

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

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Reserved on: 31st March, 2014

Decided on: 08th May, 2014

+ CRL.A. 400/2011 & CrI.M.B. 64/2014 (suspension of sentence)

RAM CHARAN

..... Appellant

Through: Mr. Arvinder Singh and Mr. Aditya V. Singh, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for the State with SI Roshan Lal, PS Nangloi, Delhi.

AND

**+ CRL.A. 972/2011 & CrI.M.B. 1372/2011 (suspension of sentence) ,
CrI.M.A. 5723/2011 (release on undergone sentence)**

BABLOO SINGLA

..... Appellant

Through: Mr. Deepak Vohra, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP with SI Roshan Lal, PS Nangloi.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals the Appellants challenge the judgment dated 28th October, 2010 passed by the learned Additional Sessions Judge convicting them for offence punishable under Sections 376 (2) (g)/34 IPC and the order on sentence dated 30th October, 2014 directing them to undergo Rigorous

Imprisonment for a period of ten years and to pay a fine of Rs. 5,000/- each and in default of payment of fine to further undergo Simple Imprisonment for a period of five months each.

2. Learned counsels for the Appellants contend that the testimonies of the Prosecutrix and her mother are inherently contrary and are contradicted by the other evidence and material on record. Though the Prosecutrix and her mother state that the statement was recorded at the Police Station however, the police witnesses state that the statement was recorded at the spot. Though PW1, the Prosecutrix states that on the arrival of her mother the Appellants fled away, however PW2 testifies that when she arrived she found no one over there. The claim of PW1 that she went to work and other labourers were there, is falsified from the evidence of police witnesses PW13 SI Nahar Singh and PW15 W/SI Savita who stated that being an independence day there was no one at the site. The version of the Prosecutrix is not corroborated by medical or forensic evidence. Even the MLC of the Appellants does not support the version of the Prosecutrix though she states that both the Appellants were drunk, Appellant Babloo was arrested on the spot and was medically examined. There is no material to show that he was intoxicated. Though the alleged incident took place around 10Ó clock in the morning however, they went to the police station after 12Ó clock. The ruqqa was sent only at 5.20 p.m. There is material contradiction as to the time of registration of the FIR. The first information to the police, resulting in the registration of DD entry is at 2.20 p.m. Thus the claim of the Prosecutrix that the police reached earlier is not correct. Though the floor of the toilet where the alleged rape took place was unpaved, however there are no injuries on the body of the Prosecutrix. The Prosecutrix in her statement

has stated that she scratched Appellant Babloo with her nails, the Appellant Babloo was arrested on the spot immediately after the incident and was medically examined, however, he had no injuries on his body. The MLC of the Prosecutrix has not been proved as PW7 Dr. Vijay Kumar has stated that he could not identify the handwriting of Dr. Anju Garg who examined the Prosecutrix. Further the FSL report has not been put to the Appellants under Section 313 Cr.P.C. and hence the same cannot be used against him. The defence of the Appellants that the mother of the Prosecutrix had taken a loan of Rs. 10,000/- and when the same was demanded back, this false case was foisted on them has not been considered. Reliance is placed on *State of Uttar Pradesh vs. Mohd. Iqram and another*, 2011 (8) SCC 80; *State vs. Dasharath*, ILR 1991 Karnataka 1542 and *Ikramuddin vs. State*, 2009 (110) DRJ 174 DB.

3. Learned APP for the State submits that the suggestion regarding loan and the consequent false implication on the said count has not been put to the witnesses and is thus an afterthought. PW7 has identified the signatures of Dr. Anju Garg and thus MLC stands proved. As per the FSL report semen was detected on the vaginal swab of the Prosecutrix. Contradictions with regard to the time in the testimony of the prosecution witnesses are bound to take place as they were examined after four years. The FSL report has been put to the Appellants in the statement under Section 313 Cr.P.C. Thus the appeals be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. Case of the prosecution is based on the testimony of PW1, the Prosecutrix who stated that she was working at the site where the school construction was going on as a labourer along with Appellants. This

construction was being done by one Manoj Gupta. The Appellant Babloo was working as electrician and Appellant Ram Charan was working as a Mistry (Mason). The Prosecutrix used to carry the bricks used for construction. On 15th August, 2005 she went to the construction site at about 8.00 a.m. as usual. On the way Appellant Babloo caught hold of her hand and took her inside the bathroom situated at the construction site. He gagged her mouth. The Appellant Ram Charan was also present in the bathroom there. Ram Charan forcibly raped her during which period Babloo caught hold of her legs and hands. The Prosecutrix tried to escape but they held her there. After committing rape, both of them threatened her that in case she disclosed it to anyone she would be killed. Thereafter her mother came in search of her. On seeing her mother, Ram Charan went away from the spot and the Appellant Babloo went to a tea shop. Both the Appellants were heavily drunk at that time. The brother of the Appellant Babloo took her to police station where her statement Ex. PW1/A was recorded which bears her thumb impression. She was got medically examined and her undergarments were seized by the doctor. After registration of the case, she also pointed out the place where rape was committed. Her statement was recorded by the learned Metropolitan Magistrate in the Court. In her cross-examination she stated that other neighbourers came there when she raised alarm and her mother also came there. This witness in her cross-examination has stated that when her mother and other persons abused Babloo, he took her along with him in front of them. She has denied the suggestion that when Babloo along with the other neighbourers saw the Prosecutrix in a compromising position with the Appellant Ram Charan, Babloo was falsely implicated. In cross-examination on behalf of Appellant Ram Charan, this witness has

stated that the floor of the toilet was unfinished. She was laid on the floor and that she resisted the rape by giving blow to the accused but in the process she only received injury on her back, elbow and knee. She denied the suggestion made on behalf of Ram Charan that he was not present there, he had not committed the rape and she was deposing falsely.

6. PW2 the mother of the Prosecutrix has stated that she along with her daughter used to work as labourers on the construction site of Manoj Gupta who was constructing a school. On that date her daughter had gone to the construction site alone. She also went to the site at around 12.00 a.m. in the lunch time, when her daughter did not come to find out the reason for her not returning for lunch. She went to the bathroom and saw that her daughter was lying on the ground and she was gagged and caught hold by Appellant Babloo and Appellant Ram Charan forcibly raped her. She took her daughter to the police station and reported the matter. Only Appellant Babloo was apprehended as Appellant Ram Charan went away from the construction site. In her cross-examination she has stated that one boy had informed her about the incident at about 10.00 a.m. She immediately reached the spot. She further stated that it took her around thirty minutes to reach the site. As per her she reached the police station at about 11.00 a.m.

7. PW4 Dr. Binay Kumar is the first doctor who examined the Prosecutrix and thereafter referred her for bone age estimation and gynecologist examination to Dr. Anju Garg. Though Dr. Anju Garg has not been examined however, Dr. Vijay Kumar, Medical Officer, PW7 has been produced by the prosecution. This witness has identified the signatures of Dr. Anju Garg on the MLC PW4/A. However, in his cross-examination this witness has stated that he did not know Dr. Anju Garg by face. The MLC

Ex. PW4/A was not prepared in his presence. He also could not identify the handwriting or signatures of Dr. Anju Garg and he was also not aware about the contents of the MLC Ex. PW4/A. In view of this testimony of PW7 it is thus apparent that the prosecution has not able to prove the MLC of the Prosecutrix. As per the FSL report Ex. PW15/F & G human semen was detected from the vaginal swab of the Prosecutrix. However, there is no material on record to show that the human semen related to the Appellant Ram Charan.

8. As per the Prosecutrix, her mother came after the incident was over. Even the mother says that she was informed about the incident by a boy at around 10.00 a.m. and thereafter she went to the construction site. She also stated that it took her thirty minutes to reach the construction site. However, still PW2 in her examination in chief has gone to the extent of stating that she saw Appellant Babloo catching hold of her daughter and Ram Charan committing rape on her. This later portion of her testimony is clearly an exaggeration and needs to be discarded. However, despite the fact that the MLC has not been proved and the FSL report does not connect Appellant Ram Charan to the Prosecutrix, conviction can safely be based on the statement of the Prosecutrix, if it is reliable. The presence of semen stains in the vaginal swab of the Prosecutrix show that sexual intercourse had taken place with her. As per the suggestion of Appellant Babloo there was voluntary intercourse between the Prosecutrix and Appellant Ram Charan and when he objected to the same he was implicated in this case. The Prosecutrix in her cross-examination has also admitted that when her mother and other persons abused Babloo he took her along with him in front of them. PW4 Dr. Manoj Dhingra has proved the bony age report of the

Prosecutrix. As per the bony age report of the Prosecutrix, she was between 14-16 years. Thus she was below the age of consent.

9. Learned counsels for the Appellants have highlighted discrepancies in the time. There is no doubt that there is discrepancy in the time as the first DD entry received at the Police Station is DD No. 9 on which PW6 Constable Lalit reaches the spot with SI Nahar Singh. PW12 Constable Ajit Ohlan has been examined who stated that about 2.20 p.m. he received a message through wireless that one girl has been raped at Tikri Village near Rajindra Bus Body. The said message was reduced in writing vide DD No. 9 dated 15th August, 2014. This witness has not been cross-examined nor was PW13 or PW6. Even if there is a delay in informing the police, the same is not material as the mother of the Prosecutrix PW12 has stated that when a boy informed her, she came to the spot and only when people collected information was sent to the police station. There is nothing on record to discredit the testimony of the Prosecutrix.

10. Learned counsel for the Appellants have stated that 15th August was a non-working day and even as stated by the police witnesses no work at site was going on. However, possibility of the some work by the private contractor going on cannot be ruled out and the evidence of the Prosecutrix cannot be discredited on this count.

11. In view of the evidence on record, I find no illegality or perversity in the impugned judgment of conviction and order on sentence. Appeal and applications are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 08, 2014
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