

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

% *Judgment reserved on :16.9.2015*
Judgment delivered on :22.09.2015

+ CRL.A. 1150/2013

PURAN CHAND SHARMA Appellant

Through Mr.Jivesh Kumar Tiwari,
Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through Ms.Meenakshi Dahiya, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 01.5.2013 and 02.5.2015 respectively wherein the appellant had been convicted under Section 376 of the IPC. He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.20,000/- in default of payment of fine to undergo SI for 2 years.

2 The nominal roll of the appellant reflects that as on date he has undergone incarceration of 3 years and 10 months which includes the remissions earned by him.

3 This is an unfortunate case wherein the victim before this Court is the daughter of the appellant. The case of the prosecution which was unfolded in the version of the prosecutrix (N) examined as PW-11 is to the effect that on the intervening night of 11.12.2005 at about 2.00 a.m. her father had committed rape upon her. This was at their residence D1/549, Gali No.13A, Ashok Nagar, Delhi. On earlier occasions also he had committed rape upon her. The complaint was lodged before the police station on 08.6.2012. Her statement was recorded under Section 164 Cr.P.C. FIR was registered and the criminal law was set into motion. Apart from the statement of the prosecutrix the medical report of the concerned doctor, Dr.Nitasha Gupta (PW-2) was to the effect that the hymen was ruptured. There was also nothing to suggest that the appellant was not capable to perform sexual act.

4 In his statement recorded under Section 313 Cr.P.C. the appellant had stated that this is a false case which has been set up against him at the behest of his wife who had strained relations with him. His daughter had deposed falsely only on the ill advise of his wife.

5 In view of the aforementioned evidence led before the Trial Judge both oral and documentary the accused was convicted and sentenced as
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aforenoted.

6 On behalf of the appellant arguments have been addressed in detail. Learned counsel for the appellant submits that this is a clear case of false implication and the testimony of PW-1 which is wholly unreliable and full of contradictions and which had formed the sole basis of the conviction of the appellant cannot be relied upon. If this evidence is rejected there is nothing to suggest that the appellant is guilty of the crime for which he had been convicted. It is pointed out that the MLC of the victim (ExPW-2/A) also shows that no injury had been suffered by her. Had it been a case of continuous rape by the appellant upon her as is the allegation; injuries could have been noted upon her person. Attention has been drawn to her testimony to support these arguments.

7 Needless to state that these arguments have been refuted. It is stated that by no stretch of imagination can it be inferred that a daughter would make such false allegations against her father and it is clearly a true version. Her testimony was rightly relied upon by the Trial Judge to convict the appellant.

8 Arguments have been heard. Record has been perused.

9 There is no gain saying to the proposition of law that if the sole

testimony of the victim of rape is un-blemish and wholly truthful, it is sufficient to form the basis of the conviction of an accused.

10 The relationship between the parties has been noted. The victim is a 16 year old girl. In her testimony she had disclosed that they are three brothers and one sister and she had been studying in 10th class on the date of the incident. Her father and mother had strained relationship. In the year 2007 because of continuous quarrels her mother had gone to her maternal uncle's house in Mainpuri, U.P. Her father was a Trantrik and he used to molest her. On 11.5.2011 while she was sleeping with her mother on the first floor of their house at around 2.00 a.m. her father picked her up and brought her down-stairs and took her to his bed where he committed sexual intercourse upon her. Her mother came downstairs and tried to raise a protest but the accused threatened both her and her mother. Earlier also the accused had also molested her and had indulged in similar act. On 08.06.2011 she lodged her complaint with the police. Her statement was recorded. This was after a month. She has been subjected to a lengthy cross-examination.

11 In her cross-examination, she admitted that on the date of the incident she was sleeping on the first floor where her mother and her

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two brothers were also sleeping. Her grandmother was living separately from them for the last 10 years as her father was not in good terms with her. There was no tenant in the house at that point of time. The house comprised of ground floor and first floor. At present there is a tenant in the first floor but there was no tenant at the time of the incident. Her father had slapped her on one occasion. This was for the reason that she refused to fulfill his demand of physical relation. She admitted that in the year 2008 her father suffered a leg injury. She denied the suggestion that her mother and her maternal uncle attempted to throw her father from the roof pursuant to which he sustained this injury. Vol. this injury was because of his own fall. There is a rod implanted in his leg. She denied the suggestion that her father cannot climb stairs. She admitted that on the date of the incident (at 2.00 a.m.) she did not raise any protest or alarm when her father attempted to take her away from the room as she did not imagine her father would commit foul act with her again. She had attempted to escape from the clutches of her father but she remained unsuccessful. Before her mother came downstairs, she (PW-1) had put on her clothes. She did not call the police at that point of time. Her mother informed her maternal uncle on the following

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morning. They admittedly did not lodge the complaint with the police till 08.06.2011. She denied the suggestion that this case has been falsely planted upon the accused only to grab his property by her mother in connivance with her maternal uncle and it was on her maternal uncle's request that she deposed falsely against her father. She admitted that there was an occasion when her father intended to sell his property and in order to protect the property certain documents were got executed by her mother and father. She admitted that a civil suit had been filed by her father but she is not sure as to whether injunction had been obtained in the suit or not. She admitted that when her father appeared in Judicial Custody her mother had a word with her father and he agreed to part with half portion of the said property in favour of her mother but she denied that her mother wanted the entire property to be transferred in her name. She denied the suggestion that the whole case had been set up in order that her mother could grab the property of her father. She admitted that she knew one Gurmeet Singh who used to visit her mother. She never met Gurmeet Singh personally. She did not know about any personal meetings between Gurmeet Singh and her mother. He was a property broker. She denied the suggestion that in

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connivance with Gurmeet Singh her mother got this case registered.

12 Version of PW-1 as narrated above discloses that the incident dated 11.5.2011 had occurred at 2.00 a.m. in the morning when she was sleeping on the first floor with her mother and two brothers. Version of the prosecutrix is that even on earlier occasions her father had molested her and committed rape upon her. She did not raise alarm when her father took her downstairs at 2.00 a.m. in the morning. This conduct of the victim does not appear to be natural. If her father had done these unbecoming acts on earlier occasions as well it would have been most natural for the victim to have protested when her father came to take her away from the first floor of the house at such an odd hour i.e. 2.00 a.m.. She could have well raised protest when her mother and her brothers were also sleeping in the same room. It is surprising that her mother and her both brothers did not hear any noise when her father came into their room and tried to wake her up. The most spontaneous reaction of the victim would have been not to go with her father as admittedly her father on earlier occasions had also committed rape upon her. It has come on record that these acts were committed upon the victim some time prior to the 11.5.2011 (frequently once in a week). At that point of

time it would have been her natural reaction to raise a hue and cry but she admittedly did not do so. She admitted that this room was on the first floor and her father has a rod in his leg but she denied the suggestion that he could not climb the stairs. Be that as it may, even after the incident was over and her mother had come downstairs to the room of her father neither of them thought it fit to report the matter to the police. They waited up till next morning to call her maternal uncle. The police report was lodged almost one month later i.e. 08.6.2011.

13 The submission of the learned counsel for the appellant that the delay in lodging of the FIR is wholly unjustified does have force. It is true that every delay in lodging of an FIR may not be fatal to the version of the prosecution but on the basis of the facts and circumstances of the present case (as noted supra) where the victim was being subjected to the lustful acts of her father since the last so many months and her mother having learnt about it on the same day but waited for almost a month (i.e. up to 08.6.2011) to lodge a report to the police does create a doubt in the mind of this Court that this was an improved story and whether the incident as narrated by the victim happened or not becomes wholly questionable.

14 In this context, the observations of the Apex Court in Rajeevan and Anr. vs. State of Kerla 2003(3) SCC 355 are relevant and quoted herein as under:

"13. Another doubtful factor is the delayed lodging of FIR. The learned counsel for the appellants highlights this factor. Here it is worthwhile to refer Thulika Kali v. State of Tamilnadu, 1972CriLJ 1296 wherein the delayed filing of FIR and its consequences are discussed. At Para 12 this Court says -

"...First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye-witness present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after- thought. On account of delay, the report not only gets benefit of the advantage of spontaneity danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging the first information report should be satisfactorily explained."

15 The testimony of PW-1 becomes suspicious also for the reason admitted that her mother and her father were sharing an acrimonious relationship since 2007 and so much so that the mother of the victim since 2007 had gone to live with her brother. However, on the fateful

day she was admittedly in the house of the appellant. It has come on record that there was a dispute pending between them regarding the house in question which was in the name of the appellant and a civil suit had been filed by the appellant against his wife seeking an injunction. It has also come on record that at the time when the appellant was in judicial custody he had offered to transfer half of the house in favour of the mother. There were talks between her mother and father wherein her father agreed to transfer half share in the house in favour of her mother. Her mother probably wanted the whole house. The possibility that the mother of the prosecutrix driven by a feeling of revenge had instigated her daughter to make this false complaint cannot be ruled out. Had it been true, there is nothing which could have prevented them from reporting the matter earlier to the police and especially when these acts as per the prosecutrix were going on since the last so many months prior to 11.5.2011. Even after her mother learnt about the incident on 11.5.2011 the mother and the daughter did not think it fit to report the matter to the police. It was finally on 08.6.2011 that the complaint was lodged with the police. There is no answer to this delay.

hold that the testimony of PW-1 is neither cogent and nor coherent. It casts great shadows of doubt upon her version. In the context of a false implication by a daughter qua her parent at the behest of her mother the Apex Court in the judgment of Radhu vs. State of Madhya Pradesh 2007 Cri LJ 4704 wherein also the daughter had leveled false allegations of rape had noted that such charges may be rare but at the same time the possibility of a false implication cannot be ruled out. The relevant extract of the observations of the Apex Court in that judgment reads as under:

“The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instance where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

17 No doubt it is true that each factual case rests upon its own matrix and no one situation can be a precedent for another but as discussed supra this Court is of the view that this is a case where the prosecutrix at the behest of her mother had leveled these false charges against her father. At the cost of repetition it is difficult to imagine that an adult daughter (aged 15-16 years) who had been subjected to rape and lustful

acts of her father for the last several months did not raise any protest when her father attempted to take her away from the room at an odd hour in the night and where her mother and her two brothers were also sleeping in the same room. Her natural conduct would have been to raise a protest especially when on earlier occasions also her father had committed these undesirable acts upon her; yet she did not do so. Her conduct appears to be colourable and un-natural.

18 This Court is of the view that the appellant is entitled to a benefit of doubt and consequent acquittal. Appellant is accordingly acquitted. He be released forthwith if not required in any other case.

19 Appeal disposed of in the above terms.

INDERMEET KAUR, J

SEPTEMBER 22, 2015

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