

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

% Reserved on: 25th April, 2012
Decided on: 9th July, 2012

+ CRL.A. 935/2010 & Crl.M.B. Nos. 1109/2011 & 271/2011

MOHIT Appellant

Through: Mr. N.S. Dalal, Adv.

versus

STATE Respondent

Through: Mr. Mukesh Gupta, APP for the State
with SI Lakhmi Chand, PS Model
Town, Delhi.

AND

+ CRL.A. 1011/2010

MOHAN KUMAR @ GOLU Appellant

Through: Mr. Ritesh Khatri, Adv.

versus

STATE Respondent

Through: Mr. Mukesh Gupta, APP for the State
with SI Lakhmi Chand, PS Model
Town, Delhi.

AND

+ CRL.A. 1109/2010 & Crl.M.B 1326/2010 & Crl.M.A. 15231/2010

SUJEET SHARMA Appellant

Through: Mr. Ritesh Khatri, Adv.

versus

STATE Respondent

Through: Mr. Mukesh Gupta, APP for the State
with SI Lakhmi Chand, PS Model
Town, Delhi.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals the Appellants challenge the common judgment dated 28th July, 2010 whereby the Appellant Mohit has been convicted for offence under Section 376 IPC and Surjeet and Mohan have been convicted for offence under Section 376 IPC read with Section 109 IPC and the order on sentence dated 30th July, 2010 whereby Mohit has been directed to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of three months, and the Appellants Surjeet and Mohan are directed to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 1,000/- and in default of payment of fine to further undergo simple imprisonment for a period of one month.

2. Learned counsel for the Appellants Mohan and Surjeet states that they have not been named in the FIR and have been falsely implicated by introducing their names in the statement recorded under Section 164 Cr.P.C. There are material contradictions in the testimony of PW-1 the prosecutrix. Forced rape on the prosecutrix is ruled out, as there is no resistance or mark of injury. Further in her statement, PW-1 does not say that she resisted the act. Thus, she was a consenting party. The defence of the Appellants Surjeet and Mohan have not been taken into consideration. DW-4 has deposed that he was having the keys of the house and the house was locked. He has further stated that there is a single key of tenanted room which is retained by him. He further denied that he had any friendship with the Appellants Mohit, Surjeet and Mohan. He denied having given the keys

either to Vinita, the daughter of landlady Asha or to anyone. Thus, place of occurrence is doubtful. The Appellants had been falsely implicated. The friendship, if any, was between Mohit and PW-1. Reliance is placed on *Abbas Ahmed Choudhary Vs. State of Assam 2010 (3) Chandigarh Crl. Cases (SC) 52* to contend that the prosecution has to prove its case beyond reasonable doubt and there can be no presumption that the prosecutrix would always tell the entire story truthfully.

3. Learned counsel for the Appellant Mohit, reiterating the contentions of the learned counsel for the Appellants Surjeet and Mohan Kumar, states that the time of alleged incident is 11.00 AM in the month of June. The area is a thickly populated area where numbers of passerby are always present. It is highly improbable that the Appellant Mohit could have caught hold of the prosecutrix by hand and taken her with him. There is no independent corroboration to the evidence of the prosecutrix. The clothes of the prosecutrix have not been recovered. There are material contradictions in the statement of prosecutrix PW-1 and her mother PW-4. The testimony of PW-5, the aunt cannot be looked into as the same is an hearsay evidence. There is no explanation for the delay in lodging the FIR after 7 days. Even after the incident, the mother of the prosecutrix PW-4 had made a proposal for the marriage of the prosecutrix with the Appellant Mohit. The Learned Trial Court did not consider the contradictions pointed out by the learned counsel for the Appellants and thus serious prejudice has been caused to them.

4. Learned APP on the other hand contends that as per the ossification test the prosecutrix was no doubt above 18 years, however her testimony

cannot be brushed aside lightly. The testimony of the prosecutrix is corroborated by PW-4, her mother. Further PW-5 the aunt has given the reasons for delay in lodging the FIR. Though the Appellant Surjeet and Mohan have taken the defence that they were not present, however no cogent evidence has been led in this regard. Thus, there is no infirmity in the impugned judgment and hence the Appeals be dismissed.

5. I have heard learned counsel for the parties. PW-1 the prosecutrix alleged that in the year 2008 she was working for an export goods company from her house. On 28th June, 2008 at about 11.00 AM while she was alone at home and doing the work of factory, Appellant Surjeet and Mohan @ Golu, whom she knew earlier, came and told her that somebody was beating her brother. She accompanied them in the back gali but did not find her brother there. However, Appellant Mohit, who was also known to her caught hold of her hand and took her to the house of Asha Aunti, who lives in front of the house of Mohit. Mohit took her to the room on the second floor of the house and bolted the same from inside. Appellants Surjeet and Mohan bolted the same from outside. Thereafter, Appellant Mohit forcibly undressed her and himself and committed rape upon her on the floor of the room. Mohit gagged her mouth with a cloth and asked her to ask her mother to get her married with him. After about two hours, her mother came, looking for her and opened the lock of the room. After the incident her mother sent her to the house of her aunt Smt. Ramshree at Narela. Her father was in the village at that time. The prosecutrix remained at the house of her aunt for three-four days. The relatives advised her not to disclose the incident to anybody. However, some other relatives stated that she should

inform the Police. Thus, after 6-7 days of the incident, the prosecutrix along with her mother and grand-mother went to the Police Station, Model Town and got the FIR registered.

6. PW-4 in her testimony states that at about 11.15 AM she came to the house and at that time her house was locked. She enquired from the children about her daughter. The children in the neighbourhood told her that Surjeet and Mohan had come to her house and her daughter had gone with them. PW-4 searched her daughter and she found Surjeet and Mohan standing near the stairs of the house where the incident took place. She heard the noise from the first floor of the said house and ran towards the house. In the meantime Surjeet threw the keys of the house towards her and Mohan stated to Surjeet that they should escape from the spot otherwise they would be in trouble. She opened the door with the help of the keys. Immediately Mohit came out of the house by holding the zip of his pant. On entering the house she noted a cloth put in the mouth of her daughter. She took out the cloth from the mouth of her daughter. Her daughter was not wearing any clothes on the lower part of her body. She put the clothes on her daughter who was unconscious. Thereafter, when she put water in the mouth of her daughter, she regained consciousness and told about the entire incident. PW-4 states that she did not inform the Police due to the prestige of the daughter and sent her to Narela to her sister's house. She went to the Police Station after consulting the relatives after 5-6 days when FIR was registered and her daughter was examined.

7. Since the FIR was registered belatedly there is no corroboration available from the FSL report. However, as per the MLC Ex.PW-9/A there

was a mark of old injury on Fourchete Redish colour and hymen was found torn. From the evidence on record it is thus apparent that sexual intercourse was committed with the prosecutrix. However, the issue is whether the prosecutrix was a consenting party and whether the Appellants Surjeet and Mohan were present or they have been falsely implicated by introducing their names subsequently.

8. PW-3 Asha has stated that on the day of incident when she returned at 6.30 PM, PW-4 the mother of the prosecutrix met her and informed that her daughter was found inside the room on the first floor with a boy and the room was found locked from outside. She further stated that the tenant Shiv Kumar stated that he had put the lock on the gate of the room, however kept the key on the wall of the room. She further stated that she had seen mother of the prosecutrix and father of the Appellant Mohit quarrel. PW-3 Asha the neighbour stated that the dispute between the mother of the prosecutrix and father of Mohit was regarding the marriage of Usha and Mohit. She has further stated that all the neighbours knew about the love affair between Usha and Mohit.

9. It may be noted that prosecutrix got married on the 7th of the month in which Holi festival was celebrated, however the prosecutrix when appeared in the witness box even denied her marriage being performed. The prosecutrix admitted that the area was a thickly populated area. Though initially she stated that she was caught hold by Mohit and taken to the second floor of the house, however later in the cross-examination she stated that Mohit caught hold of her hand only in the stairs. This is a minor

contradiction as to where the Appellant held the hand of the prosecutrix which do not go to root of the prosecution case.

10. Though Appellants have adduced evidence to show that Mohan and Surjeet were not present at the spot, however no such suggestion has been given to the witnesses and thus this defence is clearly an afterthought. Both, the prosecutrix and her mother have clearly deposed that the prosecutrix was deceived by the appellants Surjeet and Mohan and appellant Mohit took her to the place of incident and committed the crime. The commission of rape on the prosecutrix is also corroborated by the medical evidence placed on record. Hon'ble Supreme Court in catena of judgments has held that in heinous cases of rape conviction can be based upon sole testimony of the prosecutrix and there could be delay in filing of FIR in such cases.

11. In *Ranjit Hazarika vs. State of Assam, 1998 (8) SCC 635* the Hon'ble Supreme Court observed:

“6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In *State of Punjab v. Gurmit Singh* to which one of us (Anand, J.) was a party, while dealing with this aspect observed:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a

court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be

self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

We are in agreement with the aforesaid view."

12. In *Dildar Singh vs. State of Punjab*, 2006 (10) SCC 531 the Hon'ble Supreme Court observed:

"5. The main submission urged on behalf of the appellant is that there was considerable delay in lodging the first information report. It is also argued that there was never any complaint about the earlier incident. Therefore, the delay in lodging the report was fatal to the case of the prosecution. We notice from

the judgment of the High Court that the High Court has referred to several decisions of this Court and applied the principles laid down therein to the facts of the present case. This Court has observed in several decisions that the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing any one about the incident in the circumstances cannot detract from her reliability. In normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory.”

13. In the present case the prosecutrix has deposed that few of her relatives had advised them not to complain. Thus, the social pressure and the stigma attached to the crime existed on the prosecutrix. Hence, the delay in lodging the FIR is sufficiently explained. No evidence has been placed on record by the Appellants to prove their defence that the girl was a consenting party. Merely not shouting and raising hue and cry does not cast a doubt

upon the testimony of the prosecutrix as she has categorically deposed that she was threatened by the Appellant. Further both the prosecutrix and her mother have stated that the mouth of the prosecutrix was gagged. In fact, as per the mother, she took out the cloth piece from the mouth of the prosecutrix. Thus, on the basis of clear and cogent evidence against the Appellants, the offences charged are clearly made out against the Appellants.

14. The appeals and applications are dismissed accordingly.

(MUKTA GUPTA)
JUDGE

JULY 9, 2012
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