

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

RESERVED ON : 2nd JULY, 2015

DECIDED ON : 22nd JULY, 2015

+ CRL.A. 1107/2011

RAM CHANDER

..... Appellant

Through : Mr.Biswajit Kumar Patra,
Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Navin K.Jha, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 23.12.2010 of learned Addl. Sessions Judge in Sessions Case No. 11/2008 arising out of FIR No. 111/2007 PS Gokalpuri, Delhi, by which the appellant – Ram Chander was convicted under Sections 376(2)(g)/380/506 IPC, the instant appeal has been preferred by him. By an order dated 06.01.2011, he was awarded RI for ten years with fine ₹ 50,000/- under Section 376(2)(g) IPC; RI for

three years with fine ₹ 10,000/- under Section 380 IPC and RI for three years with fine ₹ 5,000/- under Section 506 IPC. The substantive sentences were to operate concurrently.

2. The prosecution case as set up in the charge-sheet was that on 15.02.2007 at about 11.00 a.m. at A-98, gali No.2, Bhagirathi Vihar, Delhi, the appellant – Ram Chander @ Kanhaya along with his associate Vashisht @ Thekedar (since PO) committed gang rape upon ‘X’ (assumed name) aged 28 years. They also committed theft of ₹ 28,000/-, ear-rings and gold chain belonging to the complainant besides criminally intimidating her. Police machinery was came into motion on receipt of an information about a ‘quarrel’ and Daily Diary (DD) No.6A (mark ‘4-A’) came into existence at PS Gokalpuri, Delhi at 11.18 hours. The investigation was assigned to HC Chanderveer Singh who with Const. Rambhaj went to the spot. The investigation was taken over by W/ ASI Nirmala who lodged First Information Report after recording victim’s statement (Ex.PW-1/A). ‘X’ was medically examined. Statements of various witnesses conversant with the facts were recorded. Efforts were made to locate the perpetrators of the crime. The appellant could be arrested on 22.03.2007 whereas his associate Vashisht @ Thekedar remained untraced and was finally declared Proclaimed Offender. Upon

completion of investigation, a charge-sheet was laid before the Court against the appellant. The prosecution examined nine witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication without producing any defence evidence. 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 file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error to base conviction on the sole testimony of the prosecutrix without any independent corroboration. Material discrepancies and contradictions emerging in the statements of the prosecution witnesses were conveniently ignored and overlooked by the Trial Court. No visible injuries were found on X's body at the time of her medical examination. Articles allegedly stolen from the house were not recovered. The appellant was wrongly named in the FIR as 'Kanhaya' whereas his real name is Ram Chander. Admittedly, the appellant did not establish physical relation with 'X'. There is no evidence if he participated or facilitated the offence of rape by his associate Vashisht @ Thekedar in any manner. The prosecution was unable to establish if the appellant shared common

intention with co-accused to commit rape. Learned Addl. Public Prosecutor urged that no valid reasons prevail to disbelieve the prosecutrix who was ravished by the appellant's associate in his presence.

4. The occurrence that took place on 15.02.2007 at around 11.00 a.m. was promptly reported to the police and Daily Diary (DD) No.6A (mark '4-A') came into existence at PS Gokalpuri, Delhi at 11.18 hours. HC Chanderveer Singh with Const. Rambhaj immediately rushed to the spot where 'X' apprised them about commission of rape. PW-5 (HC Chanderveer Singh), on getting information about commission of rape by Vashisht @ Thekedar and Kanhaya, requested the Duty Officer to depute senior officer. Subsequently, the investigation was undertaken by W/ASI Nirmala who with SI Prakash Roy reached the spot. She recorded victim's statement (Ex.PW-1/A) and sent rukka by making endorsement (Ex.PW-4/A) over it at 04.15 P.M. Prior to that at 02.10 p.m. 'X' was medically examined at Guru Teg Bahadur Hospital, Shahdara vide MLC (Ex.PW-8/A). In her statement (Ex.PW-1/A), 'X' gave detailed account of the incident and attributed specific role to the appellant and his associate in the commission of crime. While appearing as PW-1, she proved the version given initially to the police without any variation. In her deposition before the Court, she disclosed that on 15.02.2007 at around

11.00 a.m. she was alone in the house as her husband was away to his place of work. At that time, the appellant who lived on the third floor of the house as 'tenant' along with his associate Vashisht @ Thekedar, came; tapped her door and enquired whereabouts of her husband. When she apprised him that her husband was away at his work, he put the latch of the door from outside. After a while, the appellant and his associate came inside her room and put the latch of both the doors of the room. Vashisht @ Thekedar removed her salwar. Attributing specific role, she disclosed that the appellant caught hold of her; whereas Vashisht @ Thekedar closed her mouth. The accused removed her ear-rings, chain and cash ₹ 28,000/-. Vashisht @ Thekedar committed rape upon her in his presence. The accused held her while Vashisht @ Thekedar put knife on her chest. She could not raise alarm due to fear. Both of them tied her hands and legs, put her on the bed and threatened to kill if she raised alarm. In the cross-examination, she informed that she had three children and the eldest one was aged about 11 years. Her two children used to go to school. She fairly admitted that the appellant had not removed her jewellery forcibly. She was tied with the clothes of her husband. She knew the appellant by the name of Kanhaya.

5. On analysing the testimony of the prosecutrix in its entirety, it reveals that material facts deposed in her examination-in-chief have remained unchallenged and uncontroverted. The appellant did not deny his presence inside X's room along with his associate at the relevant time. No suggestion was put if co-accused Vashisht @ Thekedar had not sexually assaulted the prosecutrix to his view. No ulterior motive was assigned or attributed to the prosecutrix for falsely implicating the appellant in the heinous crime. Nothing has emerged if there was any previous animosity on any cause with the prosecutrix prompting her to falsely implicate her neighbour. In the absence of prior ill-will or enmity, the prosecutrix, a married lady, aged around 28 years, mother of three children was not expected to level serious allegations of rape. No valid reasons exist to disbelieve the statement of the prosecutrix, particularly when she stood the lengthy cross-examination without any material damage to the case of the prosecution. She is a victim of the crime. She does not have a strong motive to falsely involve the appellant. Specific role was attributed to the appellant and his associate in the crime. 'X' assigned a definite role to Vashisht @ Thekedar whereby he alone ravished her. She was fair enough to state that she was not sexually

assaulted by the appellant. She accused him of committing theft of her jewellery, cash and other articles that time.

6. Undoubtedly, the appellant and his associate Vashisht @ Thekedar used to stay in a room on the third floor on the day of incident. PW-2 (Roopwati), landlady, emphatically deposed that she had rented out the room on the third floor to Ram Chander (the appellant) and Vashisht @ Thekedar. She identified the appellant to be the individual who was also known by the name of Kanhaya. In the cross-examination, she elaborated that the accused was inducted as a tenant on 07.02.2007. In 313 Cr.P.C. statement, the appellant admitted that he and Vashisht @ Thekedar used to live as tenant on the third floor of the premises in question. Earlier, the appellant had declined to have occupied any room as a tenant. The appellant was missing from the tenanted accommodation soon after the occurrence and could be arrested after a gap of about one month on 22.03.2007 only. Various attempts were made by the police to apprehend him at his place of work in Delhi and at his native place; however, he was untraceable. The circumstance of abscondance soon after the incident points an accusing finger against the appellant. He did not explain or give any reason for abscondance for so long and for not going

to his place of work to earn his livelihood as usual. As observed above, Vashisht @ Thekedar could not be found till date.

7. Soon after the incident, 'X' was medically examined vide MLC (Ex.PW-8/A) at Guru Teg Bahadur Hospital proved by PW-8 (Dr.Ria). MLC records the alleged history of rape at 11.00 a.m. FSL report reveals that 'human semen' was detected on Ex.'1' (Bed-sheet); Ex. '3A' & '3B' (micro slides described as vaginal swab slides of the prosecutrix); Ex. '5a' (kurta) and Ex. '5b' (salwar). Detection of 'human semen' on the bed-sheet and other pieces of clothes of the prosecutrix lends-credence to her version that sexual intercourse had taken place. In 313 Cr.P.C. statement, the appellant did not deny physical relation by Vashisht @ Thekedar with the prosecutrix. He merely stated that Vashisht @ Thekedar, the real culprit succeeded to flee whereas he was falsely implicated by the police.

8. The prosecution has produced clinching evidence to prove that the appellant had accompanied his associate Vashisht @ Thekedar to the residence of the prosecutrix at 11.00 a.m. where she was sexually assaulted by Vashisht @ Thekedar. The appellant did not offer any reasons as to why and for what purpose, he along with his associate had gone inside the prosecutrix's residence in the absence of her husband

skipping his duty at his place of work. He also did not give any reason as to what forced him to abandon his work for one month after the occurrence when he went in hiding. Nothing has come on record to ascertain as to where and at which particular place, the appellant stayed during this period to avoid arrest. Appellant's name had emerged soon after the incident in X's statement (Ex.PW-1/A). She was not even aware of his real name as Ram Chander and referred him by the name of Kanhaya. She identified him to be one of the perpetrators of the crime in the Court. Minor discrepancies, contradictions and improvements highlighted by the appellant's counsel are not material to throw away the prosecution case overboard. 'X' was not going to be benefitted in any manner by levelling serious allegations of rape against the appellant and his associate. Taking advantage of absence of her husband, the appellant and his associate committed the crime when landlady living on the ground floor had gone to her native village on 12.02.2007 to attend a marriage function. Finding the prosecutrix alone, the appellant and his associate Vashisht @ Thekedar not only sexually assaulted her but also deprived her of valuable articles and cash. Adverse inference is to be drawn against co-accused Vashisht @ Thekedar to avoid arrest to face criminal proceedings initiated against him.

9. The prosecutrix has categorically alleged commission of rape by Vashisht @ Thekedar in the presence of the appellant. She also assigned specific role to the accused / appellant whereby he caught hold of her and also tied her along with his associate. The appellant did not intervene to prevent Vashisht @ Thekedar from establishing physical relations with 'X'. Rather he facilitated him and removed her gold chain, ear-rings and cash. Both the assailants had gained entry inside the house after ensuring that 'X' was alone in the house. They had apparently, no reasonable excuse to visit 'X' at that point of time when her husband and children were away. After the crime, they both fled the spot together. From the facts and circumstances of the case, common intention is reflected by the participation of both the accused persons in the crime. All these circumstances indicate beyond doubt that the appellant and Vashisht @ Thekedar were acting in concert and shared common intention to commit the crime. It is settled law that common intention or intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. Direct proof of common intention is seldom available and, therefore, such

intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.

10. In cases of gang rape, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim. In ‘Ashok Kumar vs. State of Haryana’, 2003 Cri.L.J. 4932, Supreme Court held :

“....In order to establish an offence under Section 376 (2)(g) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence”.

11. In 313 Cr.P.C. statement, the appellant did not give plausible reason for false implication. He attempted to divert the entire blame upon

his associate and stated that the real culprit i.e. Thekedar succeeded to decamp the spot. He admitted that he was working with Thekedar for the last 3 – 4 months before the incident. There is no denial that the appellant did not live with co-accused Thekedar in the premises in question. No evidence in defence was filed to falsify the incriminating circumstances proved on record by the prosecution. He even did not bother to examine any witness from his family to prove if during the relevant period, he was present at his specific place of work.

12. Certain deficiencies and discrepancies pointed out by the appellant's counsel are inconsequential to dislodge the prosecutrix' cogent and reliable version.

13. In the light of above discussion, conviction recorded by the Trial Court cannot be faulted and is affirmed. Minimum sentence prescribed under Section 376 (2)(g) IPC i.e. RI for ten years cannot be modified or reduced in the absence of adequate or specific reasons. Sentence order requires modification to the extent that default sentence for non-payment of fine would be two months in all. Other terms and conditions of the Sentence Order are left undisturbed.

14. The appeal stands disposed of in the above terms.

15. 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

JULY 22, 2015 / *tr*