

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

**RESERVED ON : APRIL, 07, 2015**

**DECIDED ON : APRIL 27, 2015**

**+ CRL.A.924/2012**

**PRAVEEN KUMAR @ KANHAIYA**

**..... Appellant**

**Through : S.B.Dandapani, Advocate.**

**VERSUS**

**STATE**

**..... Respondent**

**Through : Mr.Navin Kumar Jha, APP.**

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Aggrieved by a judgment dated 16.05.2012 of learned Additional Sessions Judge in Sessions Case No.110/2011 arising out of FIR No.244/11 registered with Police Station Sagarpur by which the appellant Praveen Kumar @ Kanhaiya was convicted under Section 376 IPC, he has filed the instant appeal. By an order dated 22.05.2012, he was awarded RI for seven years with fine ₹5,000/-.

2. Allegations against the appellant, as projected in the charge-sheet were that on 06.10.2011 at about 05.00 a.m. at CN-94, Jhuggi Near Gali No.7, East Sagarpur, Delhi, he committed rape upon prosecutrix 'X'(assumed name). Intimation about the incident was given to the police

and DD No.13B (Ex.PW-19/A) came into existence at 06.25 a.m. at Police Station Sagar Pur. Before that an information was received at this said Police Station at 05:21 a.m. about apprehension of a thief at the spot. The Investigating Officer lodged First Information Report after recording victim's statement (Ex.PW-1/A). She was medically examined. The accused was arrested and taken for medical examination. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined 19 witnesses to establish appellant's complicity in the crime. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. Learned counsel for the appellant urged that the trial court did not appreciate the evidence in its true and proper perspective. It overlooked observations recorded in the MLC whereby no injuries, whatsoever, were found on the body of the prosecutrix. Counsel would urge that 'X' was a consenting party throughout and when her husband arrived at the spot suddenly at 05.30 a.m. from duty and found both of them in compromising position, she falsely implicated him to save her

honour. Learned Additional Public Prosecutor urged that no sound reasons exist to disbelieve the prosecutrix.

4. The occurrence took place at around 05.00 a.m. on 06.10.2011. Soon thereafter the accused was apprehended and thrashed at the spot by the public. Intimation of the occurrence was sent to the police without any delay at 05.21 a.m. vide DD No.8A. Rukka for lodging First Information Report was sent at 08.30 a.m. after recording victim's statement. Apparently, there was no inordinate delay in lodging the report with the police. In her complaint (Ex.PW-1/A) 'X' gave detailed account as to how and under what circumstances, the appellant had committed rape upon her inside her jhuggi where she was sleeping with her two small kids. She elaborated that on her raising alarm, the accused was apprehended and beaten by the public. Someone gave information to the police on her mobile about apprehension of a thief. Since the FIR was lodged promptly, there was least possibility of the prosecutrix to concoct a false story in such a short interval. Soon after the incident, the prosecutrix was taken for medical examination to D.D.U. hospital. MLC (Ex.PW-11/A) records the alleged history of sexual assault by 'X's landlord's son.

5. In her Court statement as PW-1, 'X' fully supported the prosecution and proved the initial version narrated to the police without

any variation. She implicated the accused to be the perpetrator of the crime. She testified that when her husband had gone to work, in his absence the accused entered inside her jhuggi at about 05.00 a.m. When she woke up, she found him on her bed; he clamped her mouth and committed rape upon her. She managed to come out of her room and raised alarm. The accused was apprehended and beaten by the public. She informed the police at 100 from her mobile; her statement (Ex.PW-1/A) was recorded. In the cross-examination, she admitted that the accused was acquainted with her before the incident. She admitted that the accused had kept his T.V. and single bed in her room. She explained that she could not resist or assault the accused with one free hand. After she woke up, the accused remained with her for about 5/10 minutes. Thereafter, the accused entered in the bathroom with his garments. She denied herself to be consenting party or had called the accused inside the jhuggi in the absence of her husband.

6. On scrutinizing the testimony of the prosecutrix, it reveals that despite lengthy cross-examination, no material infirmities could be elicited to disbelieve her version. No ulterior motive was assigned to 'X' for falsely implicating him in the heinous offence. Nothing was suggested to her in the cross-examination if her husband had arrived at 5:30 a.m. at

the spot and both of them were caught red handed by him. Had the prosecutrix been a consenting party, there was no occasion for her to raise alarm to attract the attention of the people in the neighbourhood to defame herself. PW-7 (Meena Devi) and PW-8 (Pushpa) who lived in her neighbourhood have deposed that at about 05:50 a.m. 'X' had knocked at their houses and had apprised them about the rape committed by the accused, after entering her jhuggi, PW-8 (Pushpa) further deposed that she had seen both the accused and 'X' quarrelling. 'X' had told her that the accused had committed rape on her. Both these witnesses were not cross-examined on material aspects.

7. Another crucial document to corroborate 'X's testimony is FSL reports (Ex.PW-19/D). As per these reports, blood was deducted on Ex.P-7 (blood stained brown gauze cloth piece). It was human blood of 'B' group. Human semen was deducted on Ex.P-1 (petticoat); Ex.P-3 (cotton wool swab); Ex.P-4a and 4b (two microslides described as 'Vaginal smear'); and Ex.P-5 (cotton wool swab). Semen on Ex.P-1 (petticoat) was of 'B' group. The Trial Court for cogent reasons declined to accept the appellant's contention that the semen could be that of 'X's husband. Since 'X's husband was away on his duty and had no access to the prosecutrix at the relevant time particularly when the

appellant admitted his presence inside the jhuggi at that time. Detection of human semen of 'B' group on X's petticoat lends credence to the prosecutrix's version.

8. Another material document which came into existence soon after the occurrence is PCR form (Ex.PW-3/A). As per this document information was received at PCR at 5:11:49 hours about the apprehension of thief at the spot. Subsequently, this information was verified and it records that there was no theft and an individual had entered inside the jhuggi.

9. PW-2 (Pawan Podhar), 'X's husband in his examination-in-chief testified about his return to the jhuggi at 08:30 a.m. on 06.10.2011 after getting information about commission of rape by the accused. Nothing was suggested to him if he had arrived at 05:00 a.m. and had found both the prosecutrix and the accused in compromising position. In 313 statement also, the accused did not take specific plea if 'X' was a consenting party. Defence raised by him in 313 statement for false implication due to non-payment of rent by the prosecutrix deserves outright rejection. Nothing has come on record if any arrears of rent were payable by the prosecutrix or her husband. The appellant did not examine his father in defence to prove if the prosecutrix or her husband had

declined to pay the arrears of rent. Moreover, for non-payment of meager amount of rent (if any) 'X' is not expected to level false allegations of rape against the appellant when he himself claimed that she had called her for an urgent piece of work in between 03:00 to 04:00 a.m. in the jhuggi. There are no cogent reasons to suspect 'X's statement.

10. PW-13 (Kedar Nath) employer of 'X's husband disclosed that on the night intervening 5/6.10.2011 'X's husband had come on duty. On the next day in the morning, Pawan Poddar's brother had informed him about the incident. In the cross-examination, nothing was inquired from him as to at what time 'X's husband was relieved of his duty. In 313 statement, the appellant did not take specific plea that physical relations with 'X' were consensual. The appellant in 313 statement admitted that when he existed out of the jhuggi, the prosecutrix had raised alarm. He did not offer plausible explanation as to why the prosecutrix would raise alarm to falsely implicate him when she had allegedly called her inside the jhuggi for an urgent piece of work. The appellant did not disclose as to what was the urgent piece of work for which he was purportedly called by the prosecutrix inside the jhuggi and he remained there from 03:00 a.m. to 04:00 a.m. The appellant did not examine any witness in defence to substantiate the defence.

11. The prosecutrix aged about 24 years was mother of two small children. The occurrence lasted for about 5/10 minutes. Under these circumstances, absence of injuries on her body ipso facto cannot be considered her to be a consenting party to coitus. 'X' was taken by surprise when the appellant clandestinely entered inside the jhuggi in her sleep at about 05:00 a.m. taking advantage of the absence of her husband. The moment 'X' realised his nefarious intention, she raised hue and cry. In the absence of any prior enmity or animosity, 'X' is not expected to falsely level serious allegations against the appellant to defame herself in the eyes of her husband and other in the vicinity. Nothing was inquired from the police witnesses if 'X's husband was present at the time of recording victim's statement and lodging of the FIR. The judgment based upon fair and proper appreciation of the evidence requires no intervention.

12. The appeal lacks merits and is dismissed. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

**(S.P.GARG)**  
**JUDGE**

**APRIL 27, 2015/sa**