

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

+ **Crl. Rev. P.272/2007**

% **Decided on: 12th July, 2011**

RENU VIJ Petitioner

Through: Mr. R.K. Handoo & Mr. Aditya
Chaudhary, Advocates

versus

STATE Respondent

Through: Mr. Pawan Behl, APP with SI Meena
Yadav, P.S. IP Estate & Insp. Jeewan
Lal, P.S. DBG Road.

AND

Crl. Rev. P.293/2007

VINOD VIJ Petitioner

Through: Mr. R.K. Handoo & Mr. Aditya
Chaudhary, Advocates

versus

STATE Respondent

Through: Mr. Pawan Behl, APP with SI Meena
Yadav, P.S. IP Estate & Insp. Jeewan
Lal, P.S. DBG Road.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. On 23rd April, 2004, Complainant lodged a complaint with the DCP alleging that she had joined the Company 'Raja Construction' owned by one Vinod Kumar Vij in March, 1988. She worked there as an Accountant and Interior Designer and was later transferred to its Kirti Nagar office. The Petitioner Vinod Kumar Vij called her to his house and raped her. A few days thereafter, on the pretext of going to the site, he took her to his house at Faridabad where he gave her liquor mixed cold-drink and with the help of his relative, later identified as Rajender Singh Sachdeva videographed her in a nude position and thereafter blackmailed her and on the threat of killing her continued to have sexual intercourse with her a number of times. In 1991, she was married to one Surjeet when Vinod Kumar Vij was in London. When he came back, he showed those films to her husband and in laws due to which her marriage broke down. He threatened her not to go anywhere. By assuring her of promotion and of keeping her as his wife, he kept on sexually assaulting her without her consent till January, 2003. When she protested, Vinod Kumar Vij threatened her of her life and in 1996, he even tried to kill her. He took her to Faridabad and locked her in a room for 24 hours and threatened her that he would kill her in this manner. By threatening her of her life, Vinod Kumar started sending the complainant for sexual relations

without her consent to his clients/bank managers and others. When she talked about all this to his wife namely Renu Vij, both the husband and wife threatened to kill her. She states that because of the fear of threats and for maintaining respect of her family, she did not make any complaint to the police. However, now Vinod Kumar Vij has expelled her from the job and has not even paid her salary for the last three years, she has elderly parents to support and thus legal action be taken against them. On the basis of the complaint, FIR was registered on 14th May, 2004 under Sections 376/506/342/120B/34 IPC. On a charge-sheet being filed, the Petitioner Renu Vij herein was charged for the offences under Sections 120B and 506 (Part II) read with 120B IPC and Petitioner Vinod Kumar Vij for offences under Sections 376/506/340/342/34 read with 120B IPC, which are the orders impugned in the present petitions.

2. Rajender Singh Sachdeva who was charged for offence punishable under Section 120B IPC also filed a revision petition challenging the impugned order. This Court vide its judgment dated 8th October, 2007 set aside the charge under Section 120B IPC framed against Rajender Singh Sachdeva. This Court discharged Rajender Singh Sachdeva primarily for the reason that the FIR neither mentioned his name nor described him, moreover,

admittedly the video film was not recovered and the statement of Surjeet Singh did not support or give credence to the complainant's version.

3. Learned counsel for the Petitioners contends that evidence against the Petitioner is same as against Rajender Singh Sachdeva, his brother-in-law and in view of the order of discharge passed by this Court in his case, the Petitioner is also entitled to be discharged of the offences charged by the learned trial court and the impugned order is liable to be set aside. It is stated that prior to this complaint of 23rd April, 2004, the Petitioner had earlier filed a complaint dated 2nd September, 2003 with SHO, P.S. Kirti Nagar and the only allegation in the said complaint was with regard to the non-payment of her dues. The present complaint was a counterblast to the complaint to the SHO, Dev Nagar on 18th April, 2004 when the Complainant came in an abbreviated condition and broke the window panes of the car of the Petitioner. No video film have been recovered during the investigation, thus showing false implication of the Petitioner. There is a delay of 16 years in lodging the complaint. Moreover, the fear, if any, would have gone when her marriage broke down in the year 1991 and thus her continuing the relations with the Petitioner thereafter, shows that she was a consenting party.

4. Learned counsel for the Petitioner places reliance on *Ramdas & Ors Vs. State of Maharashtra, 2007 (2) SCC 170* and *Suresh vs. Mahadevappa*

Shivappa Danannava and Anr., JT 2005 (2) SC 462. Reliance is also placed on *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja and others, 1990(4) SCC 76* to contend that even at this stage, the Court can evaluate the material to find out if the facts emerging therefrom, taken at their face value establish the ingredients constituting the said offence. Referring to *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra, JT 2008 (6) SC 299*, it is contended that while assessing the fact that whether there exists sufficient grounds against the accused or not the Court has the power to sift and weigh the material for the limited purpose of finding out whether or not prima facie case against the accused has been made out. Referring to *Rukmini Narvekar vs. Vijaya Satardekar & Ors, JT 2008 (11) SC 32*, it is contended that at this stage the High Court has also the power under Section 482 of CrPC and Article 226 of the Constitution to prevent the abuse of the process of the Court or otherwise to secure the ends of justice within the parameters laid down in *State of Haryana and Ors. vs. Bhajan Lal and Ors., JT 1990 (4) SC 650*.

5. It is urged that on the face of the record it is apparent that the complainant has implicated the Petitioners to extort money from them. Reliance is also placed on *Tameezudding @ Tammu vs. State of NCT of Delhi, 2009 (4) JCC 2809* to contend that though it is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to

hold that the evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principle which govern the appreciation of evidence in the criminal matter. It is next contended that as regards the element of consent of the complainant is concerned, the nature and sequence of the acts have to be considered. The complainant had been consenting to the sexual relations with the Petitioner from 1988 to 2003, and so it cannot be said to be a case where there was no consent.

6. As regards the Petitioner Renu Vij is concerned, it is contended that there is no material before the learned trial court to assume conspiracy in the absence of meeting of minds with her husband for the offences mentioned. Reliance is placed on *Priya Patel v. State of M.P & Another*, 2006 CrL. L. J. 3627 that Section 376 is essentially related to the offence of rape and a woman cannot be said to have the intention to commit rape. It is thus prayed that the impugned order be set aside.

7. Learned APP on the other hand contends that there is no delay in lodging of the FIR. As per the complaint, the complainant was raped from few months after March, 1988 to January, 2003. Thus the delay, if any, has to be counted from January, 2003 and since the complaint has been filed in April, 2004, the same cannot be said to be a belated complaint. It is stated that the Petitioners cannot claim parity with the decision rendered by this

Court in the case of Rajender Singh Sachdeva as the said decision was on the specific role of the said Petitioner. Relying on *State of U.P. vs. Manoj Kumar Pandey*, AIR 2009 SC 717, *State of Himachal Pradesh vs. Prem Singh*, AIR 2009 SC 1010 and *State of Himachal Pradesh v. Shree Kant Shekari* 2004 (8) SCC 153, it is contended that the testimony of the prosecutrix in the rape case can be the sole basis of conviction and the same needs no corroboration. Thus, once the complainant says that she has been sexually exploited, the same is sufficient to convict the Petitioners. Reliance is also placed on *Aman Kumar and Anr. vs. State of Haryana*, 2004 (4) SCC 379. It is contended that the complaint to the Assistant Labour Commissioner cannot be looked into as it cannot be stated that whether the same was made by the complainant or somebody else purported to have filed the same in her name. Moreover in a complaint to the Assistant Labour Commissioner the Complainant will not spell out her grievance of sexual exploitation as he is not the competent authority for the redressal of the said grievance. Thus, from the FIR registered on the basis of statement of the prosecutrix the role ascribed to the Petitioners is clear. It is contended that non-recovery of video film does not affect the credibility of the statement of the prosecutrix. Reliance is placed on *Bharat Parikh vs. CBI & Another*, 2008 (10) SCC 109 and *Mahesh Choudhary vs. State of Rajasthan & Another*, 2009 (4) SCC 439.

8. I have heard learned counsel for the parties and perused the record. As per the statement of the complainant/prosecutrix, it is evident that she has levelled three sets of allegations against the Petitioner Vinod Kumar Vij and one against Renu Vij. Firstly, it is alleged that after a few months of her joining the office of the Petitioner, the Petitioner Vinod Kumar Vij called the prosecutrix at his residence and committed rape on her against her wish. This allegations of the complainant is specific and even if subsequent consent is sought to be inferred, the same would not apply to this particular incident. As regards the issue of delay, it may be noted that Section 468 Cr. P.C. prescribes no time limit for taking cognizance of an offence punishable for more than three years. Whether reliance should be placed on this allegation of the Complainant to convict the Petitioner is an issue to be decided after recording of evidence. At this stage, it cannot be presumed that because the allegations are leveled belatedly the same are false and concocted. Thus, to my mind, this particular allegation in the FIR is sufficient to frame a charge of offence under Section 376 IPC against the Petitioner Vinod Kumar Vij.

9. The next set of allegations are of taking her to the house at Faridabad and there mixing liquor in the cold-drink whereafter he got her photographed and video-filmed in nude position through his relative. The Petitioner Vinod Kumar Vij allegedly blackmailed her and thereafter on the threat to kill her,

had physical relations with her for a number of times. As regards, the contention of the learned counsel for the Petitioner that this allegation was also leveled against Rajender Singh Sachdeva whose order of charge has been set aside by this Court in Criminal Revision Petition 247/2007, it may be noted that the primary reason for discharge of Rajender Singh Sachdeva by this Court in the said decision was that there was no mention of this person in the FIR and since his name came by a subsequent statement, it was not relied upon by this Court. The learned Judge in the said order considered two other vital circumstances which could expose soundness of the charge against the Petitioner therein i.e. no video-film or material was admittedly recovered and that the statement of Surjeet Singh did not support or give credence to the complainant's question. It would be thus, apparent that the learned Judge used these two circumstances to lend assurance to the fact that the name of the appellant did not find mention in the FIR. However, the name of the Petitioner Vinod Kumar Vij is clearly mentioned in the entire FIR and his role is explicitly defined. Thus, the Petitioner Vinod Kumar Vij cannot claim any parity with Rajender Singh Sachdeva and seek discharge on that ground.

10. The third set of allegation against the Petitioner Vinod Kumar Vij is that on the pretext of promotion and the assurance that he would keep the prosecutrix as his wife he continued having physical relations with her till

January, 2003. It is alleged that she objected to the same on many occasions, however, Vinod Kumar Vij threatened her of her life and once in 1996, he had even tried to kill her by keeping her confined in the house at Faridabad for 24 hours and thus threatened to kill her in the same manner. It is also alleged that under threat Vinod Kumar Vij used to also compel her to have physical relations with his clients/bank managers etc. without her consent.

11. At this stage this Court, has to be mindful to the fact that it cannot appreciate the evidence but has to find out that whether the facts alleged in the FIR and the accompanying charge-sheet disclose a prima facie case and raise a strong suspicion of commission of the offence by the Petitioner. This Court is entitled to sift and weigh the evidence for this limited purpose. However, it cannot on the basis of evidence on record come to the conclusion that the version given by the complainant is false or that the same does not make out a case for an offence under Section 376. At this stage, it would be relevant to note that the Hon'ble Supreme Court in *Union of India v. Prafulla Kumar Samal*, 1979 (3) SCC 4 laid down the principle of law applicable at the stage of framing of charge. It was held that:

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.

12. Thus, the test to be applied is to sift and weigh the evidence for the limited purpose of finding whether or not a prima facie case against the accused is made out. In my opinion, the fact that the version of the complainant is belated, or that her version of being video-filmed in a nude position is not corroborated by the recovery of the video-film or by the statement of her ex-husband Surjeet Singh cannot discard her statement and the statement of her sister who have stated that the Petitioner Vinod Kumar Vij showed the video film to her by which he used to threaten her to sexually

exploit the prosecutrix. At this stage, this Court is to see whether there is a strong suspicion against the appellant/Petitioner or not.

13. Even in *Rukmini Narvekar* (supra) relied upon by the learned counsel for the Petitioner, the Hon'ble Supreme Court held that at the stage of framing of charges, material produced by the defence can be looked into in very rare cases, where the defence produces some material which shows that the whole prosecution case is totally absurd or concocted.

14. As stated above, in this case there is a clear allegation by the prosecution which is duly supported by the statement of the sister of the prosecutrix and the same cannot be thrown out merely by the statement of the ex-husband who did state that the marriage broke off not because of the reason that the nude video films of the prosecutrix photographed by the Petitioner were shown to him by the Petitioner but due to their personal differences. It is the settled legal position as set out by the Hon'ble Supreme Court in *P.Vijayan v. State of Kerala, 2010 (1) Scale 604* that whether the accused committed the offence or not can be decided only at the trial. It is also well settled that even the sole testimony of the prosecutrix can be the basis of conviction of an accused for an offence under Section 376 IPC, if the same inspires confidence. Whether the same inspires confidence or not is a

question of fact to be decided on the basis of evidence adduced by the prosecution during trial, the cross-examination and the defence of the accused.

15. Coming to the charge of Section 120B IPC framed against the Petitioner Renu Vij. I find the same contrary to the law laid down by the Hon'ble Supreme Court in the case of *State (NCT of Delhi) vs. Navjot Sandhu@Afsan Guru, 2005(11)SCC 600* wherein it was held that to constitute the offence that of conspiracy, mere knowledge is not sufficient and there should be a meeting of minds of two or more persons for doing an illegal act or an act by illegal means. From the facts in hands some act more than mere knowledge should be attributable to the alleged accused. In the present case, there is no such act attributable to Renu Vij. The only allegation is that when the prosecutrix told her about the acts of Vinod Kumar, both the husband and wife threatened to kill her. This to my mind only attributes only the knowledge of the acts committed by her husband to Renu Vij but she was not a party or a conspirator in the alleged offence. Thus, I find no ground for framing of charge under Section 120B IPC against Renu Vij. However, the charge for an offence under Section 506 IPC is made out against her.

16. As regards the charge of 120B IPC, since Rajender Singh Sachdeva has been discharged vide this Court's order dated 8th October, 2008; a charge of 120B IPC against Renu Vij is also set aside; a charge of offence under Section

120B against Vinod Kumar Vij also does not survive as a minimum of two persons are required for the charge of conspiracy.

17. The petitions are thus partly allowed by modifying the charge of the Petitioner Vinod Kumar Vij to offences under Sections 376/342 and 506 IPC and against Renu Vij for commission of offence under Section 506 IPC. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 12, 2011
dk