

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on: January 14, 2010
Judgment pronounced on: January 18, 2010

+ **Crl. Appeal No.753 of 2005**

% Babu Lal ... Appellant
Through: Mr. B.K. Kapur and Mr. Rajesh
Kumar Passey, Advocates

versus

State of Delhi ... Respondent
Through: Mr. Amit Sharma, Additional
Public Prosecutor for the 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. Appellant had faced trial for the offences under Sections 376/ 392/457/506/ 34 of the IPC, as he along with his co-accused had committed armed robbery after house breaking in Doctor Roshan Lal Farm House, near Village Chawla at Kanjanhari Mor in Delhi, in the night intervening

16th and 17th August, 2002. Not only this, the accused had also raped the two ladies of this house. The trial of this case in FIR No. 455 of 2002 registered at Police Station Najafgarh, Delhi, ended in conviction of the appellant for the aforesaid offences and sentence of RI for ten years was imposed upon the appellant for the offence of rape and robbery by the trial Court.

2. Impugned judgment has been assailed by learned Counsel for the appellant by contending that the conviction of the appellant solely rests upon the testimony of the prosecutrix (PW-1), whereas the testimony of the other prosecutrix (PW-7) as well as of Satya Narain (PW-2) and Chander (PW-5) does not incriminate the appellant in any manner whatsoever. The contention advanced on behalf of the appellant is that as per the deposition of the Investigating Officer (PW-11), appellant was not produced before the prosecutrix (PW-1) in the police station because he had admitted his guilt and his co-accused were produced before the prosecutrix (PW-1), and they were not identified by her. According to learned Counsel for the appellant, this patent illegality by itself vitiates the trial

and benefit of doubt accrues to the appellant because out of four material witnesses, testimony of three of them does not incriminate the appellant and the solitary deposition of prosecutrix (PW-1) is contradictory and unreliable. It is pointed out that in her chief examination, prosecutrix (PW-1) has deposed that she was raped by the appellant while laying her on the floor whereas in her cross examination, she has stated that she was raped on a cot.

3. The prosecution version is sought to be discredited by learned counsel for the appellant by contending that as per the deposition of the other prosecutrix (PW-7), the offence of rape was committed by two assailants whereas according to her husband (PW-5), all the four assailants had committed the offence of rape. Much emphasis has been laid by learned Counsel for the appellant on the aspect of public witness- Manjeet being not examined in this case, especially when it is the prosecution case that he had informed the police about this incident. According to learned Counsel for the appellant, there was a remote possibility of prosecutrix (PW-1) alone seeing the appellant

un-muffled, because as per the testimony of the remaining three material witnesses, the faces of the assailants were muffled during this incident. All said and done, according to learned counsel for the appellant, the prosecution version is unreliable and has been illegally accepted by the trial Court and therefore, the impugned judgment deserve to be set aside and the appellant needs to be acquitted.

4. Mr. Amit Sharma, learned Additional Public Prosecutor for the state, vehemently defends the impugned judgment and counters the submissions advanced on behalf of the appellant, by pointing out that the testimony of the prosecutrix (PW-1) alone is sufficient to nail down the appellant in this case and there is no material contradiction in her version and there is no merit in this appeal.

5. After having heard both sides and upon perusal of the evidence on record, I find that happening of this incident is not in dispute and therefore, factual details need not be spelt out here again as they stand noted in

the impugned judgment. The controversy herein centres around the deposition of public witnesses and Investigating Officer of this case. On the fateful day of this incident, prosecutrix (PW-1) with her husband (PW-2) and the other prosecutrix (PW-7) with her husband (PW-5) were present in the farm house where armed robbery was committed by house breaking and the two ladies i.e. prosecutrix (PW-1) and prosecutrix (PW-7) were raped by the intruders who had fled away after this incident. It is true that after the investigation of this case, no recovery of the robbed articles/ amount has been effected but Test Identification Parade was arranged in which prosecutrix (PW-1) had identified the appellant as the accused who had raped her on the day of this incident and this incident of rape had taken place outside the room while the remaining three witness were inside the room.

6. This is a case where the identity of the appellant as an accused cannot be doubted for the reason that he has been duly identified by the prosecutrix (PW-1) not only in the Test Identification Parade but also before the court at the time when she had deposed in this case. During the

course of the hearing of this appeal, appellant's Counsel had tried to pick up loopholes in the prosecution version by pointing out that the string of the peticot of prosecutrix (PW-1) was missing and he had wondered that how could the prosecutrix (PW-1) be wearing the peticot without a string. To say the least, this kind of argument is not at all acceptable and it is noticed just to be rejected for the reason that there is no pointed cross examination of the prosecutrix (PW-1) on this conjectural aspect. It is really inconsequential as to whether the prosecutrix (PW-1) was raped on the floor or on the cot. Such like innocuous variations in the testimony of the witnesses are likely to occur when the deposition of witnesses are recorded on different dates and after a long interval, like in the present case. Anyhow, nothing hinges on it.

7. The deposition of the Investigating Officer (PW-11) cannot be read out of context as defence Counsel chooses to do. Infact, it has to be read as a whole and the tenor of the cross-examination of the Investigating Officer (PW-11) reveals that in the disclosure statement, the appellant had admitted his guilt and had named his co-accused but had

not given the description of his co-accused or their parentage. However, strangely the persons named by the appellant were produced in the police station before the prosecutrix (PW-1), who had failed to identify them. No doubt this is an irregularity but in the facts of this case, it is not of such a grave nature which would vitiate the entire trial. So far as the case against the appellant is concerned, it is consistent regarding the identity of the appellant. Prosecutrix (PW-1) has not been cross-examined by the appellant as to how she had identified the appellant as the accused. Therefore, no reasonable doubt can be entertained about the identity of the appellant. Appellant cannot get away by simply asserting that the owner of the farm house had enmity with him or that he had given money to the prosecutrix (PW-1) to falsely implicate the appellant. This is too far-fetched, as appellant in his statement under Section 313 of the Cr.P.C. does not state so. Whether two accused or four of them had committed the offence of rape is neither here nor there as prosecutrix (PW-1) is consistent in her deposition that she had been raped by the appellant as well as by another muffled

intruder also. Non-examination of Manjeet who had informed the police is not a material omission and does not give any advantage to the appellant because there is no cross examination of Investigating Officer (PW-11) on this aspect.

8. After having scrutinized the testimony of prosecutrix (PW-1), I have no hesitation to conclude that the submissions advanced on behalf of the appellant are conjectural and are purely based on surmises and do not go to the root of the matter and are totally insufficient to cause any dent in the prosecution version, as spelt out by the prosecutrix (PW-1). I am of the considered view that the testimony of the prosecutrix (PW-1) inspires the confidence of the Court and has been rightly relied upon by the trial court. I have evaluated the testimony of the prosecutrix (PW-1) in the light of the parameters laid down by the Apex Court in '*State of Himachal Pradesh v. Asha Ram*' **AIR 2006 SC 381**, which are as under:-

"It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for

*seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. **The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliance.** It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. **The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.**" (emphasis supplied)*

9. Since the appellant fails to disclose as to what was the enmity between the owner of the farm house and the appellant, and as to why the prosecutrix (PW-1) would oblige the owner of the farm house to falsely depose against the appellant, there is no plausible reason to reject the version of the prosecutrix (PW-1).

10. In cases of this nature, no advantage accrues to the

defence, on account of bad investigation, where the prosecution version is found to be truthful. This stands reinforced by the Apex Court in rape cases, in its decisions reported in '*Karnel Singh vs. State of M.P.*' **(1995) 5 SCC 518** & in '*Zindar Ali Sheikh v. State of West Bengal*' **(2009) 3 SCC 761**.

11. *If the totality of the circumstances appearing on record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.* It has been so reiterated by the Apex Court in its recent decision in '*S. Ramakrishna v. State*' **(2009) 1 SCC 133**. In the instant case, the version of the prosecutrix (PW-1) is crystal clear, truthful and reliable and she has no good reason to falsely implicate the appellant in this case.

12. In the final analysis, it is found that there is no illegality or infirmity in the impugned judgment. The conviction of the appellant is well deserved and calls for no interference by this Court. So far as sentence imposed

upon the appellant is concerned, the Nominal Roll reveals that out of the sentence of RI for ten years, the appellant has already undergone sentence of eight years and three months as in July, 2009. Appellant is in custody. He has already undergone substantial part of the sentence already awarded to him. The Nominal Roll also reveals that no other case is pending against him. The 'Order on Sentence' indicates that he has a family to support. In the circumstances of this case, the substantive sentence imposed upon the appellant is reduced to the period already undergone by him. To this extent, this appeal is allowed. Appellant is in custody. He be informed of this order through the concerned Jail Superintendent.

13. This appeal stands accordingly disposed of.

Sunil Gaur, J.

January 18, 2010
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