

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 3rd July, 2019
Judgment pronounced on: 9th July, 2019

CRL. A. 758/2019

DEEPTI VERMA

.... Appellant

Through: Mr.Kumar Mukesh, Advocate with appellant
in person.

Versus

STATE AND ANR.

.....Respondents

Through: Ms. Aashaa Tiwari, APP for State with
Inspector Rajesh Kumar, PS Subzi Mandi.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. This is a criminal appeal filed under Section 372 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C'), filed against the judgment dated 26.03.2019 passed by ASJ/SFT-2 (Central), Tis Hazari Courts, Delhi in Session Case No. 28700/2016 in FIR No. 668/2015 registered at Police Station, Subzi Mandi, Delhi whereby the accused Nikhil was acquitted of the charge registered under Section 376 of the Indian Penal Code, 1860 (hereinafter referred as 'IPC').

2. Brief facts of the case as noted by the learned Trial Court are as under:

"That, in this case criminal law was set into motion on the complaint made by prosecutrix on dated 28.12.2015, the case was registered on dated. 29.12.2015 by W/SI Vedwati. In her complaint,

prosecutrix has made allegation that she was married for last about six years. She is a house wife and she is having four years old daughter. Her husband did not do any work and she was under tension on account of the treatment of kidney disease of her husband. She also alleged that Nikhil (accused herein) who was her neighbor used to come at her house and he also used to discuss with her regarding her tension. He took advantage of her condition, he told her that he loved her for last six years and in this way, one day he induced her and established physical relations with her and when she insisted accused Nikhil to live with her then he started avoiding her. He had made recording of her conversation and informed to the boys in her neighbourhood. She also alleged that due to the act of accused, she has been turned out of from her in-laws house and he had also established physical relations with a girl Nisha and he has started blackmailing her and had threatened her that if she takes any action then he would circulate her obscene video everywhere. Being tired of the behavior of accused, she also attempted to commit suicide by consuming 100 pills of Alprax but she was saved by the doctor. She further alleged that her life has been spoiled by Nikhil, therefore, she wanted action to be taken against him”.

3. After the completion of investigation, charge-sheet against the accused was filed before the Court for the offence punishable under Section 376(2) (n) of the IPC. To bring home the guilt of the accused, the prosecution examined 12 witnesses in all to prove its case. Statement of the accused under Section 313 of Cr.P.C was recorded, wherein he reiterated his innocence and stated that the prosecutrix had falsely implicated him out of grudge, as she had made advances towards him,

which he had refused and brought the same to the knowledge of her husband and in-laws. The accused examined no witness in his defence.

4. The learned Trial Court, upon analysis, examination and evaluation of the prosecution evidence and after considering the rival submissions recorded acquittal in favour of the accused for the charged offence.
5. Mr. Kumar Mukesh, learned counsel for the prosecutrix, contended that the impugned judgment dated 26.03.2019 is based on conjectures and surmises and has disregarded the cogent evidence, and needs to be set aside. Learned counsel further stated that it is a settled law that the accused can be convicted on the sole testimony of the prosecutrix even if there are minor discrepancies and inconsistencies in the testimony. Learned Counsel further contended that, based on the evidence of PW-2 (prosecutrix), it was demonstrated before the court that the accused had sexual intercourse with her without her consent.
6. Mr. Mukesh further stated that there are significant inconsistencies in the testimony of the accused which cannot be overlooked. Lastly, the learned counsel contended that as the accused had threatened to kill the prosecutrix and her minor daughter and also threatened to show the obscene video clips to her family, she had not informed anyone about the incident and thus the impugned judgment should be set aside.
7. Per contra, Ms. Aashaa Tiwari, APP for the State, contended that there are major variations and improvements in the testimony of the prosecutrix and that the accused cannot be held guilty on the basis of wavering statements. She further stated that the prosecutrix had refused to take a rape kit medical test which could imply that the act was consensual.

8. The learned counsel further contended that no obscene video clip was recovered from the accused and that the inordinate delay of 5-6 months in registering the FIR affords opportunity to the complainant to deliberate upon the complaint and to make embellishment and even make fabrications. Lastly, Ms. Aashaa Tiwari contended that the prosecutrix and the accused are neighbors and the prosecutrix would regularly approach the accused and had the act not been consensual the prosecutrix would have raised some hue and cry at some instance, which she did not and thus, the court may not interfere with the well reasoned judgment passed by the learned Trial Court.
9. We have heard the learned counsels for the parties and perused the entire material available on record.
10. It is a settled law that the sole testimony of the prosecutrix is sufficient to implicate the accused if it inspires confidence. Reliance can be placed on *Vijay v. State of Madhya Pradesh reported in (2010) 8 SCC 191*. Relevant para of the judgment reads as under:

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

11. Keeping in view the aforesaid settled law, the moot point involved for consideration in this appeal is whether the evidence adduced by the prosecution on rape, particularly the testimony of the prosecutrix is

trustworthy, credible and worthy of reliance. The relevant portion of the testimony of PW-2 (prosecutrix) is reproduced below:

In the month of April, 2015 in the evening time when my family members were out of my house due to sudden pain to my husband. At that time I was present in the house with my daughter, aged about 4 years after bolting the door from inside. After some time someone knocked the door and I came out and noticed it was accused Nikhil. I opened the door and accused inquired about my husband. I told him that he had been taken to the hospital due to sudden pain. He entered inside the room and asked me as to why I had not accompanied him. I told him that due to small child I had not accompanied him. On hearing the same he said okay, I am going. Instead of going out the room, he bolted the door from inside. I asked him why he closed the door from inside. He said that he wanted to talk me. He said that he was having sympathy for me and he loves me and like me. He said that I am trying to talk to you for so many days but could not get the chance in alone. He proceeded towards me. I immediately moved to open the gate but he forcibly pushed me on bed. Again I tried to escape myself. My baby was crying. Thereafter, accused established physical relations with me forcibly. When I was going to open to door accused put his hand on the neck of my daughter. He also slapped me. He also threatened me that if I disclosed the incident to anyone then he would kill me and my daughter. Accused continued to visit my house upto August 2015 and he also used to establish physical relations with me during this period. Whenever I used to go from my house, accused used to stare me and he used to stand outside my house. I asked him now it is enough. I will disclose this fact to my husband. The

accused told me that there will be no impact upon him and I will be in difficulty. Accused told me that he was having my video clip and threatened me that he will show that video clip to my husband and my family members if I disclosed the incident to anyone. I inquired from the accused regarding the video clip several times, but he did not tell me anything.

One day in the month of October, 2015, I do not remember its exact date, when the accused came to my house and established physical relations with me, on which I told him that I will disclose the incident to my husband, but there was no change in the behavior of the accused. Accused told me to continue whatever was going with me. When I refused the accused to establish physical relations, he showed video clips to my husband. I was turned down from my matrimonial house by my husband. I reached at the house of elder sister namely Neeru, who was residing nearby my in-laws house and I disclosed that I was thrown out of the house by my husband. My sister advised me to reach at the house of my mother at Sagar Pur, Delhi. Accordingly, I reached at Sagar Pur, Delhi. My mother made a call at my in-laws house but the telephone was not picked by anyone in my in-laws house. At that time I was under mental pressure due to showing of video clipping to my husband. I consumed approximately sleeping pills at Sagar Pur, Delhi and I was taken to the hospital by my mother and remained in the ICU for two days. My husband had disclosed to my brother about my relationship with the accused. My mother refused to keep me at her house and I went to the house of my sister Leena at Ramesh Nagar, Delhi. My husband was not picking my phone and my life was in trouble and I alone went to the police station

Subzi Mandi to get lodged the report. Same is already Ex.PW1/A bearing my signature at point A. I came back to my house after lodging the report and again visited at the police station on the next day of lodging report i.e. on 29.12.2015. I was further inquired by the police and taken to the hospital, where I was medically examined vide MLC Ex. PW2/A bearing my signature at point A. I was also produced before the counselor and counseled there. I had shown the place of occurrence to the police and the site plan Ex. PW2/B was prepared which bears my signature at point A.

I further want to say that I reminded the accused to marry me as he had promised to marry me and on that pretext he had established physical relationship with me 4-5 times at my house.

Accused had threatened me that he had made “intezam” for me and he would show video and audio clips to my husband.

The prosecutrix was cross examined by the learned counsel for the accused.
Relevant portion of the same is reproduced below:

“...I did not talk with accused on telephone at any time. I had stated in my examination on previous date that I am told by the accused that he was having some my audio and video recording which he would show to my husband. It is correct that no such video clip or audio clip was shown by the accused to my husband in my presence. It is correct that I had stated in my complaint that “meri sab batein jo hamare beech hui thi uski recording mere pati ko aur mere padauske sab ladkon ko faila di”. It is correct that I had stated in my complaint that “when I told accused that I wanted to live

with him then accused started talking to leave me” which is recorded in the statement Ex. PW1/A.

It is correct that I had stated in my statement u/s 164 Cr, P.C. that “jab meine uss par shaadi ke liye jor daala toh usene saari record ki hui baatein mere pati aur saas ko suna di”. These facts are mentioned in statement, Ex. PW2/D.

IO may have recorded my statement apart from my complaint, Ex. PW1/A.

It is correct that I had stated in my statement to police that “jab meine Nikhil ke saath rehen ko kaha, ussne mobile phone par hamari saari baat cheet ki recording mere pati Vipul ko suna di aur ab mere pati ne mujhe apne saath rakhne se mana kar diya hai”. All these facts are recorded in the statement Ex. PW2/DA.

It is correct that during the period from April, 2015 to December, 2015, I used to talk with my mother and my sister, Neeru. I did not inform to my mother or my sister Neeru during this period that accused used to establish physical relationship with me. I also very well knew the mother of the accused. I also did not inform mother of accused during this period that accused to establish physical relationship with me. I had not lodged any complaint against accused that he used to threaten me before lodging the present case. I was not made to listen any audio recording nor made to see any video by the police during investigation of this case. It is correct that at the ground floor at the house of my in-laws there were 6-7 rooms in which some tenants were also residing. It is wrong to suggest that there are 6-7 rooms on the first floor also. Vol. There are only two rooms on the first floor which were used by me and my in-laws.

I did not raise alarm or shouted when accused came to me after bolting the door. I did not raise alarm or shouted when accused came to me after bolting the door. I did not hit back accused when the accused slapped me. I even did not raise alarm when accused pushed me on the bed. There was a dressing table and chairs in my room at that time. Accused remained in the room for 30 to 45 minutes. My daughter was sleeping at that time. but she had woke up hearing the commotion and she also cried and thereafter, again went to sleep. I also did not raise any alarm even when the accused made sexual intercourse with me. Even I did not raise any alarm after making the sexual intercourse by the accused with me. I did not get myself medically examined in any hospital between April, 2015 to December 2015 regarding the sexual acts committed by the accused with me.

*I had stated to the IO in my statement under section 161 Cr.PC regarding the incident of rape in the month of October, 2015. **Confronted with the statement Ex.PW2/DA wherein this fact is not so recorded.***

*I had stated to the Magistrate in my statement under section 164 Cr.PC. regarding the incident of rape in the month of October, 2015. **Confronted with the statement Ex. PW2/D wherein this fact is not so recorded.***

I do not remember if I had stated the exact date of the month of October, 2015 before the Magistrate

12. From the testimony of PW-2 (prosecutrix) it is evident that there are innumerable discrepancies in her testimony. In her examination-in-chief she deposed that “accused established physical relations with me forcibly. When I was going to open to door accused put his hand on the neck of my daughter. He also slapped me. He also threatened me

that if I disclosed the incident to anyone then he would kill me and my daughter"; however she deposed to the contrary that "I further want to say that I reminded the accused to marry me as he had promised to marry me and on that pretext he had established physical relationship with me 4-5 times at my house". Further in her cross examination she deposed that "It is correct that I had stated in my complaint that "when I told accused that I wanted to live with him then accused started talking to leave me".

13. There are variations regarding the obscene video clip as well. In her examination-in-chief the prosecutrix had deposed that "When I refused the accused to establish physical relations, he showed video clips to my husband. I was turned down from my matrimonial house by my husband." She further deposed that "Accused had threatened me that he had made "intezam" for me and he would show video and audio clips to my husband". In her cross examination she deposed to the contrary that "It is correct that no such video clip or audio clip was shown by the accused to my husband in my presence".
14. It is vital to note that if the statement of the prosecutrix is not inspiring confidence or not worthy of credence then the same should not be the sole basis for conviction. The same was reiterated in ***Sadashiv Ramrao Hadbe v. State of Maharashtra: (2006) 10 SCC 92***, where the Supreme Court held the following:

9. It is true that in a rape case the Accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding

circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

15. Averting to the facts of the present case, learned counsel for the prosecutrix had argued that the consent of the prosecutrix for the sexual act was not free and voluntary as the accused had threatened to kill her and her minor daughter, contrarily, she stated that the accused had induced her to establish illicit relations upon the promise of marriage. It is apparent that the stance of the prosecutrix is ambiguous and unclear with regard to the actions of the accused.
16. Moreover, it has emerged on record that the prosecutrix had stated that she was forced to have repeated sexual intercourse with the accused, as the accused had blackmailed the prosecutrix that he would release her obscene video clips, however, it is pertinent to note that no such video clipping was recovered from the accused.
17. Nowhere has PW-2 (Prosecutrix) in her deposition stated the exact dates of the alleged crime. Moreover, it is implausible that the accused for 7 months kept on repeating the crime and the prosecutrix failed to get a chance to raise an alarm or call for help even once. It is a settled law that the benefit of doubt for delay in registering the FIR in a case under Section 376 of the IPC cannot be granted to the accused person. It is a known fact that delay in registration of FIR in such case can happen due to the fear of attracting social stigma and due to the close connection between the accused and prosecutrix. However, in the

present case there is an enormous delay of 7 months which has nowhere been properly explained by the prosecutrix. The evidence produced by the prosecution as well as the testimony of the prosecutrix at various stages is shaky and fails to inspire confidence. Hence the undue delay in lodging the FIR generates doubt in the prosecution case.

18. From the testimony of PW-2 (prosecutrix) it is evident that there were people staying on the ground floor, she had deposed that “It is correct that at the ground floor at the house of my in-laws there were 6-7 rooms in which some tenants were also residing”, yet, no independent witness has been examined by the prosecution, this signifies that there is every possibility that it is a fabricated case.
19. The veracity of the testimony of PW-2 (Prosecutrix) also comes under scrutiny as she had stated to the doctor at the time of medical examination, that at times the accused had physical relations with her consent, which evidently indicate that the prosecutrix was aware of her actions and consequences thereof. Attention of this court has also been drawn to the fact that the prosecutrix had refused to go through the rape-kit medical examination.
20. In view of her refusal to administer a rape kit medical examination, an adverse inference is drawn against the prosecutrix. Thus, there is no cogent evidence to connect the accused with the commission of the offence alleged to have been committed by him.
21. It is apparent that the prosecutrix has failed to give a uniform story and is inconsistent and wavering in her statements. On one hand, she stated that the accused established physical relations with her on the promise

of marriage, while on the other hand, she stated that the accused established physical relations forcibly by blackmailing her that he would release her audio and video clips. Even if the physical relationship was established by the accused upon the promise of marriage, the alleged act does not fall under section 376 of the IPC.

22. It is therefore observed that in the present case, while dealing with the testimony of the prosecutrix and various facts of the case, it is clear that the prosecution has not proved their case above and beyond reasonable doubt. Thus, the testimony of the prosecutrix cannot be relied upon and in no circumstance be the sole basis to convict the accused.
23. In the light of the above discussion we find no infirmity in the judgment passed by the learned trial court and we see no reason to interfere with the same. Accordingly, the present appeal stands dismissed.

SANGITA DHINGRA SEHGAL, J

MANMOHAN, J

JULY 09, 2019/afa