

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

**RESERVED ON : 5th OCTOBER, 2015
DECIDED ON : 18th NOVEMBER, 2015**

+ CRL.A. 885/2012

RAVI @ BHONDA Appellant
Through : Mr.M.L.Yadav, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent
Through : Mr.Sanjeev Sabharwal, APP.

AND

+ CRL.A. 716/2012 & CRL.M.B.108/2015

SUNIL @ NATA Appellant
Through : Mr.Vivek Sood, Sr.Advocate with
Ms.Shruti Kukreja, Advocate

versus

STATE Respondent
Through : Mr.Sanjeev Sabharwal, APP.

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

S.P.GARG, J.

1. Aggrieved by their conviction under Sections 376 (2)(g) IPC and under Sections 392/394/34 IPC by a judgment dated 29.02.2012 of learned Addl. Sessions Judge, Ravi @ Bhonda and Sunil @ Nata have

Crl.A. 885/2012 & connected appeal. *Page 1 of 11*

preferred the instant appeals. By an order dated 05.03.2012, they were sentenced to undergo RI for ten years with fine ₹25,000/- each under Section 376(2)(g) IPC; RI for five years with fine ₹5,000/- each under Sections 392/34 IPC; and, RI for seven years with fine ₹5,000/- each under Sections 394/34 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that the appellants along with their associate Sonu committed gang rape upon the prosecutrix 'X' (assumed name) on 05.08.2009 at about 10.00 p.m. at Tajpur Pahari Mines, New Delhi. They also deprived the prosecutrix of her mobile phone, three gold rings, chain, ear-rings and cash ₹600/- and inflicted injuries to her. It is relevant to note that Sonu was sent to face trial before Juvenile Justice Board as he was below eighteen years of age on the day of occurrence. Police machinery came into motion when information was conveyed about the rape incident by PW-3 (Jaiveer), victim's brother and DD No.16A (Ex.PW-18/A) came into existence at PS Badarpur on 06.08.2009 at 10.15 a.m. The investigation was assigned to SI Kusum Dangi who after recording victim's statement (Ex.PW-12/A) lodged First Information Report on 06.08.2009. 'X' was medically examined; she recorded her 164 Cr.P.C.

statement. The accused persons were arrested and medically examined. They declined to participate in Test Identification Proceedings. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellants and Sonu for commission of various offences mentioned above. To establish the appellants' guilt, the prosecution examined twenty witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication without examining any witness in defence. The trial resulted in their conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeals have been preferred.

3. I have heard the learned counsel for the parties and have examined the file minutely. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and committed grave error in relying upon the testimony of the prosecutrix without independent corroboration. The delay in lodging the FIR remained unexplained. Initial information conveyed to the police by PW-20 (Rinku) was that three individuals were attempting to commit rape upon the prosecutrix. However, when the Investigating Officer to

whom DD No.16A (Ex.PW-18/A) was assigned reached the spot, he did not find anyone there. Learned counsel would contend that the prosecutrix has not presented true facts. No injuries were suffered by her on her private parts. The prosecution was unable to collect any liquor bottle from the spot to ascertain if the prosecutrix was forced to consume liquor. The prosecution witnesses have given inconsistent and conflicting versions as to the number of the assailants. Torn clothes of the prosecutrix were not seized. PW-8 (Brij Mohan) did not support the prosecution and turned hostile. Refuting the arguments / contentions of the learned counsel for the appellants, learned Addl. Public Prosecutor urged that no sound reasons exist to disbelieve the prosecutrix.

4. Admitted position is that 'X' aged around 26 years was a widow and had two grown up children. Her brother – PW-3 (Jaiveer) lived at House No.T-514, Society Road, Tajpur Pahari, Badarpur. On 05.08.2009, 'X' along with her son had gone to him on the occasion of 'Raksha Bandhan'. It is apt to note that the appellants were also resident of Tajpur Pahari.

5. The rape-incident took place on the night intervening 05/06.08.2009 at around 10.00 p.m. The incident was reported to the police without inordinate delay and FIR (Ex.PW-14/A) came into

existence after rukka (Ex.PW-18/B) was sent on 06.08.2009. The prosecutrix was taken for medical examination to All India Institute of Medical Science on 06.08.2009. Prior to that, PW-3 (Jaiveer) had lodged DD No.16A (Ex.PW-18/A) at 10.15 a.m. on 06.08.2009 about kidnapping of her sister on the previous day at around 09.00 p.m. after the four individuals, who were author of the crime were identified and recognised. In her statement (Ex.PW-12/A), the prosecutrix gave detailed account as to how and under what circumstances, she was brutally gang raped by three individuals when she was returning to her home from the market where she had gone to take medicines for her ailing child. She attributed specific role to the appellants in committing the crime. She claimed to identify the unknown rapists if shown to her. Since the FIR was lodged promptly and the appellants were named with definite role, there was least possibility of the prosecutrix to have fabricated or concoct a false story in such a short period. In her 164 Cr.P.C. statement (Ex.PW-18/G) recorded on 11.08.2009 again she reiterated her version and implicated the appellants and their associate – Sonu to have ravished her by committing rape turn by turn. She also disclosed that the assailants tore her clothes and snatched her chain, rings, ear-rings, mobile phone and cash. In her Court statement, she proved the version given before the police and the

Magistrate in its entirety without any major variation. She identified both the appellants to be the perpetrator of the crime. She deposed that on 05.08.2009, she had gone at her brother Jaiveer's house on the eve of 'Raksha Bandhan'. Since her child was suffering from fever, she went to Badarpur market to take medicine. When she was returning through the lanes of the market, three boys stopped her forcibly and started teasing her. When she tried to rescue herself, they snatched her mobile, pulled her 'chunni'. They also snatched her ear-rings, chain and rings. Thereafter, the said boy dragged her near mines at Tajpur Pahari and committed rape upon her. She was given merciless beatings and sustained injuries on her face, stomach and legs. She was unable to move. After about an hour, again the said assailants arrived at the spot and started criminally intimidating her. Two of them i.e. Sunil and Ravi again committed rape upon her one by one. The third assailant could not commit rape as she was in a very bad shape. In the lengthy cross-examination, she informed that the appellants were not known to her and she had never seen them before. She reached home finally at around 03.30 a.m. She admitted to have conversation on her mobile with her mother at 09.30 p.m. She denied the suggestion that she had agreed to have a meeting with appellant Ravi @ Bhonda at Tajpur Pahari. She further denied that she had consented to

have physical relation with him. She further denied that due to money dispute, Ravi @ Bhonda was falsely implicated in this case. She further denied that due to her friendship with PW-20 (Rinku), she falsely implicated the appellants at his behest.

6. On scrutinising the entire testimony of the prosecutrix, it reveals that no material discrepancies or infirmities could be extracted to suspect her version. She has answered all the queries put to her in the cross-examination intelligently. No ulterior motive was assigned to the prosecutrix to level serious allegations of rape against the appellants and their associate. The appellants did not deny their presence at the spot at the time of the occurrence. In the absence of prior animosity or ill-will, the prosecutrix, a widowed lady – mother of two children, who had gone on the occasion of ‘Raksha Bandhan’ to her brother’s home, is not expected to falsely implicate the appellants for commission of rape to have reflection on her chastity. She was not resident of the said village. Her visit to Badarpur market was accidental. She remained at the spot till 03.30 a.m. She was not going to be benefitted by concocting a false story of commission of rape. Her statement is consistent throughout. Conflicting and inconsistent suggestions have been put to her in the cross-examination by the accused persons. A suggestion was put on behalf of

the accused Ravi @ Bhonda that she had consented to have physical relation with him at Tajpur Pahari. Another suggestion was put on behalf of the accused Sunil @ Nata that she was friendly with PW-20 (Rinku) and on the pretext of bringing medicine for her child, she had gone to meet him. It was further suggested that she had spent considerable time with Rinku and his friends and had taken liquor which delayed her arrival at her home at Tajpur Pahari. The suggestion put on behalf of the accused Rinku lends-credence to the prosecutrix's version about his presence at the spot. It was heavily upon the appellants to establish that physical relations with 'X' were with her free consent. The appellants did not produce any evidence to establish this aspect. Had 'X' been a consenting party, there was no occasion for her to implicate him and his two associates for commission of rape. PW-20 (Rinku) appeared as a witness but was not asked any question if he had any acquaintance with the prosecutrix or she was in their company soon before the incident. The prosecutrix who had gone to her brother's house to celebrate 'Raksha Bandhan' was not imagined to indulge in any such foul activity as alleged. It has come on record that she had conversation with her mother and brother at around 09.30 p.m. and had informed them to reach at home soon. The telephone call did not materialise thereafter. When the

prosecutrix finally reached her residence at about 04.00 a.m. she was in distress. PW-3 (Jaiveer) and PW-5 (Burfi) - her mother, have corroborated her version in this regard. No sound reasons prevail to disbelieve the positive and affirmative testimony of the prosecutrix. Adverse inference is to be drawn against the appellants for declining to participate in Test Identification Proceedings. They were identified with certainty by the prosecutrix during her Court statement.

7. The prosecutrix was medically examined vide MLC (Ex.PW-19/A). External injuries were found on her left cheek, behind left ear, right little finger and right knee. There was scar present on abdomen; hymen was found ruptured. Absence of injuries on the private parts of the victim would not by itself falsify the case of rape.

8. Minor inconsistencies, contradictions and improvements highlighted by appellants' counsel are not fatal to the prosecution case as these do not go to the root of the case. The crux of the case remains that 'X' was defiled by the appellants taking advantage of her loneliness in a secluded place when she was returning from the market to her residence. PW-18 (SI Kusum Dangi), the Investigating Officer, disclosed that certain clothes of the prosecutrix were recovered from the spot. The photographs (Ex.PW-7/1 and Ex.PW-7/2) speak volume about it. Investigating Officer

revealed in the cross-examination that during investigation, she came to know that the accused persons and Rinku were friends earlier. So there was no question of the prosecutrix to implicate the appellants at his behest. She denied the suggestion that when the accused persons declined to give money to the prosecutrix as per her demand in the presence of Rinku, they were falsely implicated in this case.

9. In 313 Cr.P.C. statements, the appellants did not give plausible explanation to the incriminating circumstances proved against them. They did not produce any evidence in defence to show their presence at some other specific place at the time of incident. They did not examine any of their family members to prove that at the relevant time, they were present in their respective houses. The Trial Court has dealt with all the relevant contentions of the appellants minutely in the impugned judgment and this Court finds no good reasons to take a different view. The conviction of the appellants is based upon fair and true appreciation of the evidence and needs no intervention.

10. Considering the gravity of the offence whereby a widowed lady was brutally gang-raped by the appellants taking advantage of her loneliness in a secluded place, they deserve no leniency. The appellants were convicted under Sections 392 and 394 read with Section 34 IPC and

separate sentences for the said crime were awarded to them. Section 394 is an aggravated form of Section 392 IPC. Since the Trial Court had convicted and sentenced the appellants under Sections 394/34 IPC, there was no requirement to award separate sentence under Section 392 IPC. Accordingly, sentence awarded to the appellants under Section 392 IPC is set aside. Other terms and conditions of the Sentence Order are left undisturbed.

11. The appeals stand disposed of in the above terms. Pending application also stands disposed of.

12. 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

NOVEMBER 18, 2015 / tr