

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

RESERVED ON : 12th FEBRUARY, 2015

DECIDED ON : 23rd MARCH, 2015

+ CRL.A. 176/2002

CHAND SINGH

..... Appellant

Through : Mr.Rajeev Gaur Naseem,
Advocate.

versus

STATE OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 05.03.2002 of learned Addl. Sessions Judge in Sessions Case No. 90/01 arising out of FIR No.46/2000 PS Dwarka, by which he was held guilty for committing offence punishable under Section 376 IPC, the instant appeal has been filed by him. By an order dated 06.03.2002, he was awarded RI for five years with fine ₹ 10,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 19.03.2001 at about 03.00 P.M., after wrongfully confining 'X' (assumed name) aged about sixteen years in his shop situated in House No.RZ G559, Raj Nagar-II, Palam Colony, the appellant sexually assaulted her after putting her in fear. The police machinery swung into action when intimation about the incident was conveyed vide Daily Diary (DD) No.26A (Ex.PW-11/B) at 08.20 P.M. that day. The investigation was entrusted to SI Rajiv Yadav who went to the spot and met X's parents. After recording victim's statement (Ex.PW-1/A), he lodged First Information Report. 'X' was medically examined. The accused was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was submitted against the appellant for commission of offences under Sections 342/506/376 IPC. To establish appellant's guilt, the prosecution examined twelve witnesses. In 313 Cr.P.C. denying his involvement, the appellant claimed false implication and examined DW-1 (Harish Yadav) in defence. After considering rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, convicted the appellant under

Section 376 IPC. It is significant to note that he was acquitted of the charges under Sections 342/506 IPC and the State did not challenge the said acquittal. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's conviction is primarily based upon the sole testimony of 'X'. In her statement (Ex.PW-1/A) to the police, at first instance, 'X' gave graphic detail as to how and under what circumstances, she was sexually assaulted by the appellant after confining her inside his shop. She was criminally intimidated and threatened not to disclose the incident or to face dire consequences. When she returned to home, she apprised her parents who made a telephone call to the police. In her Court statement (PW-1), she proved the version given to the police initially without much variation and implicated the appellant for forcible rape upon her at the point of knife. PW-2 (Munaki Devi) and PW-3 (Palak Dhari Verma), X's parents testified on similar lines.

4. The Trial Court did not adhere to X's version that she was forcibly raped by the appellant. It came to the conclusion that the physical relations with the appellant were with her consent. Since she was below sixteen years of age on the day of occurrence, her consent was immaterial

or inconsequential. For that reason, the appellant was acquitted under Sections 506/342 IPC. The findings of the Trial Court in this regard can't be faulted. Indisputably, 'X' and the appellant were acquainted with each other prior to the incident and lived in the same vicinity. The appellant has brought on record photographs (Ex.PW-1/DA and Ex.PW-1/DB) showing intimacy between the two before the occurrence. Number of letters were placed on record by the appellant allegedly written by 'X'. 'X' did not raise hue and cry or alarm at any stage. The shop, where the alleged incident occurred was not situated in a secluded place and was surrounded by number of other shops. Even 'X's house was opposite to the shop in question. In her earlier version Ex.PW-1/A, 'X' did not reveal if she was criminally intimidated at the point of 'knife', no such knife was recovered. She was medically examined vide MLC (Ex.PW-9/A) and no physical injuries on her body were found; there was no bleeding / discharge, no fresh tears, hymen was not intact; vagina admitted one-finger easily. Had there been forcible rape, there was every possibility of 'X' to sustain struggle marks on her body which are lacking.

5. From the inception, appellant's case was that he and 'X' were in love and had some intimacy. However, subsequently, he distanced himself from her and married someone else. In 313 statement, he put up a

specific defence that he was falsely implicated as 'X' had become revengeful after he distanced from her and married someone else. During the course of arguments, it was vehemently urged that the appellant was not the perpetrator of the crime and no such physical relations were established with 'X' at the given date and time inside the shop. To substantiate his plea, calculated risk was taken by him while moving Crl.M.A.No.7026/10 under Section 391 Cr.P.C. to produce additional evidence. It was contended that as per CFSL report dated 30.11.2001, human semen detected on Ex.1 (underwear) was of 'AB' group; whereas his blood group was O+ and as such the semen / blood grouping detected on X's underwear did not match his blood group. The said application was allowed by an order dated 28.02.2014; its report was received on 25.08.2014. Admitted position is that exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Underwear of the prosecutrix was seized at the time of her medical examination on 19.03.2001. FSL reports Ex.PW-12/C and 12/D reveal that human semen was detected on Ex.1 (underwear), 2a and 2b (two micro slides having faint smear); semen could not be detected on Ex.3 (one underwear). Human semen detected on Ex.1 was of 'AB' group.

Prosecution case was that the appellant had committed rape upon the

prosecutrix and soon thereafter, she was taken for medical examination. 'X' never claimed that semen on her underwear was not the result of the reported incident. Report dated 06.03.2014 given by Dr.Sanjev Lalwani, Addl. Professor, Department of Forensic Medicine states that there is no difference in blood group of the blood in circulation and semen of the same individual. If blood grouping is to be done, blood sample would be appropriate for the same and semen examination would not give different result. Report dated 18.03.2014 from Medical Superintendent, AIIMS reveals that the blood group of the appellant was O+. Apparently, the human semen detected on X's underwear was not that of the appellant. No reasonable explanation has been offered by the Investigating Agency as to, to whom the said 'semen' belonged; how and when it appeared on X's underwear. This report obtained pursuant to seeking additional evidence negated X's version that it was only the appellant who had sexually assaulted her that day. Scientific evidence, thus, is in conflict with ocular testimony.

6. Besides above, there are other inherent deficiencies in the prosecution case which lend-credence to the appellant's contention that he was not the author of the crime. The alleged incident took place when X had left her house to take tuition at 03.15 P.M. Indisputably, the shop

where the alleged occurrence took place was opposite to X's house. She returned to her house at around 05.00 P.M. Nothing has been explained by 'X' as to where she was for two long hours. The incident was reported to the police at around 08.20 P.M. vide DD No.26A (Ex.PW-11/B); the rukka was sent at 09.10 P.M. The prosecutrix was medically examined at 11.50 P.M. None of the prosecution witnesses has given plausible explanation for the inordinate delay in lodging the report. In her statement (Ex.PW-1/A), 'X' did not reveal if she was threatened by a 'knife'. However, in her Court statement, she improved her version and alleged that 'knife' was used to put fear in her mind. PW-1 (X) deposed that on return to her house, she narrated the incident to her mother. In the cross-examination, she was certain that her father was not present at home that time. PW-2 (Munaki Devi) deposed that 'X' returned at 06.30 P.M. and her husband was not present that time. She called Sachin, her husband's friend. Some neighbourers arrived there and police was informed. No such neighbourer or Sachin was examined by the prosecution. PW-3 (Palak Dhari Verma) claimed that he was present in the house when the prosecutrix returned at 05.15 P.M. The alleged incident had taken place inside the shop of the appellant during day time when other shops in the vicinity were open. The appellant examined DW-1 (Harish Yadav)

running shop in the name of Pooja Paints and Hardware in the neighbourhood. He expressed ignorance if any such incident had happened there at that time. He came to know about the occurrence the next day on 20.03.2001. 'X' did not raise hue and cry or alarm when she came out of the shop. 'X' was a child witness and there was every possibility of her putting blame upon the appellant with whom she was in love at one stage.

7. In view of the above referred serious infirmities and deficiencies on material points, conviction of the appellant, on the sole testimony of the prosecutrix, cannot be sustained. Settled position is that the testimony of the prosecutrix must be of unimpeachable, credibility and sterling nature to base conviction without any corroboration.

8. In the light of above discussion, the appeal is allowed. Conviction and sentence awarded by the Trial Court are set aside. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

MARCH 23, 2015 / tr