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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : AUGUST 05, 2015

DECIDED ON : NOVEMBER 05, 2015

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CRL.A. 1177/2011

RAGHUVINDER HARNA

..... Appellant

Through : Mr.K.K.Sud, Sr.Advocate with
Mr.Subhash Chandra Sagar,
Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.Navin K.Jha, APP for the State.
Mr.Gaurav Kumar Singh, Advocate
for R2 & R3.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 03.08.2011 of learned Additional Sessions Judge in Sessions Case No.1126/2010 emanating from FIR No.357/09 registered at Police Station Shalimar Bagh by which the appellant Raghuvinder Harna was convicted under Section 376 IPC, the instant appeal has been preferred by him. By an order dated

24.08.2011, he was sentenced to undergo Rigorous Imprisonment for seven years with fine ₹1,00,000/-.

2. Briefly stated the prosecution case as reflected in the charge-sheet was that on 13.11.2009 at around 9.30 a.m. at House No.550, C&D Block, Shalimar Bagh, Delhi, the appellant committed rape upon the prosecutrix 'X' (assumed name), aged around 41 years and criminally intimidated her. Information about the incident was conveyed to the police on 06.12.2009. The Investigating Officer after recording victim's statement (Ex.PW-5/A) lodged First Information Report on 07.12.2009. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. Statements of witnesses conversant with the facts were recorded. The accused was arrested and taken for medical examination. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of offences under Sections 376/506 IPC. To establish its case, the prosecution examined nine witnesses. In 313 statement, the appellant pleaded false implication and denied his involvement in the crime. The trial resulted in his conviction as mentioned previously under Section 376 IPC. It is relevant to note that

the appellant was acquitted of the charge under Section 506 IPC and the State did not challenge the said acquittal.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's conviction is primarily based upon the solitary statement of the prosecutrix 'X'. Needless to say, conviction can be based upon the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case, the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration.

4. Admitted position is that 'X' and her family members were acquainted with the appellant for about 12/13 years prior to the incident. Victim's husband PW-3 (Balbir Singh), Assistant Manager, Reserve Bank of India, lived along with his family comprising of he himself, his wife ('X') and two children since June 2009 at Shalimar Bagh. The appellant was Chief Manager, Allahbad Bank, Baroda House at the time of occurrence. Earlier before his transfer to Kolkata in 1997, he used to work at Parliament Street Branch. In 2009, he was again transferred from Kolkata to Delhi. Both the family had maintained their good relations since then.

5. It is also not in controversy that on 12.11.2009, the appellant had visited 'X's house at Shalimar Bagh in the evening and had stayed there overnight. It is alleged that on 13.11.2009, next morning, after the departure of her husband and children to office and school/college respectively, the appellant sexually assaulted 'X' against her wishes. She was threatened of dire consequences if she disclosed the incident to her husband.

6. The alleged incident of rape occurred on 13.11.2009 in the morning. Intimation about the crime was conveyed for the first time to the police on 06.12.2009. Inordinate delay of about 23 days in lodging the report has remained unexplained. Daily Diary (DD) No.22A (Ex.PW2/D) came into existence at 9.30 p.m. at Police Station Shalimar Bagh on 06.12.2009. The information conveyed to the police that time was of commission of rape by a 'boy' upon the victim on 03.12.2009. On receipt of the information, the investigation was assigned to SI Baljeet Singh (PW-7) who with Constable Krishan Gopal went to the spot and met 'X' and her husband there. After making inquiries, he came to know that it was a case of sexual assault and vide DD No.23A (Ex.PW-2/E) urged the Duty Officer to depute PW-9 (WASI Manisha Sharma) to carry out further investigation. She immediately went to the spot and took the

prosecutrix for medical examination at BJRM hospital. After recording victim's statement (Ex.PW-5/A) on 07.12.2009, she lodged the instant FIR. The appellant was implicated for sexual assault upon the prosecutrix in the absence of her husband and children. It is pertinent to mention that 'X' and her husband had made call at 100 to PCR from Mobile No.9717410977 to the effect 'Ek Ladke Ne 03.12.2009 Ko Mera Rape Kiya Tha, Police Bhejen'. It further records that 'X' had informed that on 13.11.2009 her husband's friend had raped her after mixing 'something' in tea.

7. Substantial delay in lodging the FIR has not been satisfactorily explained by the prosecutrix and her husband. 'X' has given inconsistent reasons for it. In the FIR, (Ex.PW-5/A), she claimed that the occurrence was not disclosed to her husband due to shame. She was also under fear due to threats on phone to kill her entire family if she dared to apprise her husband about it. She further disclosed that finally on 06.12.2009 at around 7:00 a.m., she gathered courage to tell her ordeal to her husband who after discussing it with relatives made telephone call at 100. In her 164 Cr.P.C. statement (Ex.PW-5/C) 'X' disclosed that as she was under fear due to threats of dire consequences to get her husband murdered, she had maintained silence. She further reasoned that due to

nephew's death, she did not muster courage to apprise her predicament to her husband. In her Court statement as PW-5, she improved the version and gave a different and inconsistent reason for not informing her husband about the rape incident. She disclosed that the appellant had threatened to kill her entire family if she informed the incident to her husband. Only on 06.12.2009 while taking tea with her husband at 7:00 a.m., she informed him about the entire incident. Since she was under heavy 'depression', her husband called few relatives to have consultation and thereafter they decided to make a PCR call. Her husband dialed 100 and she spoke to the officer. Thereafter, her husband had a talk with him. She elaborated that her nephew had attempted to commit suicide and was on ventilator since 10.11.2009 as a result of which there was a lot of tension at home. She was in a state of depression on his death on 15.11.2009. Finding herself in depression when her husband enquired on 06.12.2009, she divulged the entire incident to him. PW-3 (Balbir Singh) too deposed that after finding 'X' in constant depression, he enquired for its reasons. He tried to console 'X' thinking that she was in depression on account of his nephew's death. On that, 'X' disclosed the entire incident as to how after his departure to office on 13.11.2009, the appellant had committed rape upon her taking advantage of her loneliness in the house.

8. On perusal of the above statements of PW-3 and PW-5 in the light of information conveyed to the police, it does not appeal to mind that 'X's state of 'depression' was the sole reason for not divulging the horrible incident to her husband or any other relative. No material document has been placed on record to show if any time, the prosecutrix had taken medical treatment for her alleged 'depression'. Nothing is on record to show if due to death of victim's nephew, PW-3 (Balbir Singh) did not attend his office for any particular period. The reason to delay the FIR being in state of depression was not given in the First Information Report or in 164 Cr.P.C. statement. It has come on record that even after the incident, 'X' used to remain in touch with the appellant on phone. She had even made telephone call to him at his residence at Kolkata on landline for sufficient duration. It belies 'X's assertion that she being in state of depression was unable to disclose the incident to her husband.

9. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of *Jail Prakash Singh v.State of Bihar & Anr.* 2012 CRI.L.J.2101 the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information

regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

10. In her complaint (Ex.PW-5/A), the prosecutrix disclosed that the appellant and her husband were friends for the last about 14/15 years. The appellant had visiting terms at their residence. In August, 2009, after his transfer from Kolkata to Delhi, the appellant had visited her husband in the Bank to get a suitable rented accommodation in Delhi as he wanted to shift along with his family. She further disclosed that after August 2009, the appellant had visited them at her house twice or thrice also. On 12.11.2009 the appellant stayed overnight. On 13.11.2009 at around 08.30 a.m. after her husband left for duty, he stayed back on the pretext to meet one or two individuals to whom he had asked to arrange rented accommodation. At around 09:00 a.m. she served breakfast to the appellant. He asked her to bring her breakfast there. After taking breakfast, when she was picking utensils, the accused caught hold of her

forcibly by hand; made her to fall on the bed and subjected her to rape against against wishes forcibly. In her initial version (Ex.PW-5/A), the prosecutrix did not claim if the accused had administered 'something' in tea and had sexually assaulted her thereafter. She did not disclose if any 'resistance' was offered by her that time or she suffered any injury, whatsoever, on her body including private parties due to forcible rape. 'X' did not get herself medically examined immediately. Only on 06.12.2009 PW-4 (Dr.Anjali Vaish) medically examined her vide MLC Ex.PW-4/A at BJRM hospital. No visible old/fresh external injuries were seen over external genitalia. Apparently, the prosecutrix had not sustained any violent injury marks over her body to infer commission of forcible rape.

11. In her 164 Cr.P.C. statement (Ex.PW-5/C), the prosecutrix reiterated her version given to the police adding that when she attempted to cry, the accused closed her mouth. She hurled several abuses and threatened him to disclose the incident to her husband. On that, she was criminally intimidated by the appellant. Non-disclosure of such a horrible incident to her husband and other family members due to fear has no substance as the appellant was not armed with any weapon to cause real apprehension in her mind. The Trial Court did not believe her version regarding criminal intimidation and acquitted the appellant of the said

charge. Obviously, the prosecutrix was under no fear or apprehension not to raise alarm or hue and cry at the time of incident or soon after his departure from the house. There were two land-line telephones installed in the victim's house that time. She did not inform the police or her husband on duty at his office. She remained silent/mum for number of days. She did not convey an information to the security guards available in the said colony. The appellant was conveniently allowed to go without any demur. X's post event conduct is unnatural.

In her Court statement, PW-5 ('X') disclosed that after having breakfast with the appellant, when she was clearing the utensils, the accused caught hold of her hand. She made unsuccessful attempt to get herself released from him but he forcibly committed rape upon her. After the incident, when she expressed her intention to inform her husband, the accused criminally intimidated her telling that nothing would happen and these things were very common. She asked the accused to leave the house immediately. In the cross-examination, she informed that a maid used to visit their house at 07:40 or 8:00 a.m. to work for half an hour; the accused had stayed overnight at their house on one or two occasions earlier also. She denied that accused's stay with them on the night intervening 14/15.11.2009 for celebration of his birthday. She

expressed ignorance if greeting card (Ex.PW-5/DX-1) was given by her daughter to him on his birthday. She admitted to have made several telephone calls to the accused after the said incident. She reasoned that it was under compulsion and she had warned the appellant not to dare to visit them. She voluntarily added that on 13.11.2009 she had called the accused on mobile and had warned him not to come to her house. She denied the suggestion that she was making regular telephone calls to the accused. She, however, voluntarily admitted that she had made couple of calls to the accused not to come to the house after the incident. She was unable to tell as to when and for what duration telephone calls were made by her to the accused. It is pertinent to note that at no stage of investigation/trial the prosecutrix herself revealed to have made telephone calls to the appellant after the incident. In the cross-examination, she was evasive to inform as to when and for what duration, various telephone calls were made by her to him. She had no occasion to be in touch with the appellant and his family after the alleged rape incident merely to prevent him not to visit her house. Call details pertaining to appellant's mobile 9560074499 were collected by the Investigating Officer during investigation. However, for the reasons best known to her, these call details were not relied on and placed on judicial file. When PW-9 (W/ASI

Manisha Sharma), the Investigating Officer was confronted in the cross-examination about it, she admitted that call details running into 27 pages (Ex.PW-9/DX1) were collected. These were taken on judicial file after taking it out from the police file. The prosecutrix admitted that there were two land-line telephone Nos.27498090 and 27498394 installed at her residence but their call details were not collected during investigation. Perusal of call details record (Ex.PW-9/DX1) reflects that the prosecutrix and the appellant were in touch till 28.11.2009. After the alleged incident, 15 calls were exchanged out of which ten were made by the prosecutrix to the appellant while he made five calls to her. Telephone conversation on 19.11.2009 was for more than 27 minutes. She had conversation with the appellant's wife on 02.12.2009 at landline No.3324219577 at his Kolkata residence. 'X' did not apprise her husband any time about making such telephone calls to the appellant or his family. Apparently, an attempt was made by the prosecutrix to suppress the vital information. The investigation conducted is not upto the mark. The Investigating Officer did not examine any security guard or seized Visitors' Register to verify as to on what specific dates the appellant used to visit the prosecutrix; no witness from the locality was examined. The Investigating Officer did not collect any document to show as to when victim's nephew had expired

and when the body was brought to Delhi. FSL reports (Ex.PW-6/A and 6B) do not connect the appellant with the crime. PW-3(Balbir Singh) made feeble attempt to corroborate 'X's version but made vital improvements in his deposition before the court for which he was duly confronted. PW-3 (Balbir Singh) failed to offer any reason not disclosing these vital facts in his 161 Cr.P.C. statement (Ex.PW-3/DX-1).

12. To dispel prosecutrix's claim to have urgency to shift to Delhi, the appellant examined DW-1(Pramod Kumar) who proved request letter (Ex.DW-1/A) made by him for retention of Flat No.404 at Sundaram, Tollygunge, Kolkata-40 to enable his son studying in 10th class to continue his education there. He was permitted to retain the flat till 31.03.2010. His request to retain telephone No.033-24219577 installed therein was allowed on 28.08.2009 vide letter (Ex.DW1/B). It belies prosecution version that the appellant had to meet some property dealer to arrange residential accommodation in Delhi and on that pretext, had not left along with the victim's husband on 13.11.2009.

13. Relations between the parties were cordial for the last 14/15 years. The appellant had visiting terms at the victim's residence and had stayed overnight there on various occasions. The victim and her husband had no history of hostility any time. Apparently, the prosecutrix had no

ulterior motive to implicate the appellant to have physical relations with her after a gap of about 23 days. It seems that after the victim's husband senses something 'amiss' and suspected extra-marital relationship between the two, 'X' was forced to lodge complaint against the appellant. She had no occasion to falsely claim to have physical relations with the appellant to have reflection on her own chastity. Inference can be drawn that physical relations on 13.11.2009 were the outcome of free consent of the appellant and the prosecutrix and she was a willing and consenting party. Obviously, it did not attract Section 376 IPC.

14. Another feature of the case is after conviction on 03.08.2011, the matter was listed for arguments on point of sentence on 10.08.2011. On 24.08.2011 the complainant/prosecutrix along with her husband appeared in the court and informed Additional Public Prosecutor that appellant's family had approached them to seek forgiveness for his acts. They requested the court to take lenient view as convict was ready to publicly apologise to the prosecutrix for his conduct in the presence of senior family members of both the families. A joint application was filed on behalf of both the parties informing the court that they would move this Court for quashing of the FIR. Prayer was made to pass sentence order subject to the quashing petition which the parties intended to move

before the High Court. Considering the said submissions whereby compromise was arrived at between the parties at the stage of sentence, the appellant was awarded RI for seven years with fine ₹1,00,000/- subject to the outcome of quashing petition. Fine amount of ₹1,00,000/- was ordered to be given to the prosecutrix as compensation under Section 357 Cr.P.C. These developments lend credence to the appellant's contention that physical relations were consensual. The victim had agreed to exonerate the appellant. Needless to say, appellant's conduct even to have physical relations with 'X' with consent was unpardonable as he not only betrayed victim's husband who reposed utmost trust upon him but also his wife and children. He was well aware that physical relations with his friend's wife would amount to commission of offence of 'adultery' under Section 497 IPC underlying object of which is to secure purity and sanctity of marriage by penalizing conjugal infidelity.

15. In the light of the above discussion, conviction and sentence recorded under Section 376 IPC by the impugned judgment cannot be sustained. The appellant deserves benefit of doubt; the appeal is allowed; conviction and sentence order are set aside. Bail bond and surety bond stand discharged.

16. Trial Court record be sent back forthwith along with the copy of the order. Copy of the judgment be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

NOVEMBER 05, 2015/sa