

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

+ Crl. Appeal No. 475/2000 and Crl. M.B. 1346/2011

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Reserved on: 4th January, 2012

Decided on: 17th January, 2012

RAM KISHAN

..... Appellant

Through: Mr. Manoj Singh, Advocate.

versus

STATE

..... Respondents

Through: Mr. Manoj Ohri, APP for the State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. In the Present petition the Appellant lays a challenge to the judgment dated 7th July, 2010 convicting the Appellant for offence under Section 376 IPC and the order on sentence dated 11th July, 2000 whereby he has been directed to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo Simple Imprisonment for a period of five months.

2. Learned counsel for the Appellant contends that on the basis of same evidence, co-accused Raj Kumar has been acquitted however, the Appellant has been convicted. The Appellant is the only person, who has been convicted as the main accused Bannu Lal died during trial. It is the admitted case of the prosecution that on the night of 31st March, 1992, the prosecutrix left her house in the company of Bannu Lal. The FIR was registered by PW3 Sunder Lal, father of the prosecutrix against Bannu Lal only. The prosecutrix and PW3 her father have stated that when the prosecutrix came

with Bannu Lal to their house, the wife of the Appellant asked them to leave. It is further alleged that when the Appellant took her to drop at her house, he committed rape on her. There are material contradictions in the statements of the prosecutrix. She herself states that she voluntarily had sexual intercourse with Bannu Lal. There is no medical evidence to corroborate her testimony, which is full of contradictions. Further the medical examination of the prosecutrix was conducted immediately and there is no evidence of forced rape. There is no other evidence that the Appellant committed rape on her. In the MLC it is not clarified which brother-in-law of Bannu Lal committed rape. The statement being vague the Appellant cannot be convicted for the same. Thus in view of the glaring contradictions in the testimonies of the prosecution witnesses, the Appellant be acquitted of the charges framed.

3. Learned APP for the State on the other hand contends that though the prosecutrix stated that first Bani Lal and then the Appellant committed rape on her, this fact she has not only stated in her statement recorded but also stands recorded in the MLC to the doctor Ex.PW10/A. The prosecutrix was recovered from the spot and there were mark of injury on the body thus corroborating her version. In view of the cogent and convincing testimony of the prosecutrix and her father no case for acquittal is made out. There is no infirmity in the impugned judgment and the appeal is liable to be dismissed.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution is that an FIR was registered on the complaint of PW3 Sunder Lal on 1st April, 1992 who stated that he was

working as a cook in Lady Irwin College. His daughter namely 'S' was living with him at Delhi whom he had brought from the village for treatment. On 31st March, 1992 he had gone to attend his duty at about 3.00 p.m. and when he came back at 7.30 p.m. he found the prosecutrix missing. He suspected that Banno S/o Masi Charan R/o D-7, Nabha House, Servant Quarters had enticed the prosecutrix. On investigation it was revealed that the prosecutrix was present at House No. 8, Krishna Menon Marg. When the father of the prosecutrix and the police officer reached they found the co-accused Raj Kumar guarding the room. When the room was opened the prosecutrix and Bannu Lal were found inside. The statement of the prosecutrix was recorded who stated that she had come to live with her father as she was undergoing treatment for the constant pain in her ear. Bannu Lal, who was living in the quarters, used to meet her very often and ten days ago he proposed to her. On 28th March, 1992 while she was going towards Shri Ram Art and Cultural Centre Bannu Lal met her, took her forcibly in a street behind the Centre and committed sexual intercourse with her without her consent. She did not disclose about this to anyone out of shame. On 31st March, 1992 at about 7.30 P.M. when she went out again for some work Bannu Lal met her and caught hold of her hand saying that he could not live without her and would marry her. He forcibly took her to the house of his brother-in-law Ram Kishan, the Appellant herein at Jaipur House in a three wheeler scooter. The sister of Bannu Lal was present in the house whom Bannu Lal asked to keep the prosecutrix as he was going to marry her. After this Bannu Lal left the prosecutrix at the house of Ram Kishan. The sister of Bannu Lal told Ram Kishan that it was not safe to keep the prosecutrix there. Thus Ram Kishan took her to a house at R.K.

Puram. There was no electricity in the house. Ram Kishan made her sit in the house, bolted the door from inside and committed sexual intercourse with her without her consent. When she tried to raise the alarm Ram Kishan kept his hand on her mouth. After that Ram Kishan brought her to his house and threatened her not to disclose about the incident of night. In the house of Ram Kishan, Bannu Lal met her, took her to a temple and forcibly married her. Thereafter Bannu Lal took her to the servant quarter of his cousin brother Raj Kumar at Kothi No. 8, Krishna Menon Marg and told his cousin brother that he wants to keep her there. On this Raj Kumar took her and Bannu Lal to a room, asked Bannu Lal to enjoy and that he would guard the room from outside. After some time the police and her father reached there. The prosecutrix who was examined as PW1 reiterated her allegations in the Court. It may be noted that on the night of 31st March, 1992 the allegations of rape are against the Appellant. On 1st April, 1992 the prosecutrix was medically examined wherein in her statement Ex.PW10/A before the doctor she stated that that she had voluntary intercourse with Bannu Lal but was raped by a third person who was the accused's brother-in-law. The examination of the prosecutrix revealed hymen showing healing tears at 10'o clock and 6'o clock position. The FSL report Ex. PA has opined that the semen could not be detected on the swabs and the clothes of the prosecutrix.

6. The conviction for an offence of rape can be safely based if the testimony of the prosecutrix is reliable. It may be noted that soon after the incident the prosecutrix gave this version not only to the police but also to the doctor and the same is recorded in the MLC. The prosecutrix had no reason to falsely implicate the Appellant. It may be noted that after the prosecutrix alleged that she was raped by the Appellant thereafter she was

taken to the house of the Appellant from where she was taken for marriage in a mandir and thereafter she was taken to the house of Raj Kumar. According to the prosecutrix the police had reached the house of the accused Raj Kumar in the evening and thus in the meantime, the prosecutrix must have answered the call of the nature and took bath resulting in destruction of corroborating evidence.

7. Learned counsel for the Appellant has pointed out that the prosecutrix has stated that she was taken to a house in R.K. Puram but has not been able to identify the same. It may be noted that identification of the particular house would not discredit the otherwise reliable testimony of the prosecutrix. Moreover, she has stated that because of darkness she could not say whether the house was isolated or not. Further the contradiction of her being taken away in a taxi or a TSR is not a material contradiction. The minor contradictions pointed out by the learned counsel for the Appellant do not go to the root of the matter as in the elaborate cross-examination the witness is bound to commit some mistakes. In view of the fact that there are no material contradictions in the testimony, I find no infirmity in the impugned judgment.

8. The appeal and the application for suspension of sentence are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 17, 2012
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