolation and the ground realities are to be kept in view.

8. A perusal of the impugned judgment shows that the evidence produced on behalf of the prosecution has been examined

minutely by the learned ASJ. One of the aspects which has weighed with the trial court is the non-disclosure of the commission of sexual assault for a period of 5-6 months from the first such incident alleged by the complainant. The present case is not one where a Police Constable/accused could use his unequal bargaining power since the husband of the complainant is also a Police Constable. On one of the dates, when the daughter of the complainant reached home from school and on opening the door she noticed the accused leaving the house from the rear door. Even that incident was never disclosed by the complainant to her husband and, in fact, told her daughter that the accused had come there to make a telephone call from their house. In her deposition, the daughter has stated that while she was entering the house, she pressed the door bell of the main door, which would naturally arise if the door bell was functioning. However, the complainant stated in her cross-examination that the door bell was out of order, whereas in her examination-in-chief she herself admitted that she opened the door when the door bell was pressed by her daughter. The deposition of the daughter also shows that when she found the accused leaving the house, the complainant looked scared and surprised.

9. Insofar as the particular incident is concerned, the accused is alleged to have rung up the complainant while she was

present in the house. There was no immediate threat to her or her husband, who was working in the Delhi Police, but she chose not to call him and decided to join the accused. The sketch plan prepared of the place of incident by the IO did not find mention of the existence of any room in the plot where the sexual assault is alleged to have taken place. The IO tried to explain the same by stating in his deposition that there was a room without any door.

10. One of the important material aspects is that the complainant admitted to have written various letters in her handwriting when confronted in the cross-examination. These letters are exhibited as Ex.PW1/DA to PW1/D8. These letters show the affection which the complainant had for the accused wherein she has alleged mal-treatment by her own family. In fact, the case of the accused is that when the husband of the complainant was informed about the letters, a quarrel took place with her husband and thereafter the case was registered. The letters are in endearing terms addressed to the accused which express the intention of the complainant to periodically join the company of the accused. The trial court rightly found that the story of the complainant that these letters were written under threat was not believable in the context of the evidence available on the record.

11. The medical evidence has also been considered by the trial

court and the trial court found that the said evidence did not suggest that the complainant was subjected to sexual assault. Testimony of the expert witness also did not help the case of the complainant and no semen was detected on the relevant exhibits.

12.The aforesaid evidence has been discussed even though strictly speaking it is not the function of this Court to re-appraise the evidence. This is so as the nature of offence persuaded this Court to look deeper into the matter.

13.On a conspectus of the aforesaid, I do not find any procedural illegality or manifest error of law which requires this Court to interfere with the impugned order.

14.Dismissed.

15.Trial court record be sent back.

February 14, 2008
'sp'

SANJAY KISHAN KAUL, J.