

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

RESERVED ON : FEBRUARY 18, 2015

DECIDED ON : FEBRUARY 27, 2015

+ CRL.A.84/2006

RAVINDER KUMAR

..... Appellant

Through : Mr.M.L.Yadav, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Ravinder Kumar is aggrieved by a judgment dated 30.11.2005 in Sessions Case No.04/05 emanating from FIR No.564/02 registered at Police Station Anand Vihar by which he was held guilty for committing offences punishable under Section 366/376 IPC. By an order dated 06.12.2005, he was sentenced to undergo RI for ten years with fine ₹2,000/- each under Section 366 and 376 IPC. Both the sentences were to operate concurrently.

2. Briefly stated the prosecution case as projected in the charge-sheet was that on 16.10.2004 at about 07:30 a.m. at bus stop, Jagriti Enclave, Delhi, the appellant abducted 'X' (assumed name), aged around 20 years, and sexually assaulted her till 21.10.2004 in a room located in Indira Puri, J.J.Colony, Gaziabad (U.P.). When 'X' did not return as usual from her college on 16.10.04, her father Ved Parkash searched her at various places. In the FIR lodged on 17.10.2014, appellant's involvement in kidnapping 'X' was suspected. The investigation was assigned to WSI Kaushal Pandey. On 21.10.2004 at ISBT, Anand Vihar, the prosecutrix and the appellant were apprehended during their presence at platform No.C-126. Victim's statement under Section 161 Cr.P.C. was recorded and the appellant was arrested. The prosecutrix was medically examined; she recorded her 164 Cr.P.C. statement. Statement of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed in the court against the accused. The prosecution examined 13 witnesses to establish the appellant's guilt. In 313 statement, the accused 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. I have heard the learned counsel for the parties and have examined the record. The appellant's conviction is primarily based upon the solitary statement of the prosecutrix. In her deposition (Ex.PW-1/1), she implicated the appellant for committing rape upon her after putting her in fear and threat.

4. The moot question that arises for consideration is as to whether 'X' was abducted with an intent to subject her to sexual intercourse. Admitted position is that the appellant was driver in a private bus No.DL-1P-B-1850 plying on route No.313 'X', a student at Kalindi college, Patel Nagar used to take the said bus for going to her college from Jagriti Enclave at around 7:30 a.m. In the process, both became acquainted with each other; they used to have conversation for long time. Many a times, no ticket fare was charged from her. The accused used to keep a seat for her in the bus. The prosecutrix admitted in her statement (Ex.PW1/A)) that she used to take the seat offered by the accused; he used to have talk with her; offer water to drink and wanted to make friendship with her. She clarified that she had refused to marry the accused. Apparently, the accused and the prosecutrix were acquainted with each other prior to the incident and there was some intimacy between the two. In the FIR lodged by the victim's father, it is recorded that from victim's

friend Priyanka, he came to know that 'X' used to have conversation with the driver of the bus. She even used to have talk with him on mobile. The complainant suspected not only the appellant but also Ashwini Kumar @ Raju, owner of the bus to have abducted his daughter. Subsequently, the complainant deviated from the statement and exonerated Ashwini Kumar @ Raju.

5. Undisputedly, the appellant and 'X' lived together from 16th October, 2004 till 21st October, 2004 before they were apprehended allegedly at ISBT Anand Vihar. Appellant's case is that they were apprehended from Mussori and the police brought them to Delhi. The story presented by the Investigating Officer about their arrest at ISBT does not inspire confidence as nothing has been revealed as to how and under what circumstances, they got inkling about their presence at the said place all of a sudden at odd hours. Even if the prosecution case is taken as correct regarding appellant's arrest and recovery of the prosecutrix at ISBT Anand Vihar, it appears that the prosecutrix was not under any fear that time. She had accompanied him from Indira Puri, J.J.Colony in a three-wheeler scooter to ISBT Anand Vihar in morning hours to go to Nanital. At no stage, she raised hue and cry. The appellant was not armed with any weapon to cause fear in her mind.

6. Allegedly, the prosecutrix was confined for about five days in a room rented by PW-6 (Nand Kishore). He refuted 'X's version that both of them lived in the said rented accommodation for that period. He testified that the accused along with his friend had visited him to take a room on rent in the month of October/November as his wife was ill. He rented a room situated on the first floor of his house. Next day at about 07:00 a.m. while coming out of his house, he saw the accused coming out with a girl and on inquiry, he told to have occupied the room on the previous day at about 09:00 p.m. The accused had left with the girl after locking the room. In the cross-examination by learned Additional Public Prosecutor after declaring him hostile, PW-6 admitted that the accused Ravinder had told him that the girl was his 'wife'. Apparently, the prosecutrix had an occasion to meet the landlord. However, for no reasons whatsoever, she raised any alarm or protested her alleged abduction. The room in question was not situated in a deserted place. It was surrounded by other residential houses. Had the prosecutrix raised an alarm or repeatedly knocked the door or window of the house to attract the attention of the residents, they must have come to know about her presence inside the house against her wishes. It is unbelievable that for five days long neighbours would not come to know about her presence

inside the house. It has come on record that the appellant used to go outside to arrange clothes or food. On 21st October, 2004 when the appellant had brought a TSR to take 'X' to ISBT, Anand Vihar, the auto driver was not informed about the conduct and behaviour of the appellant. Even at ISBT, Anand Vihar, where there were number of public persons, nothing was done to attract their attention. The story presented by 'X' about her abduction in a TSR being driven by the appellant when she was standing at the bus stand waiting for the bus to arrive does not appeal to mind. The number of the auto allegedly driven by the appellant to take her to college has not been revealed; no such TSR was recovered. The prosecutrix was not expected to consume 'ladoo' from an auto driver especially when she had apprehensive of staring at her in the bus. The prosecutrix aged about 20 years, a college going girl was aware of the consequences of her actions.

7. Conviction can undoubtedly be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. It is, however, well settled that if the statement of the prosecutrix is suspect, the court may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected. In the

instant case, 'X's statement has remained uncorroborated. Priyanka, 'X's class-fellow was not associated in the investigation. 'X' was medically examined by Dr.Meenakshi (PW-5) by an MLC (Ex.PW-5/A) on 21st October, 2014. There was no sign of congestion/injury/scratch marks. In the cross-examination, she admitted that the patient had not told her as to when she was subjected to rape or was drugged. No marks of injury on her private parts were found. Had the prosecutrix been subjected to intercourse forcibly by the accused for five days, she would have certainly resisted the said act, resulting into struggle marks on her body and also injury on the body of the accused. Even no injuries were found on the body of the accused in his MLC.

8. The investigating officer did not examine any witness from the neighbourhood where 'X' was allegedly confined for about five days. Even at the time of alleged apprehension at ISBT, Anand Vihar, no independent public witness was joined. At the time of arrest of the accused, in his personal search, among other things, a mobile was recovered. However, no call details of the mobile were collected by the investigating officer to ascertain his location during the relevant period. The complainant was evasive to inform if on the day of incident, 'X' had

any mobile. Adverse inference is to be drawn against the prosecution for withholding reliable electronic evidence.

9. It is evident from the circumstances referred above that 'X' was not under threat of the accused any time. She had many occasions to raise alarm/ hue and cry; she however kept mum. A college girl aged about 20 years who could distinguish between her good and bad, if stayed with the accused for a period of five days and had sexual relations without any demur, it could certainly be said that she was a consenting party throughout. The circumstances brought on record negative the existence of fear. Suffice it to say that the prosecutrix was quite mature and accompanied with the accused by her own free will.

10. In the light of the above discussion, conviction and sentence awarded by the Trial Court cannot be sustained. The appeal is allowed. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order. The appellant be released forthwith if not required to be detained in any other case.

(S.P.GARG)
JUDGE

FEBRUARY 27, 2015/sa