

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

RESERVED ON : 10th April, 2013

DECIDED ON : 25th April, 2013

+ CRL.A. 157/2004

GIRISH

..... Appellant

Through : Mr.Ravi Qazi, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Fizani Husain, APP.

AND

+ CRL.A. 168/2004

POORAN CHAND

..... Appellant

Through : Mr.Shekh Israr Ahmed, Advocate.

versus

STATE

..... Respondent

Through: Ms.Fizani Husain, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Pooran Chand, Girish and Titu @ George were arrested and sent for trial in case FIR No.607/1992 registered at Police Station Ambedkar Nagar on the allegations that on 28.11.1992 at about 07.00 P.M. near Madangir market, they abducted 'X' (assumed name) aged twenty years, put her in a car and wrongfully confined her in it. She was taken to a deserted place near Pushp Vihar and at about 11.30 P.M. Pooran Chand committed rape upon her. All the three accused persons

were charge-sheeted under Sections 342/354/376(2)(g)/120-B IPC. Vide order dated 30.07.1996, they all were charged for committing offences under Sections 366/342/34 IPC. Pooran Chand was charged additionally under Section 354 IPC also. The prosecutrix 'X' appeared to testify. After her examination, vide order dated 22.11.2001, charge was amended and Pooran Chand was charged for committing offence under Section 376 IPC. It is relevant to note that Titu @ George expired during trial. The proceedings stood abated qua him. The prosecution examined 13 witnesses to substantiate the charges. In their 313 statements Pooran Chand and Girish pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment held Pooran Chand guilty under Sections 342/366/376 IPC. Girish was convicted under Section 366/342 IPC. Pooran was sentenced to undergo RI for seven years with fine ₹2,000/- under Section 376 IPC; RI for three years with fine ₹1,000/- under Section 366 IPC and RI for six months under Section 342 IPC. Girish was sentenced to undergo RI for three years with fine ₹1,000/- under Section 366 IPC and RI for six months under Section 342 IPC. The sentences were to operate concurrently.

2. PW-12 Sh.J.P.S. Malik recorded 'X's statement (Ex.PW-12/A) under Section 164 Cr.P.C. In the said statement, 'X' did not implicate any accused for committing rape upon her. She assigned specific role to the assailants and alleged that Pooran Chand, Girish and their 4-5 associates abducted her in a car. Thereafter, she was taken to a deserted place. There Pooran Chand 'teased' her. Taking into consideration this version of the prosecutrix before the ACMM, the learned Additional Sessions Judge opted to frame charge under Section 354 IPC. State did not challenge order on charge. When the prosecutrix appeared in the Court, in her statement, she categorically implicated Pooran Chand for committing rape upon her in the bushes at the deserted place. It led to amendment of the charge. She was recalled for examination. She reiterated that after her abduction in a car, Pooran Chand committed rape upon her in the bushes. A TSR driver happened to cross that place. When he confronted the assailants, she got an opportunity to flee the spot. She spent night in a nearby Jhuggi. The Trial Court relied upon the 'X's version and convicted Pooran Chand for rape.

3. It is true that conviction in a case of rape can be based solely on the testimony of the prosecutrix but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there

exists no circumstances which casts a shadow of doubt over her veracity. In the instant case, evidence of the prosecutrix appears to be not of that quality. In her statement under Section 164 Cr.P.C. before the Magistrate, she did not at all reveal that Pooran Chand established physical relations forcibly with her. She did not assign any role to Girish, Titu @ George or any other associate assisting Pooran Chand to rape her. For the first time in her deposition in the Court she introduced a new version and implicated Pooran Chand for committing rape upon her. She also deposed that his associates caught hold of her hand and feet that time. She did not offer explanation for vital improvements made by her in her court statement. She did not assign any reason as to why these facts were not disclosed in her 164 Cr.P.C. statement before the Magistrate. 'X' and her parents remained mum on this aspect till she appeared in the court. Ex.PW-12/A was recorded under Section 164 Cr.P.C. on 01.12.1992 soon after the incident. For the first time in her deposition recorded on 28.08.2000, she introduced a new version. Charge was amended on 22.11.2001. During the intervening period, the prosecutrix or her family members did not challenge the contents of her statement under Section 164 Cr.P.C. Facts which were not found in her original statement under Section 164 Cr.P.C. were revealed by her for the first time before the Court. In *Raj Sandeep*

@ Deepu Vs.State of NCT of Delhi AIR 2012 SC 3157 the Supreme

Court held as under:-

“In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be

accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

4. The prosecutrix has failed to pass any of the tests mentioned above. There is total variation in her version from what was stated in her Statement under Section 164 Cr.P.C. and what was deposed before the Court at the time of trial. PW-2 (Madan) did not support the prosecution and turned hostile. PW-1 (Bal Mukund) at whose Jhuggi ‘X’ had taken shelter during night merely deposed that ‘X’ appeared ‘panicky’ that time. On inquiries, she revealed that some boys were chasing her. The prosecutrix did not reveal to PW-1 (Bal Mukund) that any of the assailants had committed rape upon her. Her conduct is unnatural and unreasonable and relevant under Section 8 of the Evidence Act. On the next morning she left the Jhuggi alone. She did not go to her parents’ house and did not lodge First Information Report with the police. It is alleged that she went to the residence of her Tau (uncle), who informed her father. The

prosecution did not examine the said relative of the prosecutrix at whose house, she had gone next day. The said relative also did not inform the police. It is unclear if the prosecutrix narrated the incident to him. PW-3 (Devi Dayal), TSR driver, had confrontation with the assailants including Pooran Chand and Girish that night. However, his testimony does not indicate that the prosecutrix was ravished at that place. He did not see prosecutrix 'X' in the bushes. She also did not seek his assistance and allegedly fled the spot. PW-3 (Devi Dayal) was not able to testify that the girl in the bushes was 'X' or that any of the assailants was with her that time. PW-3 had altercation with four-five persons standing near the Maruti van and Pooran Chand was amongst them. He also did not report the incident to the police though he sustained minor injuries in the scuffle.

5. 'X' went missing on 28.11.1992 and 'Missing Persons Report' was lodged at police post Dakshinpuri at 02.45 A.M. on the night intervening 28/29-11-1992. The informer did not suspect anyone. On 29.11.1992 Shri Chattar Singh ('X's father) suspected that someone had allured/enticed her daughter and kidnapped her. FIR under Section 363 IPC was lodged. PW-10 (Chattar Singh) did not depose that when the prosecutrix met her, she implicated the accused Pooran Chand for committing rape upon her. Pooran Chand and Girish were known to both

the prosecutrix and her father. They were not named when prosecutrix was medically examined. 'X's MLC (Ex.PW-4/B) does not confirm rape upon her. No injuries were found on her body. The examining doctor did not give the opinion that it was a case of 'sexual assault'. The FSL report (Ex.P-X) records that human semen was detected on Salwar (Ex.1a) and underwear (Ex.2) and it was of 'A' group. It did not match with the blood group of the accused Pooran Chand. It is unclear that the 'A' was blood group of accused Pooran Chand. In the impugned judgment it is mentioned that the blood group of accused Pooran Chand was B+. The FSL report did not co-relate the version alleged. The prosecutrix, thus, failed to instill the required confidence of the court in order to confirm conviction under Section 376 IPC. To hold the accused guilty for the commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae projected above, would go to show that her evidence does not fall in that category and cannot be relied upon to hold Pooran Chand guilty under Section 376 IPC.

6. 'X' went missing on 28.11.1992 and her father lodged DD No.6-A at 02.40 A.M.(night). His statement was recorded on 29.11.1992 and he suspected someone to have kidnapped 'X'. First Information Report under Section 363 IPC was registered. 'X' made statement to the police and disclosed that she was abducted by Pooran Chand, Girish and their associates in a car. In her statement under Section 164 Cr.P.C., she informed that when she was coming back to her house after purchasing vegetables on 28.11.1992 at about 07.00 P.M. Pooran Chand, Girish and his four-five associates met her on the way and forcibly put her in a Maruti car and took towards Pushp Vihar. She was taken here and there till 11.30 P.M. Thereafter, she was taken to a deserted place where Pooran Chand 'teased' her. In her statement before the Court, she proved the version given to the police and Magistrate without any major variation on this aspect. She deposed that she was abducted at about 07.00 or 07.30 P.M. and put forcibly in a Maruti car. She identified Pooran Chand and Girish to be the assailants. Despite lengthy cross-examination, no material discrepancies or inconsistencies in this regard. PW-1 (Bal Mukund), an independent witness, having no acquaintance with the assailants corroborated 'X's version and deposed that he saw a girl i.e. prosecutrix standing outside his jhuggi at 11.00 or 12.00 night. She

appeared to be panicky. On enquiry, she revealed that some boys were chasing her. 'X' remained in jhuggi throughout the night. On the next morning, she left to go to her house. The accused did not cross-examine the witness and his version remained unchallenged. PW-3 (Devi Dayal), another independent public witness, also supported the prosecution. He had confrontation with the assailants. He deposed that when he was dropping a passenger at Khanpur Depot on the night intervening 28/29.11.1992 in TSR No.DL-1R-7593 Pushp Vihar, he saw a blue colour Maruti van standing at a deserted place. Four-five persons were standing near the Maruti van. When he inquired as to what was the problem, he heard cries of a girl from the bushes nearby. He shouted at those four-five persons who gave him beatings. He identified Girish and Pooran Chand to be amongst the assailants with whom he had confrontation. The testimony of this independent witness inspires confidence as he had no prior animosity with the accused to falsely implicate and name them. He was not even known to the prosecutrix to favour her. The injuries inflicted upon him establish his presence at the spot. The accused did not offer reasonable explanation as to what they were doing on a deserted place at odd hours. They did not explain as to who was the girl who had run out of the bushes and taken shelter in the jhuggi of PW-1. It appears

that PW-10 (Chattar Singh) had fixed marriage of the prosecutrix and the assailants were not happy with that. It seems that to prevent her marriage 'X' was abducted in a Maruti van. The findings of the Trial Court on this aspect are well reasoned and need no interference.

7. In the light of the above discussion, conviction and sentence of the appellants under Section 366/342/34 IPC is maintained. However, benefit of doubt is given to the appellant-Pooran Chand and his conviction and sentence under Section 376 is set aside.

8. The appeal is disposed of in the above terms

9. The appellants are directed to surrender and serve the remainder of their sentence, if any. For this purpose, they shall appear before the Trial court on 02.05.2013. The Trial court shall verify if the sentence awarded under Section 366/342 IPC has been undergone by the appellants.

10. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG)
JUDGE

25th April, 2013

sa