

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.01.2020

+ **CRL. A. 52/2020**

STATE (NCT OF DELHI)

..... Appellant

versus

RINKU @ SATISH

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Meenakshi Chauhan, APP for State.
Mr Viren Bansal, Advocate for Mr Adit S.
Pujari, Advocate (DHCLSC).
For the Respondent: Mr Ashok Chhitkara and Ms Shobha,
Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal has been filed by the State, impugning a judgment dated 27.07.2017 passed by the ASJ, Special Fast Track Court, Rohini Courts whereby the respondent was acquitted of the offences under Sections 376/354D of the Indian Penal Code, 1860 (IPC).

2. On 12.06.2013, the prosecutrix (name withheld to avoid any ignominy) filed a complaint alleging that the respondent (hereafter also referred as the 'accused') used to follow her and had forcibly

established physical relations with her at her residence by threatening her that he would show her video and defame her. It is stated that she had narrated the said facts to her sister-in-law, who had called the police. After registration of the case, the statement of the prosecutrix was recorded under Section 164 of the CrPC on 13.06.2013.

3. On 16.11.2013, the accused was charged with the commission of the offences punishable under Sections 376/453D of the IPC. He pleaded not guilty and the case was set down for trial. During trial, the prosecution examined nineteen witnesses.

4. The Trial Court examined the testimony of the prosecutrix and noted that she had given the complaint dated 12.06.2013 (Ex. PW9/A) in her own handwriting, wherein she alleged that the accused had been following her and had forcibly established physical relations with her under the threat to show videos of her in order to defame her. In her complaint, she stated that the accused had jumped into her house and had then established physical relations with her. Thereafter, he threatened her that he had made a video of her and would put the same on the internet. He kept establishing physical relations with her for the next 4-5 months. She stated she that felt harassed by this blackmailing and narrated the incident to her sister-in-law who, thereafter, called the police. The prosecutrix also added that the accused would threaten her that he would kill her husband and would make him consume liquor. In her cross-examination, the prosecutrix had stated that she knew the accused since he resided in her neighborhood and that she was on good terms with the sister-in-law of the accused. Further, she stated

that she had been sending SMSs to the accused, when the accused would throw stones and empty liquor bottles at her house. She stated that she did not report the same for the fear that her video would be publicized.

5. Upon analysis of the evidence obtaining in the case, the Trial Court concluded that there are material inconsistencies between the complaint and the testimony of the prosecutrix. The Trial Court also found the version of the prosecutrix improbable. The Trial Court observed that the prosecutrix had not deposed as to whether her video was recorded by the accused during the first time he assaulted her or thereafter. Further, had the video been recorded in her presence and to her knowledge, she would have known the truth of its existence. But she had not seen any such video and yet, claimed that she believed the accused. The Trial Court also noted that the prosecutrix had alleged that the accused had established physical relations with her on various instances. However, there was no plausible reason given by the prosecutrix as to why she did not disclose the same to either her husband, family members or the family members of the accused, especially when she admittedly had good relations with the accused's sister-in-law.

6. The Trial Court noted that the prosecutrix had deposed that the accused had blackmailed her for about eight months and had established physical relations with her for 4-5 months. However, on 12.06.2013, when she was medically examined, she informed the doctor that she was sexually assaulted and had physical relations with

the accused for the last time, eight months prior to the said date. Further, the prosecutrix had stated that the accused would jump directly into her house. The Trial Court found it improbable that the accused would have done so as the prosecutrix lived on the upper floor and her in-laws live on the ground floor of her house.

7. Further, the Trial Court noted that the prosecutrix had been, admittedly, sending messages to the accused. She stated that she was compelled to do so, as the accused would throw stones and empty liquor bottles at her house. However, she had not stated so in her initial complaint or testified to this effect in her examination-in-chief. Further, neither the nature nor the frequency of such messages was disclosed by the prosecutrix. The Trial Court also found it difficult to believe that the accused could throw the aforesaid items at her house without being noticed or objected to by the prosecutrix's family or by other neighbors. In view of these facts, the Trial Court concluded that the prosecutrix had failed to justify her prolonged silence and that her testimony did not appear to be natural or probable and therefore, did not inspire complete confidence.

8. Further, the Trial Court also noted that no witnesses had been examined to corroborate the allegations made by the prosecutrix. Her sister-in-law, who she had disclosed the alleged incident to in the first instance, was not examined. The prosecutrix's husband was examined to the extent of proving her school certificates. No other witnesses from the neighborhood were examined in order to corroborate the testimony of the prosecutrix. The Trial Court also noted that the

writings/notes allegedly sent by the prosecutrix to the accused matched her specimen handwriting and thus, evidenced that she had herself been communicating with the accused for which, no explanation was furnished.

Evidence

9. Before proceeding further, it is relevant to refer to the testimonies of some of the witnesses. The prosecutrix was examined as PW9. In her examination in chief, she stated that she knew the accused Rinku for the last ten years as he lived in her neighbourhood. PW9 correctly identified the accused in open court. PW9 stated that one year prior to the registration of the present case, the accused used to follow her (*'picha karta tha'*) wherever she went. One day the accused jumped into her house and did *jabardasti* with her and thereafter, he threatened her that if she did not act as per his directions, he would upload her video on the internet (*'dhamki dene laga ki maine teri video bana le hai agar mere anusar kaam nahi karogi to ishe internet pe dal donga'*). He would threaten her and would call her out of her residence. She deposed that he had forcibly established physical relations with her, on the threat of disseminating her video and kept on making physical relations with her for four/five months as she felt compelled to do in view of the said threat. Thereafter, he blackmailed her for about eight months. She stated that she felt so harassed by the accused blackmailing her that she told her sister-in-law (*bhabhi*) about the same. Upon being told of the incident, she (the sister-in-law of the prosecutrix) called the police at no. 100. She stated that the accused

would threaten that he would kill her husband and would make him consume liquor.

10. In her cross-examination, she stated that she had normal relations with the accused's sister-in-law (*'jesai padose ke hote hai'*) and that the sister-in-law if the accused used to come to meet PW9's mother-in-law. Further, she stated that she had often quarreled with her husband about him consuming liquor with the accused, however, he did not pay any heed to the same. Thereafter, she stated that when the accused would throw stones and liquor bottles at her house, she would message him since she felt compelled to do so. She stated that in the building where she resides, there were other tenants as well. The ground floor was occupied by her mother-in-law and brother-in-law and she lived on the upper floor with her husband and two children. She stated that she had not seen the video on the basis of which the accused was blackmailing her and she was only told of the same by the accused.

11. Bhagat Singh, husband of the prosecutrix, deposed as PW-10. He deposed her date of birth of PW9 to be 15.09.1984 and affirmed the school certificate of PW9. He further identified his signature at various points on certain documents shown to him.

12. WSI Sunita, PS Daryaganj deposed as PW18. She deposed that on 12.06.2013, she was posted at PS Vijay Vihar. She was directed to go to Sanjay Gandhi Police Post, where she met ASI Surender, W/ASI Krishna, counselor Radha Bhardwaj and the complainant

(Prosecutrix). She stated that the house of the accused was situated in front of the house of the prosecutrix. The accused was found standing in front of his house and he was arrested by her on identification. She deposed that the accused pointed at one bed lying in the room constructed on the first floor of the prosecutrix's house, where the accused had established physical relationship with the prosecutrix forcibly. In her cross examination, she affirmed that the accused had never shown her any video clipping by which the accused blackmailed the prosecutrix. She affirmed that no one came forward to claim that they had seen the said recording. The complainant did not show her any stone or empty bottle, which was allegedly thrown into her house by the accused. Further, she stated that no letter/SMS was shown to her by the complainant.

13. In his statement under Section 313 of the CrPC, the accused denied that he knew the prosecutrix for the last ten years. He denied that he would follow the accused or had established forcible physical relations with her. He denied having prepared a video of the prosecutrix and blackmailing her. He denied that he had been blackmailing the prosecutrix for about eight months and would jump into her house to establish physical relations with her. He stated that he and the husband of the prosecutrix would consume liquor together as friends and he would drink with the accused out of his own free will. He affirmed that he was arrested, however, he stated that the case against him is a false case.

Discussion and Reasons

14. At the outset, it is necessary to observe that the case of the prosecution rests almost entirely on the testimony of the prosecutrix (PW-9). In her initial statement to the police, she had stated that she is a housewife and resides at the given address. She alleged that the respondent, who lives in the neighbouring house, used to follow her whenever she went to the market. He threatened her that he had her video, which he would show to everybody to defame her. She alleged that he had been forcibly establishing physical relationships with her for the past one year and desired to forcibly maintain physical relationship with her in future as well. She alleged that he keeps threatening her that he would jump into her house and tell everyone that he done so because she had called him there and this would lead to her being defamed. In addition, she stated he also threatened that he would upload her video on the net. She stated that she was under fear to such an extent that she could not go anywhere. She stated that in the circumstances, she had disclosed the same to her sister-in-law (*bhabhi*) who then called the police at 100 number in order for proceedings to be initiated against the respondent. It is relevant to note that according to the prosecutrix, the initial call to the police authorities was made by her sister-in-law. However, for some reason, the prosecution has not examined the sister-in-law of the prosecutrix.

15. The statement of the prosecutrix under Section 164 of the CrPC was recorded on 13.06.2013. In her statement, she stated that the respondent had forced himself on her (*mere sath jabardasti ki thi*) and

she had stated that he had made a video of her and if she did not follow his dictates, he would show the video to everybody. She reiterated that the defendant had threatened her that he would jump into her house and inform everybody that she had called him there and this would result in her being defamed in the locality. She stated that she, being afraid of his threats, had done whatever he had asked her to do. She stated that for about four to five months, he had forcibly established physical relationships with her. She now stated that he would call her and meet her outside. He would also threaten that he would inform everything to her sister-in-law. She stated that the respondent had been blackmailing her for the past eight months and she could not tolerate the same anymore. She also alleged that the accused used to jump into her house to establish physical relationships with her. In addition, she also stated that he had threatened to kill her husband.

16. As is apparent from the above, there are significant improvements in her statement recoded under Section 164 of the CrPC. She had now alleged that the respondent had also threatened that he would kill her husband. No such allegation had been made in her initial complaint. She now also stated that he used to jump into her house for forcibly establishing physical relationships. However, no such allegation had been made earlier. She also stated that he would phone her and call her out to meet her. This was also not one of the statements made initially.

17. In her testimony before the Trial Court, she further improved her stand. She now stated that one year prior to the registration of the FIR, the respondent had jumped into her house and had forced himself on her and thereafter, he started threatening her that he had prepared a video and if she would not act as per his directions, he would upload the same on the internet. In her statement under Section 164 of the CrPC, she had not stated that he had started threatening her with uploading her video on the internet after he had jumped into her house and had forced himself on her.

18. In her testimony, the prosecutrix stated that she was fed up of being blackmailed and therefore, she informed about the incident to her sister-in-law (*“iske blackmailing se mai itni tang aa gayi thi ke maine apni bhabhi ko sab kuch batha diya”*) and on doing so, her sister-in-law had called the police. She stated that the respondent used to threaten to kill her husband. She now made a further allegation that he used to make him drink liquor.

19. The prosecutrix was sent for medical examination and was examined on 12.06.2013. The MLC indicates that she reported history of sexual assault eight months ago and had stated that she had physical relationships with a person other than her husband eight months ago. According to the MLC, her last contact with the respondent was eight months prior to her examination.

20. In her initial statement to the police, which led to registration of the aforesaid FIR, the prosecutrix had stated that the respondent had

established physical relationships with her since about a year and desired to continue establishing the same in future as well (*mere se kareeb ek saal se jabardasti sharirik sambandh mere saath banaye aur Rinku ne mere saath jabardasti sharirik sambandh mere ghar par aakar banaye aur aage bhi jabardasti sharirik sambandh banakar rakhna chahta hai*”).

21. There is inconsistency in her initial statement to the police; her statement recorded under Section 164 of the Cr.P.C.; and the MLC with regard to the forcible physical contact by the accused. According to her initial statement, the incidents of establishing physical relations were continuing since the past one year. However, in her statement recorded under Section 164 CrPC, she stated that he had done so over a period of four to five months and her MLC indicated that her last contact with the respondent was eight months prior to the date of examination.

22. It is also relevant to note that the complaint made by the prosecutrix, as well as her testimony, are completely vague and no particulars have been provided as to on which dates the accused committed the offending acts. Although it is stated that the respondent used to blackmail the prosecutrix, she had neither given any particular incident nor provided any details. She did not even provide the details of the last incident that eventually prompted her to inform her sister-in-law (*Bhabhi*).

23. In her cross-examination, the prosecutrix had stated that she used to have telephonic conversation with the respondent. She had also exchanged messages with him. However, she stated that the respondent used to threaten her on phone and she had messaged him only when he used to throw stones and empty liquor bottles at her house.

24. It is material to note that the prosecutrix had not made any such allegations in her initial complaint; in her statement recorded under Section 164 of the CrPC.; or, in her examination-in-chief.

25. The Trial Court found it difficult to believe the said testimony since, admittedly, the prosecutrix, her husband and their two children were not the sole occupants of the building. They lived on the first floor of the house, while the ground floor was occupied by the mother-in-law and the brother-in-law of the prosecutrix. Therefore, any incident of throwing stones or empty liquor bottles inside the premises would not escape their attention.

26. The mobile phone of the respondent was seized and examined and it did not reveal any offending video. The prosecutrix also admitted that she had not seen any video. There is also no information as to when such a video, if at all, was prepared. According to the prosecutrix, she had succumbed to threats of her video being uploaded. However, neither her nor any other person had seen that video. There is no information as to when and how the said video was prepared.

27. The prosecutrix had explained her conduct of not reporting the incident, either of the respondent forcing himself on her or throwing of stones and empty liquor bottles at her house, on the ground that she was afraid that her video would be disseminated. A video, which no one has seen and neither has anyone testified to its making.

28. It has also been brought in evidence that certain letters/notes, written by the prosecutrix to the respondent, have also been seized. The fact that said notes were in her handwriting was also established. The plain reading of the said notes does not indicate that the prosecutrix was being blackmailed. On the contrary, it does indicate that the prosecutrix enjoyed a close relationship with the respondent. In one of her note, she had explained that she did not have any affair with anybody and he could see her face for a few days, thereafter, he would not get a chance to see her (*mera kisi ke saath koi chakkar nahi hai. Kuch din aur meri shakal dekh lo baad mein to dekhne ko bhi nahi milegi*). Clearly, this is not a statement that a person who is being blackmailed and exploited would write. The note also indicates that she required a mobile phone from the respondent.

29. The mobile phone seized from the respondent also showed certain SMSs from the prosecutrix. The transcript of the said SMSs also does not support the case of the prosecution. If it is accepted that the SMSs were sent by the prosecutrix, it would indicate that her relationship was entirely voluntary.

30. Although it is not necessary that the testimony of a victim be corroborated to sustain conviction, however, this is subject to the condition that the same is found reliable. Nevertheless, given the delay in filing of the FIR; the improvements in the statement made by the prosecutrix; and the fact that the same lacks any specific details of the incident of blackmailing, this Court is of the view that it would be unsafe to convict the respondent on the sole testimony of the prosecutrix. The prosecution must establish the commission of offence beyond any reasonable doubt. In the present case, the evidence obtaining in the case leaves sufficient room for doubt as to the commission of the offence, as alleged.

31. The conclusion of the Trial Court, after examining the evidence obtaining in this case, is a plausible view. It is well settled that a Court's verdict of acquittal should not be interfered with until the same is found to be manifestly erroneous. Thus, in the given facts of this case, this Court finds no reason to interfere with the impugned judgment.

32. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

**JANUARY 27, 2020
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