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

+ CRL.A. 142/2011

% Judgment reserved on 26th November, 2012
Judgement delivered on 7th December, 2012

FURKAN AHMED Appellant
Through: Mr. O.D. Sharma, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Mukesh Gupta, APP

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. By way of present appeal appellant has assailed the judgment dated 19th November, 2010 and order on sentence dated 30th November, 2010 passed by the trial court whereby he has been convicted under Sections 376 and 506 IPC; sentenced to undergo rigorous imprisonment for 10 years with fine of ₹50,000/- out of which ₹40,000/- has been directed to be paid to the prosecutrix, if deposited and remaining ₹10,000/- to go to the State, in default of payment of fine to undergo simple imprisonment for six months; sentenced to undergo rigorous imprisonment for two years with

fine of ₹2,000/- and in default of payment of fine to undergo simple imprisonment for 15 days under Section 506 IPC. Both the sentences have been directed to run concurrently, inasmuch as, benefit of Section 428 Cr.P.C. has been accorded to appellant.

2. Prosecution story, as emerges from the record, is that the prosecutrix along with her husband and two year old son was living on rent in a room on the second floor of house no. A-323 Shakur Pur, J.J. Colony Second Floor, Delhi. Appellant was also living in a room on the same floor as a tenant. In the night intervening 20th and 21st November, 2008 prosecutrix was sleeping in her room with her child while her husband was away for work on night duty. At about 3 am prosecutrix went to the toilet and when she returned to her room she found the appellant standing in the room. As soon as prosecutrix entered in the room appellant caught hold of her and when she tried to raise alarm he gagged her mouth with the help of a cloth, which was lying there; he bolted the door from inside and showed her a knife and threatened to kill her; thereafter, he opened her *salwar*, pushed her on the floor and did “galat kaam” with her. On her raising alarm some voices were heard from outside at which

appellant jumped out of the window with the help of cable wires and escaped. When her husband returned home in the morning she informed him about the incident. Thereafter, she along with her husband went to the police station Saraswati Vihar and lodged the FIR No. 729/08 under Sections 342/376/506 IPC against the appellant.

3. After registration of FIR on 21st November, 2008 prosecutrix was examined at Babu Jagjivan Ram Hospital, (BJRMH) at about 08:15 pm. Her *salwar* was sealed by the doctor in a pullanda and handed over to Investigating Officer. Vaginal swab of prosecutrix was also taken, sealed and handed over to the Investigating Officer by the doctor. Statement of prosecutrix under Section 164 Cr.P.C. was also recorded by the Magistrate on 24th November, 2008. On 27th November, 2008 appellant along with his uncle came to police station and was arrested. Thereafter, he was got medically examined at BJRMH. His underwear, blood sample and semen sample were taken, sealed and handed over to the Investigating Officer by the doctor. *Salwar* and vaginal swab of the prosecutrix as well as underwear, blood sample and semen sample of appellant

were sent to FSL and its report was obtained according to which semen was detected on the *salwar* and vaginal swab of the prosecutrix as well as on the underwear of appellant. Semen sample was found putrefied, thus, its group could not be ascertained. Semen found on the *salwar* and underwear of the appellant was opined to be of “AB Group”. As regards vaginal swab is concerned, the group of the semen was not analyzed.

4. Prosecutrix has been examined as PW3 while her husband has been examined as PW4. Landlady was examined as PW5. Dr. Kumbhaz Mahargudra, who had examined the appellant, has been produced as PW1. He has deposed that he was working in the casualty ward of BJRMH at the relevant time. On 21st November, 2008 and 27th November, 2008 he prepared MLCs of the prosecutrix and appellant. He has proved the MLC of appellant and prosecutrix as Ex.PW1/A and Ex.PW1/B respectively. PW2 Dr. Bhawana was CMO, BJRMH and has deposed that prosecutrix was examined by Dr. Shalini under the supervision of Dr. Neelam. She has proved the notings of Dr. Shalini. PW6 Dr. Anjali Vaish, Sr. Resident, BJRMH has also proved the notings of Dr. Shalini. PW7

Dr. Neeraj Chaudhary, CMO, BJRMH has proved the MLC of appellant as Ex. PW7/A. He has deposed that on examination of appellant by Dr. Rakesh nothing was found to suggest that he was incapable of performing sexual intercourse. PW8 V. Shankarnarayanan, SSA (Bio), has proved the FSL report as PW8/A. PW11 SI Raj Bala is the Investigating Officer and has given overall view of the investigation conducted by her. All other witnesses are formal in nature as they were joined in investigation at one stage or the other.

5. Statement of appellant under Section 313 Cr.P.C. was recorded wherein entire incriminating material, which had come on record during the trial, was put to him. He denied the same. He denied that he had committed rape upon the prosecutrix in the night intervening 20th and 21st November, 2008. He has stated that he is a building *thekedar* and had given ₹25,000/- to the husband of prosecutrix; when he demanded the same back he has been falsely implicated in this case. He also examined brother of his father-in-law as DW1, who has deposed that the appellant had paid ₹25,000/- to the husband of prosecutrix for three-four months. On

20th November, 2008 he went to the residence of prosecutrix with the appellant at about 7-8 pm and demanded money at which prosecutrix and her husband threatened the appellant that they would implicate him in some false case in case money was demanded again. Appellant has not denied that he was living in the same building and on the same floor, as a tenant. In fact, from the defence taken by him it is clear that he was well known to the prosecutrix.

6. Learned counsel for the appellant has vehemently contended that there is an inordinate delay in lodging the FIR which creates a serious doubt about the prosecution story. Incident had allegedly taken place at about 3 am; whereas FIR had been registered at 5:30 pm. This delay makes it clear that the FIR was got registered after due deliberations. Delay in lodging the FIR in this case is fatal and creates a doubt about the veracity of prosecutrix's version, thereby making the appellant entitled to acquittal. He has placed reliance on *Mohan Singh versus State of Haryana 2004 (3) C.C. Cases (HC) 267* and *Chander Bahadur versus The State 1997 (1) C.C. Cases 304 (HC)*. I do not find any force in this contention of the

learned counsel. There is no gainsaying that delay in lodging the FIR, if explained by sufficient and logical reasons it would not be fatal, inasmuch as the prosecution story cannot be disbelieved merely on the ground of delay in such circumstances. In *State of Punjab versus Ramdev Singh AIR 2004 SC 1290*, Supreme Court has held that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, same cannot by itself be a ground for disbelieving and discarding the entire prosecution version. In the present case, delay in lodging the FIR has been suitably explained. Prosecutrix was alone in the house as her husband had gone for work on night duty. Incident took place at 3

am when prosecutrix was alone in her room along with her two year old son. Her husband returned home in the morning at about 9 am and only thereafter she informed him about the incident and thereafter they decided to lodge the FIR and went to the police station. PW11 SI Raj Bala, who was posted at Rape Crisis Cell, has deposed that she received information about the incident from the duty officer at police station at about 4 pm and thereafter she reached the police station at about 4:30 pm where the prosecutrix and her husband were present. She recorded the statement of the prosecutrix and got the FIR registered and sent the prosecutrix for medical examination; meaning thereby that prosecutrix and her husband reached the police station in the afternoon and since the police officer, working in the Rape Crisis Cell, was not present, they had to wait for her arrival. All this resulted in delay in lodging the FIR which will not be fatal in the facts and circumstances of the present case. Judgments relied upon by the learned counsel for the appellant are in the context of different facts and are of no help to the appellant. In **Mohan Singh** (supra), there was delay of about 11 days in lodging the FIR which

remained unexplained. Similarly, in **Chander Bahadur** (supra), husband of the prosecutrix was working as a driver with an advocate. It came in his statement that after being confided in by his wife that she was raped he did not go to the police station; instead he went to consult his advocate and thereafter went to the police station. Accordingly, it was held that FIR was lodged after due deliberations and consultations.

7. Learned counsel for the appellant has next contended that the prosecutrix is not a trustworthy and reliable witness in view of inconsistent stand taken by her at different stages of the investigations and trial. In the FIR, prosecutrix had stated that when she returned from the bathroom she found the appellant standing in her room; whereas in her statement under Section 164 Cr.P.C. she stated that when she returned she saw the appellant sitting in the room. While deposing in Court, prosecutrix again changed this version and stated that the appellant was standing in the room. In the FIR and while deposing in Court she stated that the appellant had gagged her mouth with the help of a cloth, however, in her statement under Section 164 Cr.P.C. she has not

mentioned about it. She only stated that appellant gagged her mouth. In the FIR, she stated that appellant showed her a knife and threatened that in case she raised alarm she would be killed. While in her statement under Section 164 Cr.P.C. she stated that the appellant showed her a knife and said that in case she raised alarm he would kill her. While deposing in Court she stated that appellant took out a knife and said that if she raised alarm he would kill her. In the FIR, prosecutrix stated that when she raised alarm some voice was heard coming from outside at which appellant escaped through the window with the help of cable wires. This statement was reiterated by her while deposing in Court. However, she is silent about raising alarm in her statement under Section 164 Cr.P.C. In my view, the discrepancies as pointed out by the learned counsel are insignificant and minor in nature and are not sufficient to discredit the statement of the prosecutrix.

8. In *Vijay @ Chinee versus State of Madhya Pradesh 2010(8)UJ3727*, Apex Court held that the evidence of witnesses must be read as a whole and the cases are to be considered in totality of the circumstances and while appreciating the evidence of

a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, should not be taken into consideration as they cannot form grounds to reject the evidence as a whole. It has been further held that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. In *State versus Saravanan and Anr. AIR 2009 SC 152*, Supreme Court held that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the

general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof; in normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation which has to be taken note of. Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

9. When statement of prosecutrix (PW3) is read as a whole, in the backdrop of above settled legal position, I find it to be trustworthy and reliable and, in my view, the same has rightly been accepted by the trial court to conclude that it was the appellant who had committed rape upon the prosecutrix in the intervening night of 20th and 21st November, 2008.

10. Above all, I find that the statement of prosecutrix is corroborated by the scientific evidence. Salwar of the prosecutrix was taken into possession, sealed and handed over to the Investigating Officer by the doctor who had examined the

prosecutrix. Similarly, underwear, of the appellant was taken in possession, sealed and handed over to the Investigating Officer by the doctor who had examined the appellant. Later abovesaid articles were sent to FSL. A perusal of FSL report indicates that semen was found on the *salwar* of prosecutrix and underwear of the appellant and the same has been opined to be of 'AB' Group and this factor lends credence to the prosecutrix's version. It may also be noted here that the doctor who had examined the appellant has categorically mentioned in his MLC Ex.PW1/A that there was nothing to show that appellant was incapable of performing sexual intercourse.

11. Now coming to the defence of the appellant, in my view same has no force. First of all, appellant has failed to lead any cogent evidence to establish the same inasmuch as even DW1 has failed to give date, time and month of extending such a loan. He has not even deposed that the same was given by the appellant in his presence. Secondly, it is difficult to believe that the prosecutrix would have falsely implicated the appellant by staking her reputation and the reputation of her family, only to avoid payment

of ₹25,000/-. This plea of the appellant lacks plausibility and is highly incredible.

12. For the foregoing reasons, conviction of the appellant under Section 376 IPC is upheld. Prosecutrix has categorically deposed that appellant had threatened to kill her by showing a knife, thus, in my view, appellant has been rightly convicted under Section 506 IPC by the trial court. However, sentence of appellant under Section 376 IPC is reduced to seven years keeping in mind that appellant has no past criminal record, has a family comprising of his wife, one child and old aged parents who are totally dependent upon him, inasmuch as his jail conduct is satisfactory.

13. Appeal is disposed of in the above terms.

14. Copy of this judgment be sent to the Jail Superintendent for serving it on the appellant as also for compliance.

A.K. PATHAK, J.

DECEMBER 07, 2012

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