

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

RESERVED ON : MAY 07, 2015

DECIDED ON : MAY 28, 2015

+ CRL.A. 1230/2011 & CrI.M.B. No. 3051//2015

VISHAMBER Appellant

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

versus

STATE Respondent

Through: Ms. Kusum Dhalla, APP for State.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 15.04.2011 of learned Additional Sessions Judge in Sessions Case No.123/10 emanating from FIR No.390/08 registered at Police Station Sangam Vihar by which the appellant Vishamber Singh was held guilty under Sections 354/376/506 IPC, the instant appeal has been preferred by him. By an order dated 20.04.2011, the appellant was awarded RI for ten years with fine ₹25,000/- under Section 376 IPC; RI for two years under Section 506 IPC; and, RI for one year under Section 354 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that the appellant, father of the prosecutrix 'X' (assumed name), aged 22 years sexually assaulted her after putting her in fear. 'X' lodged complaint (Ex.PW-1/A) on 21.07.2008 and gave detailed account as to how and under what circumstances, the appellant outraged her modesty and subsequently committed rape upon her. 'X' was medically examined. Statements of witnesses conversant with facts were recorded. The accused was arrested and taken for medical examination. After completion of investigation, a charge-sheet was filed against him for the commission of aforesaid offences in the court. The prosecution examined 13 witnesses to substantiate its case. In 313 statement, the appellant denied his involvement and claimed false implication. The appellant examined his son Vishal as DW-1 in defence. The trial resulted in 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. The prosecutrix, in the instant case, is the daughter of the appellant. In her statement (Ex.PW1/A) given to the police, she gave vivid description of the incident and specifically named the appellant for committing rape upon her. In her Court statement, she proved the police

version without major variation. She testified that the accused used to outrage her modesty since the time she was studying in class VIII. The accused used to touch her private parts, put off her clothes and used to force her to have physical relations with her. She brought the incident to the notice of her maternal grandmother-Kusum Devi (PW-2). She in turn conveyed it to her mother-Smt.Shashi Devi. However, there was no change in the behaviour of the accused and he continued to act in the same manner. She gave specific instances when on 20.04.2008 and 01.07.2008 the accused established physical relations with her against her wishes. The accused used to threaten to kill her and her brother/sisters. She informed that on 21.07.2008 she went to police station and lodged complaint (Ex.PW-1/A). In the cross-examination, she elaborated that earlier she used to stay at the residence of her maternal grand mother who lived nearby. She studied in a private school upto Vth standard while staying there. She admitted that her father had purchased three RTVs and one blue-line bus. She expressed her ignorance as to who was managing/controlling the said RTVs/bus. She admitted that her younger sister Pooja had left the house after the appellant's arrest and she was not aware about her whereabouts. She declined that the appellant was falsely

implicated to grab his property. She denied to have any acquaintance with Karan and Sidhartha.

4. 'X' has attributed specific role to the accused in committing crime. Despite searching cross-examination, no material infirmities could be extracted to disbelieve her statement. She had no strong reasons to falsely implicate her own father who was a source of support/income to her and her siblings particularly after her mother committed suicide in 2008. The accused has given different conflicting reasons for his false implication. Undoubtedly, 'X' and Karan used to meet each other and had intimacy. PW-2 (Kusum Devi) admitted in the cross-examination that 'X' was married to Karan in November 2009 and she is living at Palwal, Haryana. She clarified that it was an arranged marriage and the expenses were incurred by them. She also admitted that some expenses were incurred from the sale of plot in the name of 'X'. DW-1, 'X's brother also disclosed that Karan used to frequently visit 'X' in the absence of his father. The appellant did not like the said relationship and one day when 'X' did not come back to the house over night, he found a mobile in 'X's possession and scolded her. She left the home without informing anyone and lodged the report. He also disclosed that in November, 2009, during the pendency of the case 'X' married Karan. This circumstance of

having affair with Karan cannot be a reason to falsely implicate the accused. The prosecutrix had attained the age of majority and there was no hitch for her to marry Karan with her free consent. Nothing has come on record to show that before marriage 'X' was seen in objectionable relationship with Karan in the house to the disliking of the appellant. No complaint was ever lodged against Karan. Moreover, the said love affairs ripened into an arranged marriage subsequently. There is no substance that the other reason for false implication was to grab appellant's property. No evidence has surfaced to infer if 'X' or her family members ever disposed of any property belonging to the appellant to cause wrongful loss to him. Apparently, 'X' and other siblings were entitled to the property belonging to the appellant even without his implication and they were enjoying it before the lodging of the report. It has come on record that income from appellant's RTVs/bus is being enjoyed by his family members. Nothing has come on record if maternal grand father/mother/brothers ever enjoyed any benefit from the appellant's property. PW-2 (Kusum Devi) disclosed that after appellant's arrest they were taking care of the children and used to pay their expenses. She fairly admitted that gold ornaments of 'X's mother were lying with them in safe custody. She volunteered to add that whenever asked, she would produce

the jewellery “Ladki ka dhan hai usko sambhal ke rakha hai”. She also corroborated ‘X’s version about outraging her modesty and sexual assault. Since ‘X’ had stayed for sufficient period at her residence, she reposed trust in her and took her into confidence while reporting the conduct and attitude of the appellant after the commission of crime. No ulterior motive was assigned to PW-2 for falsely implicating the appellant. PW-13 (Pooja), appellant’s other daughter, aged around 19 years stepped into the witness box and corroborated ‘X’s version in its entirety. She also pointed out an accusing finger against her father in outraging ‘X’s modesty and to have physical relations with her. She went to disclose that once her father had attempted to outrage her modesty (chat pe hath rakha tha), she warned her father that he should not understand her ‘X’ who would not protest. After that the appellant never attempted to repeat the act. She admitted that on 05.08.2008 she left the house. She reasoned that Vishal, her brother, had created a bad atmosphere in the house and he used to bring his friends which forced her to leave the house.

5. ‘X’s mother committed suicide by pouring kerosene oil on her in 2008. Suggestion was put to PW-1 in the cross-examination that appellant had visiting terms with one lady from Garhwal which was not liked by her and her maternal grandmother. She denied that due to illicit

relations of her father with the said lady, she and her grandmother falsely implicated him in this case. No cogent evidence had come on record if the appellant had illicit relations with any lady from Garhwal. The said lady has not been examined in defence. DW-1 (Vishal) though supported the appellant did not utter a word if the said lady had stayed in their house and both appellant and she had illicit relationship to the disliking of 'X' and other family members. It rather has reflection on appellant's character when he allegedly established illicit relation with that lady after the death of his wife. Apparently, her grown up children were not expected to like that relationship. 'X' had instituted civil proceedings against the appellant and she was awarded ₹5,00,000/- as compensation. Nominal roll dated 29.01.2015 reveals that CA No.129/2010 filed by the appellant against a judgment dated 17.01.2009 of learned Metropolitan Magistrate in case titled '*X' vs. Vishamber Singh*' in which the court had ordered to pay ₹5,00,000/- as lump sum compensation and ₹10,000/- p.m. till her marriage was dismissed by order dated 14.02.2014. It shows that 'X' had resorted to legal means to assert her claim. No sound reasons exist to infer that false allegations of rape levelled by 'X' to extract money from her own father. The Trial Court has discussed in detail various judgments whereby conviction can be based upon the sole uncorroborated testimony

of the prosecutrix. In the case of *State of Punjab vs. Gurmit Singh* [1996 Cri LJ 1728], Supreme Court pointed out at SCC P.403:-

“Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

6. Since the perpetrator of the crime is ‘X’s father, delay in lodging the report is not fatal. Minor contradictions, inconsistencies and improvements pointed out by the learned counsel in the testimony of the prosecution witnesses are inconsequential as they do not affect the core of

the prosecution case. The impugned judgment based upon fair appraisal of the evidence requires no intervention on conviction.

7. The appellant was sentenced to undergo RI for ten years with fine ₹25,000/- and default sentence for non-payment of fine is six months. He has already undergone six years, six months and six days incarceration besides remission for eleven months and six days as on 27.01.2015. Since the victim is appellant's own daughter, the sentence awarded cannot be termed excessive. Sentence order requires modification to the extent that default sentence for non-payment of fine of ₹25,000/- shall be SI for fifteen days instead of SI for six months. Other terms and conditions of the sentence order are left undisturbed.

8. The appeal stands disposed of in the above terms. All pending application(s) also stand disposed of. Trial Court record along with copy of this order be sent back to the Trial Court. Copy be also sent to the accused/appellant through Jail Superintendent.

(S.P.GARG)
JUDGE

MAY 28, 2015

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