

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

+ **Crl.App. 164/2007**

% Date of Reserve : 19.05.2009
Date of Decision : 01.07.2009

HARISH CHAND @ HARI CHAND ... APPELLANT
Through: Mr. D.K. Sharma, Mr. S.K. Vashisth,
advs.

Versus

THE STATE (DELHI ADMINISTRATION) ...RESPONDENT
Through: Mr. Navin Sharma, APP for State

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.**

1. The short point involved in this appeal is as to whether the judgment delivered by the Learned ASJ dt. 23.01.2007 in having convicted the appellant under Section 366/376/506 IPC is sustainable and the sentence awarded vide order dated 29.01.2007 to the appellant is justified.

2. Briefly stating the facts of this case are that a report was lodged by prosecutrix with P.S. Gokal Puri on 24.08.2004 alleging commission of rape by the appellant on her on 23.08.2004 between 4 pm to 5 pm in forest area near Suraj Kund, Haryana after she was taken in a Maruti Car bearing registration No.DL-8C-E-3100. On that basis FIR

No.389/2004 was registered under Sections 366/376/506 IPC against the appellant.

3. The appellant was sent for trial after the completion of the investigation of this case. The case was committed to Sessions vide Sessions case No.293/2006 where the charges were framed.

4. Since accused pleaded innocence, trial was held. The prosecution examined as many as 14 witnesses to establish a charge against appellant, namely, Smt. Anita (PW1), Shyam Lal, Constable (PW2), Charan Singh (PW3), Vinod Singh, Head Constable (PW4), Devender Singh, Head Constable (PW5), Kusum Lata (PW6), Sarita ASI (PW7), Jaiveer Singh, Constable (PW8), Desh Pal SI (PW9), Umed Singh ASI (PW10), Bhunesh Sharma, Record Clerk (PW11), Sushil Kumar, Record Clerk (PW12), Vikram Singh SI (PW13) and Amul Tyagi SI (PW14) in the case.

5. While the other witnesses are formal in nature who either recorded the FIR or collected MLC or took the prosecutrix for medical examination, the case of the prosecution has been unfolded by the prosecutrix, who appeared as PW-1. In her deposition she stated that on 23.08.04 at about 3pm, accused Harish Chand @ Harichand took her to Surajkund in his car on pretext of getting a job for her. He took his car to an isolated place, where he threatened her of instant death. After putting her in fear, he raped her. This incident took place between 4 to 5pm on that very day. Thereafter, she went to police post Prahlad pur, where her statement was recorded and the appellant was arrested from his house.

6. The only defence given by the appellant in his statement under Section 313 of the Cr.P.C. was that he has been falsely implicated at

the instance of Inspector P.L. Suri who was enemical qua him. He also stated that the car did not belong to him and that he neither knew driving nor had any driving license. However the defence as taken by the appellant has not been substantiated.

7. Appellant to support this appeal reiterated similar contentions which were also raised by him before the Trial Court which are summarised hereunder:

- i) The material brought on record, even if taken on face value, would clearly establish that the appellant has been falsely implicated in this criminal case at the instance of Inspector of P.L. Suri.
- ii) Judgment of Learned ASJ is based on sole testimony of prosecutrix and therefore is liable to be quashed. Prosecutrix was not a victim but was an accomplice. The conviction of the appellant on the sole testimony of prosecutrix needs to be set aside as the ASJ has overlooked serious defects in the testimony of the prosecutrix.
- iii) Prosecutrix is not worthy of credence as the FIR has been lodged by her on the next day.
- iv) The friend, at whose house the prosecutrix stayed on the night of incident namely Sabiya has not been examined. As a matter of fact her statement was also not even recorded by the police.
- v) The ownership of Car bearing No.DL-8C-E 3100 has not

been established.

- vi) It has not been proved that the appellant new driving.
- vii) Ingredients of Section 376 IPC having not been established.

Hence impugned order is liable to be set aside.

8. I have gone through the judgment delivered by the Additional Sessions Judge. At this juncture, to appreciate the appellant's 1st contention, I notice that in her evidence of PW1 deposed that on 23.08.04, she was taken by the accused to forest area towards Surajkund, Haryana. On back seat of the car driven by accused, she was raped. He threatened her of death, in case she resists his advances. She became afraid, when she was raped by the accused at about 5 PM on that day. Accused brought his car to main road, where she got down and went to police post, Prahladpur. In police post Prahladpur, she made her statement, which is Ex.PW1/A. When Ex.PW1/A was perused, it surfaces that when she reached police post Prahladpur, it was odd hours of night. Hence, she went to house of her friend. On very next morning, she reached the police post Prahladpur and lodged a report there. Rukka Ex.PW10/A was prepared by Umed Singh ASI for getting a case registered. In this document, Umed Singh ASI details that on night of 23.08.04 prosecutrix visited police post Prahladpur to lodge the report. She unfolded that she was raped. It has been mentioned that on account of odd hours of the night, she did not made her statement at that juncture. Therefore, out of statement Ex.PW1/A and rukka Ex.PW10/A, it emerges that on the night of 23.08.04, Anita reached police post Prahladpur to lodge a report. Umed Singh ASI admits in his testimony that she came to police police station

at 11 or 12 PM. Consequently, it is clear that PW1 went to lodge a report in police post Prahladpur on night of 23.08.04 itself.

9. During the course of her cross-examination, Prosecutrix clarified, as to why there was a delay of 1 day in lodging the FIR. As per her version she was left at the house of her friend by police on the night of 23.08.04. She explained that on that night, neither she was interrogated by police nor her statement was recorded. These facts ordain that police put Anita off that night, since it was going to cause inconvenience to them in odd hours of night. To shrug off their responsibility, an excuse was made that owing to odd hours of night Anita opted not to make a statement. Her conduct of approaching police post Prahladpur and reporting to ASI Umed Singh that she was raped, clinches that she was prompt to initiate an action. In these circumstances, the learned ASJ rightly did not find any fault regarding the reporting of the incident on the next day.

10. To appreciate the 2nd contention, it is relevant to take note of para 12 of the judgment where learned ASJ has also dealt with non-examination of Sayiba in paragraph 12 of the judgment which gives sufficient reason to dispel the argument of the appellant in not examining Sabiya. The said para is reproduced hereunder:

12. Eerie silence is there over the issue as to whether Anita detailed facts before Sabiya. Whether that silence projects a strange behaviour of the victim. She presents that she reached house of Sabiya with police. Reaching a friend's house with police is an uncommon behaviour. Host is expected to question her about that unusual conduct. In such a situation, Anita ought have detailed facts before Sabiya also. Why Sabiya was not examined by the investigating officer, is a proposition, which was beyond control of this poor lady. Further more, testimony of Sabiya could have brought conduct of Anita, subsequent to the events over record. That conduct has been reflected through contents of Ex.PW1/A and Ex.PW10/A. Consequently, the fact that Sabiya was not interrogated or examined by the

investigating officer is not going to cast any aspersions on testimony of Smt. Anita.

11. Insofar as the defence taken by the appellant is concerned, in para 13 of the judgment it has been observed by the trial Court that the enmity with Sh. P.L. Suri has not even been substantiated by the appellant as the appellant even failed to establish as to how the prosecutrix was known to P.L. Suri. In this regard, it may be observed that PW-1 has deposed that the accused met her at the corner of street No3, Ganga Vihar, Delhi, and gave assurances to her that he will get a job for her. On his assurances, she boarded his car and was driven to forest area near Surajkund, Haryana. From her testimony, it is evident that accused was known to her and she was having cordial relations with him. Defence had not made any effort to dispute that Anita was known to the accused, she met him in Ganga Vihar, Delhi, and was swayed by his assurances of getting a job for her. In such a situation, it crystallizes that accused exploited the lady on account of his previous acquaintance with her. No efforts were at all made by the accused to castigate her testimony on the count that she entered witness box on receipt of bribe or some offer of extraneous considerations of temporal gain. When her testimony was meticulously perused, it surfaced over record that no inherent infirmity or defect was there in her testimony. It is not the case of defence that Anita was a lady of easy virtue and seduced the accused to fall in her trap. Not even a whisper was made to suggest that she was not a lady of veracity and entered witness box with a motive to frame the accused. When her testimony was scrutinized, it emerged that story projected by her is consistent and aboveboard. Her demeanour was not found to

be abnormal when she faced ordeal of crossexamination. Events unfolded by the lady satisfy standards of ordinary human behaviour, natural course of events and tenets of veracity.

12. The observation made in paras-14-16 of the judgment are also relevant and explain natural human behaviour on the part of the prosecutrix and defies the stand of the appellant in this regard.

14. When testimony of Anita was tested on acid test of natural human conduct of a female, it gave imprimatur for veracity. A lady, in a traditionbound nonpermissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of being ostracised by the society. In normal course of human conduct, a lady would not give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone lest family name and honour is brought into controversy. No self respecting woman would come forward in a Court just to make a humiliating statement against her honour, such as is involved in the commission of rape on her. Inherent bashfulness of females generates a tendency to conceal outrage of sexual aggression. As held above, defence could not assign any reason as to why Anita made such a humiliating statement castigating her own honour and character. In case her statement is discarded on unrealistic assumptions, it would be adding insult to her injury, for her evidence stands all rigours of truth and honesty.

15. Anita deposed that on 23.08.04 at about 3pm, she had gone to Ganga Vihar, Delhi, where she used to reside in house No. 106, Street No.3, Ganga Vihar, Delhi, at earlier point of time. Accused met her at corner of street No.3 in Ganga Vihar, Delhi, who assured her of getting an employment for her. He made her to board his red colour car. He took her to a long distance to Surajkund, Haryana. On reaching Surajkund, Haryana, he drove his car on kacha road. When she asked as to where he is going, he told that she will come to know shortly. He had taken his car to some distance in forest area. He stopped his car at a place. All doors of the car were closed. She was sitting on back seat of the car, while accused was driving it. Accused came to back seat of the car and put off his pant. He had threatened her of death, in case she would resist his advances. He lifted her sari and raped her. After committing rape on her, accused brought his car to main road, where she alighted it. Accused drove his car from there.

16. Facts detailed by Anita bring it over the record that she was taken to a forest area near Surajkund by the accused in his maruti car of red colour. She was induced by accused by deceitful means to board his car on assurances that he would get a job for her. It was so

done by the accused with an intention to force her for illicit intercourse. Ultimately, she was raped by the accused on back seat of his car in a forest area near Surajkund, Haryana, at about 5pm. These facts make out that a lady was abducted with an intention to force her for illicit intercourse criminally intimidated of her death, and was ultimately raped by the accused.

13. The statement made by PW-1 is further fortified by the MLC, Ex.PW-10/A prepared by Dr. Deepa at AIIMS on 24.08.2004. Even though said doctor having left the services was not produced but the MLC has been produced by Bhunesh Sharma, record clerk who was conversant with her handwriting and signatures. The said MLC makes it clear that PW-1 appeared before the doctor, she told her that she was sexually assaulted at about 5pm last night at Surajkund by her neighbour, i.e., the appellant. The details of the family of the prosecutrix have been recorded in the MLC which goes to show that the statement is not fabricated one or a tutored one. Despite there being no complaint of external injury the statement made by PW-1 of to aforesaid doctor cannot be disbelieved rather the abrasion found on her left knee with dimension of 1cm x 1cm stands explained by PW-1 in her testimony.

14. Insofar as the ownership of the car is concerned the statement made by Amul Tyagi, SI who seized the seat cover of the case from the possession of the appellant vide EX.PW5/E shows the connection of the appellant with the car. Moreover, the car was seized from a place outside the house of the appellant. This again goes to substantiate the testimony of Anita. The contention of the appellant that he was neither the owner of the car nor knew driving is of no consequence. Moreover, no suggestion has been given in this regard to the appellant. The commission of rape on the person of the prosecutrix was also

established by the examination of vaginal smear slides of prosecutrix which was FSL report, EX.PW14/D.

15. As far as the argument that the prosecution has tried to prove their case only on the basis of sole testimony of Anita, PW-1. It is now well settled that statement of the prosecutrix alone is more than sufficient to prove the commission of rape on her if the statement is consistent and flawless. The trial Court rightly observed that overpowering all situations and emotions, she narrated facts, which give guarantee for her veracity. Substratum of her story is consistent with other evidence, which appears to be flawless and free from suspicion. Since perfection in this imperfect world is seldom found, evidence of a witness is sometimes fringed with embellishment and exaggerations, however true in main, the Court may accept it, without seeking corroboration from any other source.

16. At this juncture it is relevant to take note of few more precedents in this regard as laid in Rafiq Vs. State of U.P. (1980 (4) S.C.C. 262), Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat (1983 (3) S.C.C. 217), State of Maharashtra Vs. Chander Prakash Kewalchand Jain (1990 (1) SCC 550), Raghubir Singh (1993 (2) SCC 622), State of Punjab Vs. Gurmeet Singh (1996 (2) SCC 384) and State of Sikkim Vs. Padam Lal Pradhan (2000 (10) SCC 112), Om prakash Vs. State of Rajasthan 2002 (5) SCC 745

17. I have meticulously gone through the evidence of PW1, Anita, the prosecutrix. I do not find any inconsistency in it. Appellant strenuously urged that he has been falsely implicated in this case, but has miserably failed to prove his defence before the Trial Court or before this Court as he is unable to prove any connection or link between

Anita and Inspector P.L. Puri. It is well settled that conviction can be based on the sole testimony of the prosecutrix if it inspires confidence and if it is worthy of credence.

18. The learned ASJ has correctly appreciated the evidence on record. The conviction of the accused does not suffer from illegality or infirmity and therefore needs to be confirmed.

19. In these circumstances, while maintaining the conviction of the appellant, I am constrained to observe that the sentence awarded to him to undergo RI for 10 years for the offence punishable under Section 376 IPC is not justified as in the present case it is not a case of commission of rape on the minor.

20. The prosecutrix accompanied the appellant of her own volition for seeking some favour from him, of course. The appellant at the stage of commission of the offence was embedded in his family having a wife and three children. He used to help her mother in arranging supplies of the articles required for the last rites of the dead bodies brought for the cremation at the Shamshan Ghat at Ghazipur. The appellant is throughout in jail since 2007. On account of the misdeeds of the appellant, his family is the sufferer.

21. In these circumstances, the sentence awarded to the appellant under Section 376 IPC is reduced to seven (7) years while maintaining sentence on other counts. He be released after completion of the sentence as modified.

22. The appeal is disposed of accordingly.

MOOL CHAND GARG, J.

JULY 01, 2009