

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

RESERVED ON : 4th AUGUST, 2015

DECIDED ON : 6th OCTOBER, 2015

+ CRL.A.306/2011

RANJEET KAUR Appellant

Through : Mr.Joginder Tuli, Advocate with
Mr.Ashu K.Sharma & Ms.Pooja
Arora, Advocates.

versus

STATE (NCT GOVT. OF DELHI) Respondent

Through : Mr.Amit Ahlawat, APP.

AND

+ CRL.A.671/2011

RAJU @ NEPALI Appellant

Through : Mr.Joginder Tuli, Advocate with
Mr.Ashu K.Sharma & Ms.Pooja
Arora, Advocates.

versus

STATE Respondent

Through : Mr.Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 23.02.2011 in Sessions Case No.232/2010 arising out of FIR No.475/2004 PS Nangloi by which the

appellants - Ranjeet Kaur (A-1) under Section 328 IPC and 109 read with Section 376 IPC and Raju @ Nepali (A-2) under Section 376 IPC were convicted, they have filed the instant appeals to impugn its legality and correctness. By an order dated 28.02.2011, A-1 was awarded RI for ten years with fine ₹ 25,000/- under Sections 109/34 IPC r/w Section 376 IPC and RI for seven years with fine ₹ 10,000/- under Section 328 IPC. A-2 was sentenced to undergo RI for ten years with fine ₹ 25,000/- under Section 376 IPC. It is pertinent to mention that one Neelam @ Billo was also convicted and sentenced by the impugned judgment. However, the appeal preferred by her stood abated as she expired during the pendency of the appeal. It is relevant to note that Neelam @ Billo was acquitted of the charge under Section 5 of the ITP Act and State did not challenge it.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 06.06.2004, A-1 after administering stupefying substance to the prosecutrix 'X' (assumed name) aged around 20 years at New Delhi Railway Station took her to her residence at A-118, Chander Vihar, Nilothi with an intention to facilitate the commission of rape by her acquaintance. Thereafter, 'X' was confined inside the house and A-2 committed rape upon her during the period from 06.06.2004 to

09.06.2004. A-1 and Neelam @ Billo in furtherance of common intention abetted the commission of offence of rape upon the prosecutrix.

3. The Nangloi police swung into action on getting information at 02.00 p.m. from HC Bijender of Police Control Room (PCR) to send police assistance at A-118, Chander Vihar, Nilothi as there was something 'wrong'. The investigation was assigned to ASI Sri Kishan who with Const.Surender Kumar went to the spot. After recording X's statement (Ex.PW-11/A), he lodged First Information Report. 'X' was medically examined; she recorded her statement under Section 164 Cr.P.C. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. The accused persons were arrested and medically examined. Upon completion of investigation, a charge-sheet was filed against all of them in the Court. Charge under Section 376 IPC against A-2; under Section 5 of the ITP Act against Neelam @ Billo; under Section 328 IPC against A-1 were framed. By additional charge dated 18.01.2011, A-1 and Neelam @ Billo were charged for committing offence under Sections 376/34 IPC read with Sections 109/34 IPC. The accused persons pleaded not guilty to the charges and claimed trial. To prove its case, the prosecution examined fourteen witnesses. In 313

Cr.P.C. statements the accused persons denied their involvement in the crime and pleaded false implication. No evidence in defence was produced. Trial resulted in their conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeals have been preferred.

4. Learned counsel for the appellants in brief synopsis urged that the Trial Court did not appreciate the evidence in its true and proper perspective. It committed error to ignore that 'X' was willing and consenting party to physical relations throughout. He further urged that 'X' remained under medical treatment at Regional Mental Hospital, Thane, Maharashtra from 17.01.2001 to 12.08.2002. She got married in December, 2005 and is happily living with two children. 'X' during her stay in the house was quite friendly with the appellants and had every opportunity to escape and report the matter to the police which she never did. Her medical examination vide MLC (Ex.PW-1/A) does not reflect any external injuries on her body. Semen was not detected on the exhibits sent to FSL. Delay in lodging the FIR is unexplainable. Reliance has been placed on '*Raju & Ors. Vs. State of Madhya Pradesh*', 2008(15) SCC 133 & '*Ram Kumar vs. State of Haryana*', 2006 (2) SCC (Cri) 308.

5. Learned Addl. Public Prosecutor urged that no reasons prevail to suspect the statement of the prosecutrix who has fully supported the prosecution case.

6. Prosecutrix 'X' admittedly is a resident of Bhiwandi, Distt. Thane (Maharashtra). She was not acquainted with the appellants before the incident. Her stay in A-1's house at the relevant time is not under challenge. The appellants did not explain as to how, when, where and under what circumstances, they came into contact with 'X'.

7. In her statement (Ex.PW-11/A) recorded on 09.06.2004, giving detailed account, 'X' informed that on 10.05.2004 she had gone along with her friend Ritu to Jammu and Kashmir for outing with her parents' permission and consent and stayed there for 15 / 20 days. On return to Delhi, she alighted at a station at Panipat or Jind to fetch water but the train left. On 06.06.2004, she somehow managed to reach New Delhi Railway Station. When she was making enquiries to go to Bombay, A-1 met and informed her that she was also going to Bombay and she should accompany her. Thereafter, she was administered some stupefying substance in tea and on regaining senses, found herself in a room. She further disclosed that in the house at A-1's instance, A-2 established physical relations with her against her wishes. A-1 and A-2 also took her

to Sector -16, Rohini at the residence of one Neelam @ Billo in the car where she was forced to have physical relations with two or three men. On 09.06.2004, she somehow managed to flee from A-1's house and narrated her ordeal to the police.

8. In her 164 Cr.P.C. statement (Ex.PW-10/B) recorded on 11.06.2004 she reiterated her version. She elaborated that it was Wednesday on 09.06.2004, at around 09.00 a.m. when A-1 had gone to visit the 'ashram' of small children, she jumped from the house, went to an STD Booth and made a call to the police at 100.

9. In her Court statement as PW-11, she identified both the appellants to be the perpetrators of the crime and proved the version given to the police and before the learned Metropolitan Magistrate without major variations or improvements. She deposed that A-1 had brought her to her house from New Delhi Railway Station after administering some stupefying substance in tea, as a result of which, she started feeling giddy. At her house, A-2 committed rape upon her forcibly without her consent and wishes. A-1, thereafter, sent her along with an old man forcibly but he could not commit rape as she started weeping and raised alarm. The said old man left her at A-1's house. Thereafter, A-1 and A-2 took her to the house of Neelam @ Billo at Rohini in the car. She (Neelam @ Billo)

called one or two individuals in her house and they committed rape upon her forcibly. From there, she was taken back to A-1's house and was confined there after locking the room from outside. One day, she jumped out of the main gate and went to an STD Booth being run by a 'lady'. She provided shelter by hiding her and informed the police. Police arrived at the spot and recorded her statement (Ex.PW-11/A). In the cross-examination, she was confronted with her statement (Ex.PW-11/A) where certain facts stated by her in examination-in-chief were omitted to be recorded. She explained that her arrival at the New Delhi Railway Station was at about 06.00 a.m. A-1 had brought her in a car driven by her. She had visited Delhi for the first time. The house where she was confined was located near an 'ashram'. There was a pet dog in the house also. She reasoned that while going to Rohini, she did not raise alarm as A-1 was armed with a 'knife' tied around her body. She admitted her hospitalization for mental treatment for two months. She denied that her statement under Section 164 Cr.P.C. was tutored by the police.

10. On scanning the above said statements of the prosecutrix, it reveals that she is consistent throughout. Despite lengthy cross-examination, no material discrepancies or infirmities could be brought out to doubt her version. No ulterior motive was assigned to her for falsely

implicating the appellants. Nothing was suggested to her as to how she came into contact with the appellants. Conflicting and divergent suggestions have been given in the cross-examination making their defence highly suspect. Suggestions given to the prosecutrix are worth noting. “It is incorrect to suggest that I myself is a prostitute and it is further incorrect to suggest that in order to fetch money from the accused, I have falsely implicated them in this case. Volunteered, the accused were also saying the same thing that I may take money from them and back out from this case. It is further incorrect to suggest that I voluntarily submitted to the sexual intercourse to accused A-2 and to the said two persons at the house of accused Neemal @ Billo. It is incorrect to suggest that there was a dispute over the charging of the money as a consideration for my sexual intercourse that I had falsely implicated the accused in this case. It is incorrect to suggest that the accused neither forcibly kept me in confinement nor I was given any intoxicating tea nor I suffered any giddiness nor I was raped at all. It is incorrect to suggest that in order to mint money, I had voluntarily gone with the accused persons with my full senses at my command and when I failed in my expectation of receiving money, I falsely implicated the accused in the present case.”

11. These suggestions are enough to believe the statement of the prosecutrix in toto. Otherwise also, in the absence of prior animosity or ill-will 'X' who was stranger to Delhi was not expected to level serious allegations of sexual abuse against the appellants to have reflection on her chastity. Nothing has surfaced to infer if 'X' was a girl of easy virtue or was indulged in 'prostitution' as alleged. The accusations levelled against her in the cross-examination are without any foundation or substance. The appellants did not deny X's stay at their residence during the relevant period. The manner she identified the appellants including Neelam @ Billo and has described location of their houses reveal that she was the victim at the hands of the appellants. The appellants did not produce any document to show if they were engaged in any legal business / job. Post-event conduct of the appellants is highly unnatural and unreasonable. A-2 dared to abscond and was declared Proclaimed Offender. Feeble attempt was made to project the complainant a lunatic person. In CrI.M.A.15983/2012 this Court sought reports from the Medical Superintendent, Regional Mental Hospital, Thane (Maharashtra). It negated the appellants' contention that 'X' was suffering from a mental ailment. Order dated 12.08.2012 records that A-1 had attempted to escape from police custody.

12. Medical evidence is entirely in consonance with ocular testimony. 'X' was medical examined on 10.06.2004 vide MLC (Ex.PW-1/A). She had two abrasions measuring 1x2 c.m. over left side of labia; hymen was found broken (old healed). Police officials have also corroborated her version. In 313 Cr.P.C. statements, the appellants did not give plausible explanation to the incriminating circumstances. Adverse inference is to be drawn against the appellants for not divulging certain facts which were within their special knowledge. Non-examination of X's friend Ritu is of no consequence as she was not a witness to the incident. Presence of the prosecutrix in Delhi on the relevant dates is not under challenge. It is immaterial as to how and under what circumstances, she arrived in Delhi. Lapse on the part of the Investigating Officer to conduct Test Identification Proceedings has no impact as the prosecutrix had stayed for a number of days at the house of the appellants and had fair opportunity to identify and recognise them. She was certain that the appellants were the authors of the crime and had no hesitation to identify them in her Court statement.

13. The Trial Court has discussed all the relevant contentions in the impugned judgment which is based upon fair and true appreciation of the evidence and warrants no intervention. The conviction is affirmed.

14. Considering the gravity of the offence whereby a young girl aged around 20 years was forced into 'prostitution' for money consideration, the appellants deserve no leniency. 'X' suffered mental trauma due to the incident. It has come on record that in the year 2000 – 2002, she was getting certain treatment due to her abnormal behaviour. The disease was, however, under control. At present, 'X' is happily married and is staying in her family with her two children. It falsifies the appellants' plea that 'X' was a lady of easy virtue. Sentence order needs no modification except that the default sentence for non-payment of fine would be three months each in all for both the appellants.

15. The appeal stands disposed of in the above terms. Pending applications (if any) stand disposed of.

16. 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

OCTOBER 06, 2015 / tr