

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

Date of decision: August 06 , 2014

+ **CRL.A. 1033/2013 and Crl.M.A. 2267/2012**

STATE NCT OF DELHI

..... Appellant

Represented by: Ms.Aashaa Tiwari, APP for the State.

Mr.Robin R.David, Mr.Febin M Varghese and Ms.Esha Shekhar, Advocates for the Prosecutrix/complainant.

versus

RAJENDER GARG & ANR

..... Respondents

Represented by: Mr.Pradeep Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

Crl.M.A. No.2267/2012

1. Since leave to appeal has already been granted and appeal registered vide order dated August 13, 2013, the delay in filing the leave petition is condoned.

2. Application is disposed of.

CRL.A. 1033/2013

1. The appeal is directed against the judgment dated March 07, 2011 acquitting the respondents of the charges for offences punishable under Sections 376(g)/506/34 IPC. The complainant had also filed an appeal being

Crl.A.No.1033/2013

Crl.Appeal No.1214/2011 which was disposed of by this Court on August 13, 2013 giving liberty to the complainant to address arguments in the present appeal. Hence we have heard learned counsel for the State as well as the Complaint and also perused the record.

2. Learned counsels for the State as well as of the Complainant assail the judgment on the ground that the learned Trial Court wrongly disbelieved the testimony of the Prosecutrix. The version of the Prosecutrix has been also corroborated by her sister. Hence in view of the material evidence on record even in the absence of any medical evidence supporting the version of Prosecutrix the learned Trial Court ought to have convicted the respondents of the charges framed. They also submit that the version of the Prosecutrix inspires confidence. The delay in filing the FIR has been properly explained that due to her honour the Prosecutrix had initially not informed her family and when it was revealed to her family complaint was made.

3. The learned Trial Court acquitted the respondents on the ground that there were material contradictions and vital improvements in the testimonies of PW-4 the mother, PW-8 the father and PW-10 the sister of the Prosecutrix and PW-12 the Prosecutrix. The mother of the Prosecutrix had been shifting stands on her compromising the matter with the accused. However, she admitted signing some papers. Despite the fact, the mother of the Prosecutrix stated that scuffle took place in the office of Rajender on the next day and she received injury however, no MLC was got done. There are various informations received at PS Bindapur on the evening of December 17, 2009 giving varying version. However, in none of the calls, there is any mention of rape of the victim. Though it is the case of the Prosecutrix that

on December 16, 2009 after the incident she went home and slept before her parents reached home however, the parents have stated that they had inquired about her health and she stated that she was having stomach ache. Though the mother stated that she was at home in the next morning and offered to take Prosecutrix to the doctor however, the Prosecutrix stated that she got up in the noon on December 17, 2009 and her parents were not there and the mother returned home only in the evening. The MLC or the FSL report does not support the version of the Prosecutrix.

4. The prosecution case is based on the statement of PW-12 the Prosecutrix 'K' who deposed that on December 16, 2009 at about 4.00-4.30 PM she had gone to drop her younger sister for tuition. While she was returning home, Rajender who deals in sale purchase, construction and letting out of houses gave her a call from his office situated at Vaani Vihar. So she went to his office. Rajender was present there with other bald man. When she entered the office, Rajender closed all the doors. When she cried and shouted Rajender gagged her mouth with his hand. Thereafter Rajender and other person namely Devender raped her forcibly. She tried to kick Devender who stated that it was useless as her kicks would not hurt him. After committing rape, both of them threatened her that if she disclosed it to anyone they would kill her as well as her family members. According to her accused persons had torn her clothes during rape and after committing rape they stated to her "*Baal waal thik karke jaa hamari bhi izzat hai*". She went home where her sister PW-10 was present. She changed her clothes and went to sleep. When her sister inquired from her about the matter, she stated that she was having stomach ache and her sister gave her ajwain to eat.

Next morning she got up at about 11.00-12.00 noon. At about 2.00-2.30 PM her mother asked her about her health and if she wanted to go to the doctor which she declined. At about 2.00-2.30 PM she told her sister about the rape who in turn informed her mother and her mother went to the office of Rajender. There Rajender punched on her mother's lips. The Prosecutrix was at her home at that time and her mother came back home and took her to PS Bindapur where Rajender with many of his supporters have come. There the accused threatened her parents and stated that the Prosecutrix was of weak mind due to which her marriage could not take place and due to which her parents have got scared. They asked her to compromise the matter but the Prosecutrix and her family did not agree. Since the police was not listening to them they returned home at about 10.00-10.30 PM. On December 19, 2009 when her sister was returning from her school one person from the office of Rajender pushed her and stated "*Teri behan ke saath humne rape kar liya, teri mummy ne kya bigad liya*". At about 6.00-6.30 PM they went to PS Dabri from where they were taken to PS Bindapur, where on her statement Ex.PW-12/A FIR was registered, her medical examination was conducted and her clothes were also taken into possession. In cross-examination by learned APP she clarified that on the day of incident she was wearing yellow colour suit and peach colour sweater. She identified the clothes worn by her on that day which had been seized and were exhibited as Ex.P-1, P-2 and P-3. In cross-examination this witness stated that she sustained injury on her foot during the incident and her kurta was torn though the sweater was not torn. She also reiterated that she did not have any physical relation with anyone prior to this incident.

5. PW-10 the sister of the Prosecutrix stated that on December 16, 2009 she was present in her house when her sister came after leaving her younger sister for tuition after 2-2½ hours. She appeared to be 'sust' (lazy) and was silent. When she asked her about the matter the Prosecutrix replied that she was having stomach pain. She changed her clothes and went off to sleep. When her mother came home, she enquired about the Prosecutrix on which she stated that the Prosecutrix had slept as she was not well. The next day also she appeared to be unwell and her mother was not at home when she got up. When she asked about the reason, the Prosecutrix informed her that she had been raped forcibly by those two persons. When their mother returned she narrated the facts to her. Her mother went to the office of Rajender Garg. Thereafter her mother returned home and telephoned her father and went to PS Bindapur with her sister. Her mother and father returned home at about 11.00-11.30 PM. On December 19, 2009 when she was returning from her school after her pre-board examination one person came out of the office of Rajender Garg and pushed her and stated "*Teri Behan Ke Saath Hamney Rape Kar Liya, Teri Maa Ney Hamara Kya Bigad Liya*". She went home and told her mother about the incident. Her mother telephoned her father who came home and then she, her parents and her sister 'K' went to PS Dabri from where they were taken to PS Bindapur. This witness has been confronted from her previous statement recorded under Section 161 Cr.P.C. which shows material improvement and most of the version which was deposed before the Court was not part of statement under Section 161 Cr.P.C.

6. PW-4, the mother of the Prosecutrix deposed that she had three

daughters and the Prosecutrix was the eldest of them. About seven months ago on 16th day of the month her eldest daughter had gone to drop her youngest daughter for tuition. While returning Rajender called the Prosecutrix. He was living at Vaani Vihar. Her daughter went to Rajender's office where he had called her. On that day the Prosecutrix did not disclose anything to them but when next day she was crying in the house her other daughter inquired the reason of the crying on which she disclosed that Rajender etc. had done galat kaam with her and had torn her clothes and forcibly raped her. Her younger daughter disclosed these facts to her and she went to the office of Rejdender and confronted him. He manhandled her and called the property dealers of the area. She called 100 number and police came and took Rajender to the police station. Around 400-500 persons gathered. This witness in her cross-examination has admitted that when the Prosecutrix returned home she was not present. She had returned home at about 8.00-8.30 PM and when she returned back she found her daughter 'K' to be perplexed. She inquired from her other daughter as to why 'K' was perplexed however, she did not give any reason. She also stated that her daughter was wearing sweater over the suit at the time of incident and thus she could not notice that her suit was torn when she returned after the incident. Her other daughter informed her about the incident on the next day. Though she stated that on the next day she informed the police on 100 number about the accused person however, no PCR report was found. This witness in cross-examination gave evasive reply towards the compromise sought to be entered between the parties. However, she admitted that the document Ex.PW-4/DX was signed by her, the Prosecutrix and her husband.

7. Similarly PW-8, father of the Prosecutrix deposed that on December 16, 2009 when he reached home he inquired about her daughter who was lying on the bed. On inquiry she told that she was having stomach ache. Next morning he went to his office and at about 4.30/4.45 PM he received a phone call from his wife about the rape committed on his daughter and that there had been altercation outside the office of Rajender. He rushed to the house of Rajender where the police had already reached. Thereafter the police took Rajender to Police Station. He along with his wife and daughter 'K' went to PS Bindapur. There were 300-400 persons supporting Rajender. On 19th again they teased her younger daughter when he went home on the telephone call of his wife and lodged the complaint.

8. According to the Prosecutrix she had changed the clothes and thus went off to sleep. It is not the case of the prosecution that the clothes were washed. The alleged incident took place in the evening of December 16, 2009 and the Prosecutrix was examined on December 19, 2009 at 9.55 AM. The MLC of the Prosecutrix showed old hymen torn. In cross-examination PW-11 Dr.Namita Gupta clarified that the old tear in hymen means that the sexual intercourse was old. It could be 15-20 days old but not be 2-3 days old. The FSL report also does not support the Prosecutrix as her shirt, Salwar and underwear worn on the day of incident were taken into custody and were marked as Ex.L-1, L-2 and L-3 by the FSL report. No semen was detected on the said exhibits. Thus this Court is left with the testimony of the Prosecutrix, her family members. As settled, the law on the point is that in case the testimony of the Prosecutrix inspires confidence conviction can be based thereon.

9. As noted above after the alleged incident when the Prosecutrix came back to her house on December 16, 2009 she did not inform her family members. The information was given to the sister on the next day who informed the mother when she came home. The mother then went to the office of Rajender and had a scuffle. In this regard three DD entries were registered at PS Bindapur on December 17, 2009. DD No.34A Ex.PW-1/C-1 at about 5.45 PM states about a quarrel near Jain Mandir, Vaani Vihar, Uttam Nagar. DD No.36A Ex.PW-1/C-2 recorded at 6.00 PM states about misbehaviour with a girl (ladki ke saath chedchad ki he) and the DD No.38A Ex.PW-1/C-3 recorded at 6.14 PM states about a quarrel at Vijay Vihar, Uttam Nagar near Bhatia College. It is thus apparent that actually some incident of teasing a girl took place. For this reason people collected and there were talks of settlement going on between the father of the Prosecutrix and Rajender. Both the mother and father of the Prosecutrix have admitted their signatures on a document Ex.PW-14/DX. Even the Prosecutrix has admitted her signatures at appoint 'B' on Ex.PW-4/DX. Ex.PW-4/DX is an application from the mother of the Prosecutrix to the SHO Bindapur wherein she stated that she had quarrel with Rajender Garg as on December 16, 2009 Rajender Garg had misbehaved with his daughter 'K' and she and Rajender Garg had quarrelled with each other. It is further stated that since Rajender Garg in the presence of neighbours had apologised so she and her husband have pardoned Rajender Garg. She stated that she was doing this compromise in the presence of her husband, well wishers and the neighbours. The application nowhere suggests any allegation of rape. In view of this evidence on record and the contradictions as noted by the learned Trial Court in the testimony of the Prosecutrix, her sister, mother

and the father and the vital improvements made before the court we are of the considered view that the learned Trial Court committed no error in extending the benefit of doubt to the respondents.

10. Accordingly the appeal and the application are dismissed.

11. TCR be sent back.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 06, 2014
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