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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: January 28, 2010
Judgment pronounced on: February 02, 2010

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Crl. A. No. 567/2008

% Dharampal
S/o Shiv Lal Singh ... Appellant
Through: Mr. Ajay Verma, Delhi High Court
Legal Services Counsel with Mr.
Gaurav Bhattacharya, Advocate for
Appellant.

versus

State of NCT of Delhi ... Respondent
Through: Mr. R.N. Vats, Additional Public
Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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| 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. |

SUNIL GAUR, J.

1. A minimum sentence of rigorous imprisonment for ten years with fine of Rupees ten thousand has been awarded to the Appellant by the trial court, after recording conviction for the offence of rape of graver nature punishable under Section 376(2)(d) of Indian Penal Code.

2. On the fateful day of this incident, i.e., at about 11.00 pm on 18th October, 2004, appellant as a Sweeper of

VIMHANS, a government Hospital, in Nehru Nagar, New Delhi, while taking advantage of his official position, had raped the prosecutrix (PW-2), aged 19 years, in the bathroom of the general ward of the above-said hospital. Prosecutrix (PW-2) was the attendant of a patient in the General Ward of this hospital and when this incident had happened, brother (PW-4) of the prosecutrix (PW-2) was incidentally present outside the general ward of this hospital. This incident of appellant/accused forcibly taking away the prosecutrix (PW-2) from the General Ward of the hospital to its bathroom and of raping her in the bathroom and thereafter, running away was promptly reported by the prosecutrix (PW-2) to her brother (PW-4) and thereafter, local police was contacted. FIR No. 438/04 under Section 342/376-D of Indian Penal Code was registered at Police Station S.N. Puri, New Delhi, regarding this incident.

3. Investigation proceedings of this case stood completed with the recording of the statement of the prosecutrix (PW-2), her medical examination and that of the accused. Filing of the charge sheet, led appellant/accused claiming trial for the offence of rape punishable under Section 376(2)(d) of Indian Penal Code. The

evidence led at trial, consisted of the depositions of the prosecutrix (PW-2), her brother (PW-4), and of witnesses regarding the arrest of the accused and of official witnesses regarding the official status of the accused in the government hospital. Apart from this, there is medical evidence and deposition of the Investigating Officer recorded during the trial of this case.

4. The stand of the Appellant before the trial court was of admission of his official status but of denial of this incident and all that, appellant/accused had stated before the trial court needs to be highlighted and is as under:-

“The prosecutrix asked me to go with her when I did not go with her then she falsely implicated me in this case.”

5. No evidence in defence was led by the appellant/accused before the trial court. After the trial, Appellant stood convicted and sentenced, as herein noted above.

6. In this appeal, the conviction and the sentence imposed upon the Appellant is questioned by learned counsel for the Appellant, while contending that the prosecution version is totally unreliable. It is pointed out that the prosecutrix (PW-2) does not raise any alarm when

she is allegedly forcibly taken away from the hospital ward to the bathroom and she does not resist, nor suffers any injury and all this, renders her version unreliable. Learned counsel for the Appellant further contends that it is highly and unlikely that the brother of the prosecutrix (PW-2) is outside the room and still the prosecutrix (PW-2) could not raise any alarm to draw his attention to avert the alleged incident.

7. During the course of arguments, learned counsel for the Appellant drew attention of this court to the deposition of the Investigating Officer (PW-17) to point out that there was no latch inside the bathroom in question, which rules out the alleged happening of this incident. It was also emphasized by Appellant's counsel that the deposition of brother (PW-4) of the prosecutrix (PW-2) has been illegally taken into consideration while convicting the Appellant as his evidence is hearsay and thus, inadmissible.

8. Much reliance has been placed by Appellant's counsel upon the FSL Report (Ex.Pw-18/A) to contend that no semen was found in the vaginal swab of the prosecutrix (PW-2), which rules out the offence of rape. Thus, the ultimate contention advanced on behalf of the appellant/accused is that there is a reasonable doubt

about the veracity of the prosecution version which renders the conviction of the Appellant illegal and unsustainable.

9. Aforesaid contentions are strongly refuted by Mr.R.N. Vats, Additional Public Prosecutor for the State, who not only staunchly supports the impugned judgment but asserts that it cannot be reasonably said that the version of the prosecutrix is improbable. It is pointed out that it has come in the testimony of the prosecutrix (PW-2) that there was no other person in the ward at that time and the brother of the prosecutrix was outside the ward and the appellant/accused has closed the door of the ward. It is also pointed out by learned Additional Public Prosecutor for the State that the prosecutrix (PW-2) had resisted. According to learned Additional Public Prosecutor for the State, simply because doctor is not able to say whether the rape has been committed or not, clean chit to the appellant/accused cannot be given because the evidence of the prosecutrix (PW-2) has to be preferred over and above the other evidence, especially so, when there is no reason as to why she would falsely implicate the appellant/accused. Thus, it is urged that there is no illegality or infirmity in the impugned judgment.

10. Contentions advanced and the evidence on record have been meticulously scrutinized and I proceed to evaluate the testimony of the prosecutrix (PW-2) in the light of the apt observations made by the Apex Court in *Dildar Singh vs. State of Punjab*, **AIR 2006 SC 3084**, which are as under:-

“In the normal course of human conduct an unmarried girl who is victim of sexual offence would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report.”

11. Criminal trial has to be fair one. No one ought to be taken by surprise. What is being now urged to discard the testimony of prosecutrix (PW-2), in all fairness, ought to have been put to her in cross-examination and in all probability, she would have given a plausible answer as to why she did not raise any alarm or as to how she had not suffered any visible injury while she was being forcibly

subjected to sexual intercourse. There is no cross-examination of the prosecutrix (PW-2) on these lines. Therefore, in my considered view, it is neither fair nor proper to give benefit of doubt to the appellant/accused on this account.

12. Although, Investigating Officer (PW-17) has obliged the appellant/accused by stating in cross-examination by the defence that there was no latch inside the door of the bathroom, but it is pertinent to note that the Investigating Officer has stated so in his deposition after his retirement from service. In any case, nothing material turns on it for the reason that the prosecutrix (PW-2) has not been cross-examined about it.

13. It is a fallacious that absence of semen in the vaginal swab of the prosecutrix, would rule out the commission of the offence of rape. It is so said because Apex Court has recently in *Arjun Singh vs. State of H.P.*, **(2009) 4 SCC 18**, has reiterated that to constitute an offence of rape, even slight penetration is sufficient and emission of semen is unnecessary.

14. It is worthwhile to note that the present case is not the one where medical evidence completely rules out the

commission of the offence in question. FSL Report (Ex.PW-18/A) reveals that the human semen was detected on the salwar of the prosecutrix (PW-2) and also on the underwear of the appellant/accused. Since the prosecutrix (PW-2) was menstruating, when this incident took place, therefore, medical evidence is hardly of any relevance. In all probability, it is in this context, that the doctor (PW-14) was not in a position to categorically state as to whether rape upon the prosecutrix was committed or not. In any case, medical witness is not required to opine so. Therefore, the opinion of the doctor (PW-14) is neither here nor there, especially so, when she erroneously it proceeds to rule out rape because of absence of semen in the vaginal swab of the prosecutrix (PW-2). Thus, on this account, no benefit accrues to the appellant/accused.

15. In cases of sexual offences, it is a consistent view of the Courts across the country that truthful and reliable testimony of the prosecutrix does not require any corroboration. I am of the considered opinion that the referred scientific evidence provides material corroboration to prosecutrix's version of this incident, which is consistent and reliable. There is no plausible reason as to why the testimony of the prosecutrix (PW-2)

ought to be discarded. The plea of the appellant/accused taken before the trial court, militates against all human probability. It is not elaborated by the appellant/accused, as to why the prosecutrix (PW-2) would ask him to go with her and why she would stake her honour to falsely implicate the appellant/accused in this case. Apparently, the aforesaid plea is half baked and has rightly been repelled by the trial court.

16. In the light of the aforesaid narration, I do not find any illegality or infirmity in the impugned judgment and sentence. This appeal lacks substance and is hereby dismissed.

17. During the pendency of this appeal, the sentence imposed upon the appellant/accused was suspended. Bail bond furnished stand forfeited. Trial court is directed to take the Appellant into custody to serve out the sentence as awarded by it.

18. This appeal is dismissed with directions as aforesaid.

Sunil Gaur, J.

February 02, 2010
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