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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : March 19, 2009
Judgment delivered on : March 25, 2009

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**Crl. A. No.53/2000 &
Crl. M.A. No. 6749/2008**

Narender Kumar ... Appellant
Through: Mr. R.P. Khatana,
Advocate

versus

The State (NCT of Delhi) ... Respondent
Through: Mr. Amit Sharma,
Additional Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. In this appeal, appellant assails his conviction for the offence of rape awarded by the trial court vide impugned judgment of 7th December, 1999, and the sentence of rigorous imprisonment of seven years with fine of Rs.2,000/- imposed upon him for the offence under Section 376 of the IPC, vide impugned order of 8th December, 1999.

2. The factual backdrop of this case is that on 16th September 1998, at about 8 PM, prosecutrix (PW-1) was going via Press Enclave Road, towards Chirag Delhi, where her husband used to work and on the way, near 'ganda nala', Appellant/accused followed her and dragged her towards nearby bushes and told her that she complains against him to the police and today, he would teach her a lesson and, thereafter, despite resistance by the prosecutrix, he forcibly had sexual intercourse with her and in the process, her salwar was torn and out of fear, she did not raise an alarm but she had abused the Appellant. After this incident, prosecutrix went to her husband who took her to the police, where on her Complaint Ex. PW-1/A, FIR of this case was registered. Prosecutrix was got medically examined and during the course of the investigation of this case, Appellant/accused was arrested and was got medically examined and after completion of the investigation, appellant was charge sheeted for committing the offence of rape upon the prosecutrix of this case.

3. Trial commenced as Appellant/accused did not plead guilty to the charge of rape framed against him by the trial court. Out of the eleven witnesses examined at trial, the important witnesses are prosecutrix (PW-1) and her husband (PW-3). Apart from the medical evidence of the doctors (PW-7) and (PW-9), there is evidence of SI Lekh Raj (PW-6) and SI R.N. Chaudhary (PW-11), who had conducted the investigation in this case.

4. Appellant/accused in his statement under Section 313 Cr. P.C. recorded by the trial court, has denied the prosecution case and had stated as under:-

“I was having good relations with the family of the prosecutrix and we were staying in the same village. The prosecutrix desired to keep me in her house, to which I refused and for that reason, this false case has been planted on me. I am innocent and I have been falsely implicated in this case by police at the instance of the prosecutrix and her husband as I did not accept the proposal of the prosecutrix to live in her house and her husband has also given severe beatings to the prosecutrix on that account.”

5. The two witnesses who were got examined by the Appellant in his defence have supported the aforesaid version of the Appellant/accused.

6. Upon conclusion of the trial, Appellant was convicted for raping the prosecutrix and was sentenced to Rigorous imprisonment for seven years and to fine of Rs.2,000/-, which is under challenge in this appeal.

7. Both the sides have advanced their respective submissions and have referred to the evidence on record.

8. Appellant alleges false implication in this case and it has been submitted on behalf of the Appellant that the prosecution case of

Appellant, having forcible sexual intercourse with the prosecutrix, is altogether improbable, as the Appellant was then aged eighteen years and prosecutrix was a married lady of 32 years, having three grown up children. Learned counsel for appellant points out that the medical evidence does not support the prosecution version and although the sample blood of the Appellant was taken, but it was not sent to the FSL for determination of the blood group and had it been done, then it would have conclusively proved the innocence of the Appellant, as the blood found on the clothes of the prosecutrix is of AB group, whereas the blood group of the Appellant is 'O+'. Belatedly, an application has been filed in this appeal to get the blood group of the Appellant determined. Lastly, it is urged on behalf of the Appellant that there is evidence of two defence witnesses to show that the prosecutrix was a lady of loose character and she used to seduce young boys for sexual intercourse and thereafter, used to take money from them and the Appellant being a neighbour used to visit the prosecutrix and this was not liked by her husband and therefore, Appellant has been falsely implicated in this case. Thus, it is submitted that the conviction of the Appellant is bad in law and therefore, it deserves to be set aside.

9. On behalf of the State, it is pointed out that to teach a lesson to the prosecutrix for making complaint to the police against the Appellant, she was raped by the Appellant in the bushes near the

‘ganda nala’. It is submitted that the evidence of the prosecutrix has been rightly relied upon by the trial court to convict the appellant and the defence plea is an afterthought, which has been rightly discarded by the trial court. Thus, it was asserted by learned Additional Public Prosecutor for the State that there is no merit in this appeal.

10. The prosecution case rests upon the testimony of the prosecutrix (PW-1) who is a married lady and her testimony has to be appreciated in the light of the observations made by the Apex Court in the case of ‘*Om Prakash V State of Uttar Pradesh*’, **AIR 2006 SC 2214**, which are as under:-

“The Indian women has tendency to conceal such offence (of rape) because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after staking her own prestige and honour”.

11. As per the version of the prosecutrix (PW-1), she was a domestic servant, who, after finishing her work, was going to her husband and on the way, Appellant/accused is said to have raped her

in the bushes nearby 'ganda nala', to teach her a lesson for complaining against him to the police.

12. To test the case of the Appellant, cross-examination of the prosecutrix (PW-1) has been scrutinised and it has been found that the motive put forth by the prosecutrix (PW-1) for the Appellant to have raped her, of teaching her a lesson to have complained against the Appellant to police, remains unchallenged. The suggestion put by the defence to the prosecutrix (PW-1), was of false implication due to previous enmity, as Appellant was living in her house one year prior to this incident.

13. Defence wants this court to believe that the prosecutrix (PW-1) was a person of loose character. Whatever has been stated by the defence witnesses is obviously an afterthought as the same has not been suggested to prosecutrix (PW-1) in her cross-examination by the defence.

14. In the grounds of appeal, it has been stated that the Appellant and prosecutrix were close neighbours and were intimate with each other and the prosecutrix had been calling the Appellant/accused to her house on several occasions prior to this incident. What is being stated is that the prosecutrix was the consenting party.

15. On the one hand, the Appellant/accused claims that it was a case of consent, whereas on the other hand, he alleges false

implication. After having carefully gone through the evidence of the prosecutrix (PW-1), I find that her version of being raped in the bushes near the 'ganda nala' at 8 PM at night to teach her a lesson for making complaint against the Appellant/accused to the police, inspires confidence and the plea of the Appellant/accused of consent or false implication, does not appeal to reason and it is found that the defence plea is highly improbable and the same has been rightly rejected by the trial court.

16. The position in law is quite well settled regarding there being no requirement of corroboration to the testimony of the prosecutrix, if it is found to be reliable. Since, I have already concluded above that there are no good reasons to discard the testimony of the prosecutrix (PW-1), medical evidence need not be insisted upon. Still, I have noticed that as per the evidence of Dr. Nisha (PW-9), who had medically examined the prosecutrix, that she (PW-9) had found the clothes of the prosecutrix were torn and there were nail marks on her breast. It is difficult to say, whether those nail marks could be self inflicted. Dr. Nisha may not have ruled out the possibility, but it cannot be so inferred because it is not so suggested to the prosecutrix by the defence. As per FSL report, Ex. PW-11/D blood mixed with semen stains were found on the clothes of the prosecutrix. Appellant cannot get away by now belatedly claiming that his blood group is 'O+'. As

per the aforesaid FSL report, human semen was not only detected on the clothes of the prosecutrix, but also in the vaginal slides of the prosecutrix. A half hearted attempt has been made on behalf of the Appellant/accused to contend that the said human semen found in the vaginal slides of the prosecutrix could be of her husband. Unfortunately, no such suggestion has been given to the prosecutrix (PW-1) by the defence in her cross-examination, nor it has been brought out in the cross-examination of the prosecutrix (PW-1) and her husband by the defence. Furthermore, 'AB' grouping of the blood found on the clothes of the prosecutrix, would not *per se* indicate that the aforesaid blood was of the culprit. Possibly, it being of the prosecutrix (PW-1), cannot be ruled out. It is factually incorrect that the sample blood of the appellant was not sent for analysis. In fact, appellant's blood sample had putrefied and so its grouping could not be determined. In any case, this aspect loses its significance, for the reason that before this court, the plea of consent has not been put across, which cannot be accepted in the face of the evidence of the prosecutrix (PW-1).

17. In the ultimate analysis, I find the prosecution case to be consistent and reliable and the conviction of the Appellant/accused to be just and proper and there is no illegality or infirmity in the impugned judgment and order of conviction.

18. This appeal lacks merits and deserves to be dismissed. It is accordingly dismissed. The pending application also stands dismissed.

19. Appellant/accused is on bail. His bail bonds are cancelled and he is directed to surrender forthwith to serve out remainder of the sentence. Trial court is directed to ensure that the Appellant/accused is taken back in custody to serve out the remainder of the sentence as awarded to him.

20. With aforesaid directions, this appeal is disposed of.

SUNIL GAUR, J.

March 25, 2009

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