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

+ **CRL.A. No.763/2009 & CrI.M.B. No.937/2011**

% *Judgment delivered on: 9th January, 2012*

RAM SARAN & ANR.

.... Appellants

Through: Mr.S.D. Singh, Adv.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Ms.Rajdipa Behura, APP for
State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant appeal, the appellants preferred appeal against the impugned judgment dated 17.07.2009 wherein the appellants were held guilty under Section 376/34 Indian Penal Code however they were acquitted under Section 328 Indian Penal Code.

2. Vide order on sentence dated 12.08.2009, both the appellants were sentenced to undergo RI for ten years and pay fine of Rs.5,000/- each. Benefit of Section 428 of CrPC has been given.

3. The brief facts of the case are that on Diwali night, the appellants Ram Saran and Udai Raj called prosecutrix and offered her ‘‘Campa Cola’ Cola’ drink. Since she was known to Ram Saran for

past 10 years, in good faith she consumed the 'Campa Cola' but after consuming the same she felt dizzy and soon became unconscious as some intoxicated substance was mixed in the drink. When she regained consciousness, she found herself in naked condition and Ram Saran, Udai Raj and two other persons were present there and had raped her. At about 10:00PM appellant Ram Saran left her at her jhuggi in the naked condition. The wife of one Hashmi namely Sapan Nisha, residing in her street had seen appellant Ram Saran taking her to his jhuggi. On the next day appellant Ram Saran had sent the message to the prosecutrix not to make a complaint with the police and had even sent a message to one person named Durga that he is ready to pay any amount to her but she flatly refused to the offer.

4. As per the prosecution, thereafter she was threatened to be killed. On the next day, some of the persons of the locality asked her to take action against the appellant whereas some persons advised to settle the matter and in this process her thumb impression was obtained on some documents. Earlier she had not disclosed this fact to anybody as she was ashamed of her husband and brother. Statement of prosecutrix was reduced into writing. Thereafter the complainant was sent for medical examination alongwith lady Ct. Madhu Sharma and Rajender Tiwari to DDU Hospital. FIR under Sections 376/328/506 Indian Penal Code was registered at PS Moti Nagar.

5. During the investigation IO prepared site plan. Clothes worn by complainant on the day of incident were sized by IO. Statement of the complainant under Section 164 Cr.PC. got recorded.

6. Ld. counsel for the appellant has submitted that in the instant case both the appellants were admitted on anticipatory bail. He further submitted that as per the allegations of the prosecutrix some intoxicated substance was administered to her in “Campa Cola’ Cola’ whereas the appellants have been acquitted under Section 328 of Indian Penal Code.

7. Ld. counsel further submitted that the FIR was lodged against the appellants under Section 506 of Indian Penal Code however the charges were not framed against the appellant under Section 506 Indian Penal Code.

8. Ld. counsel has further asserted that relating to incident occurred on 26.10.2000 the complaint was made to police on 04.11.2000 and the same was converted in the FIR in the instant case.

9. Ld. counsel has referred Ex.PW4/A, as on 27.10.2000 there was a compromise between the appellants and prosecutrix related to some quarrel took place between them. This fact has been proved by PW10 Durga Prasad and DW2 SI Azad Singh. It is further stated, in the instant case no medical evidence available though the lady is a grown up, married woman having children; however no injuries, no marks and no semen was found either on the clothes of the prosecutrix or in the vagina.

10. Ld. counsel has further argued that as per the statement of the prosecutrix and her husband PW5 Om Prakash who has stated that some intoxicated substance was administered in “Campa Cola’ Cola’

and she became unconscious and thereafter four persons removed her clothes.

11. The prosecutrix in her deposition had stated that she found herself naked in the presence of the appellants. Both the appellants had committed rape upon her. Two or three other persons were also present whom she did not know. She has further deposed that those 2-3 persons did not commit rape upon her when she regained conscious. Appellant Ram Saran had brought her to her house. When appellant Ram Saran had brought her to her house her neighbourer Sapan Nisha had seen her.

12. Ld. counsel has pointed out that in the instant case neither 2-3 persons were made witnesses nor were made accused as they were also liable for the prosecution.

13. PW8 Sapan Nisha has not supported the prosecution case, however she was further declared hostile. In her cross-examination she has not discussed anything to support the case of the prosecution.

14. PW5 Om Prakash, husband of the prosecutrix, has not supported the prosecution story however if we look into the deposition made by the prosecutrix and PW5 there are a lot of contradictions between the statements made by them. In the statement under Section 313 Cr.PC the appellant has stated their innocence.

15. On the other hand, ld. APP submits that there was delay in lodging the FIR however in the present matter, the prosecutrix is a married woman and she was ashamed of the society and without the

support of her husband she could not report the matter to the police, therefore this cannot be fatal to the instant case.

16. Ld. APP has further stated that additionally she was being threatened that she and her families lives were at risk had she filed a complaint against the appellants.

17. Ld. APP further argued that there was no name suggested by the appellants against the prosecutrix for their false implication by levelling such serious allegations which also effect her own reputation.

18. Ld. APP has pointed out as per the statement of the defence of the appellants, a quarrel took place between them and she compromised the matter. However, the prosecutrix PW4 had denied this fact by stating that she only went to the Police Station on the said date and never put thumb impression on the said compromise.

19. However, DW2 SI Azad Singh falsify the evidence of this witness as he has submitted that PW4 Sharda came to police station on 27.10.2000 and compromise was effected between the prosecutrix and the accused persons and the prosecutrix had signed the compromise. Ld. APP for the State argued that if the compromise took place between the appellant and the prosecutrix there is no reason given by the appellants on what pretext the quarrel took place and matter was compromised. Even the trial court has recorded that on perusal of the compromise it is not indicated as to in which context the quarrel took place. She further submits the minor discrepancy of the witnesses are natural therefore it does not affect the case of the prosecution against

the appellants.

20. Ld. Counsel for the appellant has pointed out compromise Ex.DW1/A which took place on the incident of quarrel due to the non payment of the earlier dues by prosecutrix to the appellants against grocery items purchased by her from the shop of the appellants. Ld. Counsel for the appellant has also fairly considered regarding buying ration articles from Ram Saran; a suggestion was put to the witness to which she denied. She further submitted that a compromise had already taken place on this issue.

21. The trial judge has not considered the fact as under:

- (i) No injury found on her body;
- (ii) The semen was not found on the clothes or in her private parts.

22. There is delay of 09 days in lodging the FIR of the incident.

23. PW8 who happened to be the neighbourer and the witness of the naked condition did not support the case. Discrepancy in the deposition of PW5 Om Prakash and PW8 did not support the case. The prosecutrix denied any compromise arrived on 27.10.200 at police station. However the SI Azad Singh confirmed the same as well as DW1 Ct. Kamlesh Kumar. The links of the chain are totally broken because of the fact that the appellants were acquitted under Section 328 of IPC and they were not even charged under Section 506 IPC.

24. It is interesting to note the fact that incident took place on the Diwali day, a festival most celebrated in north India, even if an alarm

raised by the prosecutrix was submerged beneath the noise of the fire crackers, it is highly impossible that there will be no public witness. In the FIR she has categorically named two persons who have committed rape on her, where as she states the presence of 2-3 persons, which creates a doubt in the prosecution version and same lay the foundation of doubt, the benefit of which must be given to the appellants and not otherwise. No external injury marks observed by the doctor concerned who prepared the MLC of prosecutrix, also there is delay of nine days in reporting the matter to police by prosecutrix, has made the case of the prosecutrix weak. Also, as stated by the prosecutrix of her being admitted in RML Hospital, and there is no documentary evidence in the form of MLC, admission ticket etc of her being admitted in that hospital. Lastly, the place of incident was thickly populated as confirmed by PW5 in his deposition.

25. Further, PW5 Om Parkash, husband of the prosecutrix has given different version of facts whereby weakening the prosecution case. Firstly, he mentioned that on the day of incident, he was in his jhuggi when Ram Saran left prosecutrix in a naked condition, and a bucket of water was thrown on the prosecutrix, as narrated by her; this fact has no where been mentioned by the prosecutrix and neither was she found wet when she returned home to her jhuggi. However, while contradicting his earlier deposition, in the cross-examination, this witness categorically admitted that he was not present at that time when his wife was left by Ram Saran in the jhuggi.

26. After hearing submission from both learned counsels, I am of

the view the Trial Judge has not considered the fact raised by the counsel for the appellants, therefore, both appellants are acquitted.

27. In view of above, Criminal Appeal No.763/2009 is allowed and stands disposed of.

28. Consequently, Criminal M.B.No.937/2011 renders infructuous and stands disposed of as such.

29. The Superintendent of Jail is directed to release both the appellants, if not warranted in any other case.

30. Copy of order of this court be sent to Jail Superintendent, Tihar Jail for compliance.

SURESH KAIT, J

JANUARY 09, 2012

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