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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: January 27, 2010
Judgment pronounced on: February 01, 2010

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Crl. A. No. 600/2007

% Razik Iman
S/o Ikramul Haq ... Appellant
Through: Ms. Ritu Gauba, Delhi High Court
Legal Service Counsel

versus

The State
(NCT 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. In this appeal, the conviction of the Appellant for the offence of rape and the sentence of rigorous imprisonment for ten years with fine of Rs.5,000/- is assailed, by asserting that due to a landlord-tenant dispute, Appellant has been falsely implicated in this case.

2. The incident is of night intervening 22nd and 23rd May 2005. The prosecutrix (PW-5) is a married lady who was aged 25 years then, whose version is that she is an illiterate lady and she was present at her house with her infant child and her husband had gone for night duty and at about midnight on the day of this incident, appellant/accused, who was residing in the neighbourhood, came inside her house and had switched on the light and had bolted the door of the room from inside and had grabbed her. According to the prosecutrix (PW-5), she had resisted and in the scuffle, her blouse was torn and the Appellant had succeeded in having forcible sexual intercourse with her and thereafter, he had left and while leaving, he had extended threat to her, not to disclose about this incident to anyone. It is the version of the prosecutrix (PW-5) that after this incident, she was crying in the whole night and when her husband returned back from duty, she disclosed about this incident to him and also to an old lady in the neighbourhood and thereafter this incident was reported to the police, which led to registration of FIR No. 793/05 under Section 376 of Indian Penal Code registered at Police Station Sultanpuri,

Delhi.

3. In the course of investigation of this case, version of prosecutrix (PW-5) was recorded and she was got medically examined and appellant/accused was arrested in this case and his medical examination was also got conducted. The exhibits of this case were sent to FSL for analysis. Upon completion of investigation of this case, charge sheet for the offence of rape was filed against the appellant/accused before the trial court. Since Appellant had chosen to contest the charge of rape framed against him, trial ensued. Apart from the evidence of the prosecutrix (PW-5), there is medical evidence and evidence of the landlord (PW-8) and the Investigating Officer (PW-11) on record. At trial, Appellant was given an opportunity to rebut the prosecution case and he in his statement under Section 313 of Code of Criminal Procedure, recorded by the trial court, had repelled the prosecution version and had stated that the prosecutrix (PW-5) and her husband has not paid the rent for the last ten months and he was authorized by the landlord to collect the rent from the tenants and when he had asked

the prosecutrix (PW-5) and her husband to pay the rent, then he was falsely implicated in this case. Despite opportunity given by the trial court, Appellant had not led any evidence.

4. Trial of this case culminated in the conviction of the Appellant for the offence of rape, which is impugned in this appeal.

5. The impugned judgment contains the factual narration of this case and the same is not required to be reproduced herein, as the fate of this appeal mainly revolves around the testimony of the prosecutrix (PW-5), which has been extensively referred to, during the hearing of this appeal.

6. The submissions advanced by learned counsel for the Appellant primarily centers around the veracity of the version of the prosecutrix (PW-5). According to Appellant's counsel, prosecutrix (PW-5) had not bolted the door of her room from inside at night, which adversely reflects upon the prosecution case. Furthermore, it is contended that the prosecutrix (PW-5) claims that she had received an injury on her back but she stands falsified by her MLC as

no injury on her back was found. Counsel for the Appellant wondered as to why the prosecutrix (PW-5) has not raised any alarm when she was being allegedly raped.

7. The foremost submission advanced is that the medical examination contradicts the prosecution version as the semen stains found on the underwear are of 'A' Group, whereas the semen on the petticoat of the prosecutrix (PW-5) was of 'O' Group. According to the Appellant's counsel, aforesaid material contradiction in the prosecution case gives immense strength to the version of the appellant/accused of being falsely implicated in this case to avoid payment of rent to the Appellant. Last but not the least, much emphasis was laid by learned counsel for the Appellant on the fact that the FSL report clearly rules out the commission of the offence of rape as the vaginal swab of the prosecutrix (PW-5) had tested negative for semen. Thus, a fervent appeal was made by Appellant's counsel for extending benefit of doubt to the appellant/accused in view of the aforesaid so-called infirmities in the prosecution version.

8. The stand of the Respondent-State in this appeal, is not the usual one but is quite effective as Mr. Amit Sharma, Additional Public Prosecutor for the State points out that the prosecutrix (PW-5) had legitimately not bolted the door of her room from inside because her husband was to arrive at night after finishing his duty. It is also pointed out that prosecutrix (PW-5) had not raised any alarm at the time of incident because she was threatened by the appellant/accused. It is pertinently pointed out that the torn blouse of the prosecutrix (PW-5) is a sufficient indication of the resistance put up by the prosecutrix (PW-5) to the forcible sexual intercourse committed by the appellant/accused upon her. As regards there being no injury on the back of the prosecutrix (PW-5), it has been rightly asserted by learned Additional Public Prosecutor for the State that there is no worthwhile cross-examination of the prosecutrix (PW-5) on this aspect as it is not necessary that while the prosecutrix (PW-5) was being laid on the floor, by the appellant/accused, she would have sustained a visible injury.

9. The controversy regarding the group of semen stains on the underwear and petticoat being different, stands cleared by learned Additional Public Prosecutor for the State by drawing attention of this court to the testimony of the Investigating Officer (PW-11), which indicates that the underwear, which was seized, was not of the prosecutrix (PW-5) but was of the accused. In any case, it has been rightly contended by learned Additional Public Prosecutor for the State that no benefit accrues on this account to the appellant/accused as there is no cross-examination of the prosecutrix (PW-5) on this aspect. Learned Additional Public Prosecutor for the State closed his submissions by reiterating the reasoning of the trial Judge, ruling out false implication in a case like the present one, by a married lady, on account of non-payment of rent and it is, thus, asserted that impugned judgment does not suffer from any infirmity or illegality.

10. The version of the prosecutrix is of prime importance and it needs no corroboration, if it is found to be trustworthy. Conviction, for the offence of rape, can be recorded solely on the basis of trustworthy testimony of

the prosecutrix and no corroboration is necessary. This is the position of law on this subject as reinforced by the Apex Court in *State of Madhya Pradesh vs. Babu Lal*, **(2008) 1 SCC 234**. The pertinent observation made are as follows:-

“Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.”

11. Upon in depth analysis of the entire evidence on record, I am of the considered view that the version of the prosecutrix (PW-5) cannot be doubted merely because,

she keeps the door of her room open to enable her husband to return back after duty at night. It is neither the case of the Appellant nor it can be made out from the evidence of the prosecutrix (PW-5) that she was a consenting party to the sexual intercourse. I find immense substance in the contention of the learned Additional Public Prosecutor for the State regarding prosecutrix (PW-5) being not cross-examined about the nature of injury, she had suffered in this incident.

12. In cases like the present one, it is not always necessary that the injury suffered would be visible one. It has to be kept in mind that it emerges from the deposition of the prosecutrix (PW-5) that she was under threat from the appellant/accused but still, she had resisted and the clear indication of this, is that her blouse was torn during this incident. The testimony of the prosecutrix (PW-5) throws light on the aspect of prosecutrix not raising alarm while appellant/accused had proceeded to forcibly sexually assault her and the reason put forth by her for not raising the alarm is that her mouth was pressed by the appellant/accused. The version of the prosecutrix (PW-5)

cannot be doubted on the premise that her vaginal swab had tested negative for semen. 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.

13. Since the semen stain on the petticoat of the prosecutrix (PW-5) was of different group than that of the appellant/accused, the inference sought to be drawn by Appellant's counsel of prosecutrix (PW-5) being raped by someone else is too far-fetched, for the reason that the prosecutrix (PW-5) is a married lady and in all probability, the semen stain on her petticoat could reasonably be said to be that of her husband. In any case, aforesaid inference is purely conjectural and is of no consequence.

14. Defence in cases of this kind, especially involving married women, have to be judged in the light of the pertinent observations made by the Apex Court in *Om Prakash vs. State of U.P.*, **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”

15. Upon careful reading of the testimony of the prosecutrix (PW-5) as a whole, no infirmity can be found in her version, which is sought to be countered by the defence by contending that she has falsely implicated the appellant/accused because of landlord-tenant dispute. First of all, appellant/accused was not the landlord. He was merely rent collecting agent of the landlord (PW-8). In any case, it is not in dispute that Appellant was the neighbour of the prosecutrix. Had there been any strained relations between the Appellant and the prosecutrix (PW-5) regarding alleged non-payment of rent, certainly, landlord (PW-8) would have deposed about it. Strangely, to the

contrary, landlord - M.A. Ahmed (PW-8) had deposed that the relations between the appellant/accused and the family of the prosecutrix were cordial. This takes out the steam from the defence of the appellant/accused, which falls flat on the ground.

16. Courts have to be socially sensitized in dealing with crime against women entailing penal provisions. Undeserved indulgence cannot be shown by entertaining illusory doubts while appreciating the testimony of prosecutrix in cases like present one. The version of the prosecutrix is required to be tested on the touch stone of human probability. On doing so, this court finds no reason for taking a different view than the one, which has been taken by the trial court. Conviction of the Appellant for the offence of rape is well deserved and is hereby upheld.

17. On the quantum of sentence, all that can be said is that Appellant was of the same age group as the prosecutrix, when this incident had taken place and that he has a family to support. All this, did not find favour with the trial court while awarding the sentence of ten years to the Appellant. The minimum sentence for the offence in

question, is rigorous imprisonment for seven years and for adequate and special reasons, a sentence less than the minimum can be awarded. For the heinous crime of rape, deterrent sentence is required to be imposed. However, nominal roll of the Appellant impels this court to scale down the substantive sentence from ten years to the minimum sentence of seven years, for the reason that despite sentence of the Appellant being suspended during the pendency of this appeal, he could not submit the bail bond. The reason is obvious, i.e., poverty. The conduct of the Appellant in jail during incarceration of about five years, is satisfactory and he is not said to be involved in any other case. Custodial sentence of seven years would, in the opinion of this court, be a sufficient deterrent to the Appellant not to commit any crime in future.

18. In view of the aforesaid, the substantive sentence imposed upon the Appellant is reduced from rigorous imprisonment for ten years to rigorous imprisonment for seven years. However, the sentence of fine is maintained.

19. The appeal is partly allowed to the extent indicated above. Appellant is in custody, he be informed of the fate

of this appeal through the concerned Jail Superintendant.

20. This appeal and the pending application, if any, is accordingly disposed of.

Sunil Gaur, J.

February 01, 2010

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