

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. A. No. 274/2009

% Judgment decided on: 22nd February, 2011

MUKESH APPELLANT

Through: Ms. Ritu Mishra, Amicus
Curiae

Versus

STATE (N.C.T. OF DELHI)
....RESPONDENT

Through: Mr. M.P. Singh, APP

AND

CRL. A. No. 603/2009

NARENDER @ GANTU APPELLANT

Through: Ms. Purnima Sethi, Legal Aid
Counsel

Versus

STATE (N.C.T. OF DELHI)
....RESPONDENT

Through: Mr. M.P. Singh, APP

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (Oral)

1. By the judgment dated 24th February, 2009, Additional
Sessions Judge, Delhi has convicted the appellants under

Sections 341/34 and Section 376(2)(g) IPC. Appellants have been sentenced to undergo rigorous imprisonment for 10 years each along with fine of ₹3,000/- each and in default of payment of fine to undergo simple imprisonment for 3 months under Section 376(2)(g) IPC; sentenced to undergo simple imprisonment for one month each for the offence under Sections 341/34 IPC. Both the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to the appellants.

2. It is this judgment which is under challenge in these Appeals. Accordingly, both the abovementioned appeals are being disposed of together.

3. FIR No. 399/2003 under Sections 341/34 and 376(2)(g) IPC was registered at Police Station Narela on the statement of prosecutrix. In the FIR, prosecutrix stated that she had been working in a factory situated at Bhorgarh. On 24th October, 2003 at about 6:30 PM she was returning home from the factory; when she reached near the boundary wall of DDA flats, two boys intercepted her, caught hold of her and dragged her to a nearby jungle, laid her in the bushes and raped her one after the other. While raping her they had gagged her mouth. She was also threatened that in case she raised alarm, she would be stabbed by a knife. In the meanwhile, one person came there to ease himself. On seeing him she raised alarm at which 2/3 rehriwalas came there and caught hold of Mukesh. Other boy,

whose name was later on revealed as Narender, succeeded in escaping after snatching ₹ 740/- from her. After apprehending Mukesh, rehriwalas took prosecutrix as well as Mukesh to a nearby village, where villagers gave beatings to Mukesh.

4. After registration of FIR, prosecutrix was medically examined in Maharshi Balmiki Hospital, Pooth Khurd, Delhi vide MLC No. 759/03 (Ex. PW5/A). Following injuries were found on her person:-

- (a) superficial abrasion over right elbow 1x1 cm.
- (b) abrasion right side lower back 1x1 cm.
- (c) abrasion below shoulder right side 1x1 cm.
- (d) a cut mark of more than 1.5 cms. was found on the left side of labia majora of the patient.

Slides prepared from vaginal smear as well as petticoat of the prosecutrix was sealed by the doctor and handed over to the police officials.

5. Mukesh was also medically examined in Maharshi Balmiki Hospital, Pooth Khurd, Delhi. Doctor opined that there was nothing to suggest that he was incapable of performing sexual intercourse. Smell of alcohol was noticed in his breath. His blood sample was taken and sealed by the doctor besides his underwear and handed over to the concerned police official. Subsequently, Narender was apprehended. He was also medically examined in the same hospital. Doctor opined that there was nothing to suggest that he was not capable of performing sexual intercourse. His blood sample and pubic hair

were taken, sealed and handed over to the concerned police official by the doctor. Both Mukesh and Narender did not cooperate in giving their semen samples. As per report of CFL (Ex. PW2/A), stains of semen were found on the petticoat of the prosecutrix which were of 'B' group. Blood samples of appellants were identified as that of 'B' group and 'O' group.

6. Charges under Sections 341/506/34 IPC and 376(2)(g) IPC were framed against the appellants on 31st March, 2004 to which they pleaded not guilty and claimed trial.

7. Prosecution examined 11 witnesses in all to prove its story. Prosecutrix has been examined as PW1. Dr. Saroj Aggarwal stepped in the witness box as PW3 to prove the MLC of the prosecutrix (Ex.PW 3/A). Dr. Jay Kumar and Dr. A.K. Gupta, who had examined Mukesh and Narender respectively, stepped in the witness box as PW4 and PW5 respectively. W/SI Harjinder Rana, who is Investigating Officer in this case, was examined as PW11. All other witnesses are formal in nature being police officials, who had been joined with the investigation at one or the other stage.

8. After prosecution closed its evidence, statements of appellants under Section 313 Cr.P.C. were recorded separately on 5th July, 2008 wherein entire incriminating material, which had come on record, was put to them. Both the appellants have denied their complicity in the crime and claimed themselves to be innocent. Appellant Narender examined his wife Geeta in his

defense as DW1. However, Mukesh did not examine any witness in his defense.

9. Trial Court has found testimony of prosecutrix (PW1) trustworthy, reliable and credible. It has been further noted that injuries found on the person of prosecutrix had lend credence to her statement that she was forcibly taken by the appellants to a deserted place and laid in the bushes before committing rape upon her. Traces of semen on the petticoat and vaginal swab of prosecutrix were also taken as corroborative piece of evidence. As per the Trial Court, statement of PW1 was sufficient to convict the appellants for committing gang rape upon the prosecutrix. I have carefully perused the testimony of the prosecutrix and other evidence on record and I am of the view that Trial Court was right in reaching to the conclusion that it is the appellants who had committed gang rape upon the prosecutrix by taking turns, thus, had committed the offence punishable under Section 376(2)(g) IPC.

10. PW1 has fully corroborated the prosecution story. Her statement is in line with the allegations contained in the FIR. While deposing in the witness box, she has categorically stated that while she was returning from the factory where she had been working, appellants caught hold of her from her both arms; they took her to a nearby jungle which was having some bushes; they laid her on the bushes. Thereafter, Narender and Mukesh committed rape upon her one after the other. She has stated

that accused Narender sat on her chest and gagged her mouth while other accused Mukesh committed rape upon her. She has deposed that he had put his urinating portion into her vagina. Thereafter, accused Narender committed rape upon her in the same manner. After committing rape, Mukesh caught hold of her and started moving from that place. In the meanwhile, one person came there for easing himself. On seeing him, she tried to escape from the clutches of Mukesh. She also raised alarm. One vegetable vendor apprehended Mukesh. Narender succeeded in escaping from the spot. On her narrating the incident to the vegetable vendors, they gave beatings to Mukesh. Someone informed the police. Police arrived there and Mukesh was handed over to the police officials. She and Mukesh were taken to Police Station. Her statement was recorded. She was medically examined. Her this statement has remained unshattered despite the fact that she had been cross-examined by the counsel of the appellants at length. There is no reason to disbelieve her testimony. Injuries found on her person lend credence to her version. The injuries, which were found on her person, are possible if a person is laid down on the bushes. Not only this, injury was also found on her private parts. As per MLC, a cut mark of 1.5 cms. was found on the right side of labia majora. Immediately after the incident, vaginal swab and petticoat of the prosecutrix were taken in possession by the doctor. Semen stains were found on the petticoat of the prosecutrix. Traces of semen were also noticed on the vaginal

swab. Thus, scientific evidence also lends credence to the statement of the prosecutrix that she was raped on the fateful day. Prosecutrix has identified the appellants as the persons, who had committed rape upon her. There is no reason as to why she would have falsely implicated them in this case, more so, when there was no previous enmity between them, inasmuch as, they were strangers to her. It is not the case of the appellants that they were known to the prosecutrix in any manner or that prosecutrix was having any kind of grudge against them.

11. Learned Amicus Curiae and counsel from legal aid have vehemently contended that the testimony of PW1 has remained uncorroborated from any independent witness. As per the prosecution, on seeing a person, who had come at the spot for easing himself, prosecutrix raised alarm. Thereafter, vegetable vendors/rehriwalas apprehended Mukesh. None of these persons have been joined with the investigation nor were produced in the witness box to corroborate the version of prosecutrix. I do not find any force in this contention. In a metropolis like Delhi apathy of public persons to join the investigation is not unknown. Public persons are reluctant to join the investigation in order to avoid harassment at the hands of the accused as also from taking rounds of court. Non-joining of independent public witnesses by itself is not sufficient enough to discard the testimony of the complainant/injured witness. I

also do not find any force in the contention of learned Amicus Curiae that in the absence of the semen of the appellants and detailed report on their pubic hair, the appellants cannot be connected with the offence of rape.

12. It is well settled that conviction can be based on the sole testimony of prosecutrix without corroboration from any independent witness if the testimony of prosecutrix is found to be trustworthy and reliable. Prosecutrix is a victim of rape, who cannot be put on par with an accomplice. There is no rule of law that says that testimony of the prosecutrix cannot be accepted unless it is corroborated. In **State of U.P. v. Pappu @ Yunus and Anr. AIR 2005 SC 1248**, Supreme Court held that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. In **State of Punjab v. Gurmit Singh and Ors. AIR 1996 SC 1393**, Supreme Court held that the Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for

conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration.

13. Ms. Purnima Sethi, Legal Aid Counsel contends that lenient view may be taken on the quantum of sentence. Narender is the only bread-earner in the family and his widowed mother, wife, two children and unmarried sister are totally dependent upon him. Narender is not involved in any other case. He is in incarceration for about 7½ years. Ms. Ritu Mishra, Amicus Curiae contends that the mother of appellant Mukesh is about 70 years old and is solely dependent on him. It is contended that both the appellants be released on the sentence already undergone by them. Keeping in mind the nature and gravity of offence, I am of the view that appellants are not entitled to any leniency in the sentence. They have committed gang rape upon a helpless woman turn-by-turn. Section 376(2)(g) IPC mandates that an accused of gang rape shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life. Proviso to this section, however, vests power in the court to reduce the sentence of imprisonment for a term of less than 10 years but only if adequate and special reasons are brought forth. In this case, I do not find it to be a fit case to award sentence less than what has been mandated under Section 376(2)(g) IPC.

14. No other argument has been advanced nor any other plea been raised by the counsel for the appellants.

15. For the foregoing reasons, both the Appeals are dismissed being devoid of merits.

16. Fee of Ms. Ritu Mishra, Amicus Curiae is quantified as ₹7,500/- to be paid by the Government of NCT of Delhi.

A.K. PATHAK, J.

FEBRUARY 22, 2011

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