

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

% *Judgment reserved on : 10.9.2015*
Judgment delivered on : 21.09.2015

+ CRL.A. 1375/2011

SHANTA SHASTRI

..... Petitioner

Through Mr. Vimal Wadhawan, Advocate.
versus

STATE AND ANR.

..... Respondents

Through Ms.Kusum Dhalla, APP for the
State along with ASI Shri Ram.
Mr.L.K.Upadhyay, Mr. Arvind
Chaudhary and Mr. Mohd. Asaf
Kamal, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment dated 13.7.2011 wherein the respondent (Vijender Kumar) stands acquitted for the offences under Sections 376/506 of the IPC. The complainant/appellant is aggrieved by this judgment.

2 The version of the prosecution is that the complainant/PW-1 (hereinafter referred to as "PW-1") was subjected to rape by the

appellant on three different occasions, this was on 17.9.2007,
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15.10.2007 and 04.12.2007; on the last date i.e. on 04.12.2017 (which was a typographical error and was later on amended to be read as 05.12.2007) as attempt to rape had been made. The victim being a married lady and working as a teacher in a Government School in Paschim Vihar had not disclosed the incident to her husband till March, 2008 as she was under fear of the respondent. He had threatened her that in case she disclosed the incident to any person she and her son would be killed. The FIR was finally registered on the complaint (dated 29.5.2008) made by the prosecutrix on 03.06.2008.

3 The prosecution in support of its case had examined 13 witnesses of whom the star witness of the prosecution was PW-1. Her testimony runs into 82 pages. She was cross-examined on various dates. Her husband was examined as PW-11. He was a professor posted at Baran, Rajasthan. He used to come to Delhi once in about 15-20 days. Apart from the prosecutrix, Archana, the colleague teacher of the prosecutrix (PW-5) was also examined. Mr.S.C.Aggarwal, the Ex. Principal in a Government School, Uttam Nagar was examined as PW-6. He was the Principal of the school where the accused was teaching. Mrs.Aruna

Puri, the Principal from the Girls Senior Secondary School was examined as PW-8. The prosecutrix was teaching in the school of PW-8. The victim was medically examined by the Senior Resident of the DDU Hospital who was examined as PW-10.

4 In the statement of the accused recorded under Section 313 Cr.P.C. his defense was that the story has been cooked. He has been falsely implicated.

5 On the basis of the evidence collected by the prosecution oral and documentary the respondent was acquitted. The Trial Judge was of the view that the prosecution has failed to prove its case; there are inherent contradictions in the version of PW-1. The accused/respondent was accordingly acquitted.

6 On behalf of the appellant, the foremost submission of the learned counsel for the appellant is that this was a clear case where the prosecutrix has fully supported the version of the prosecution and her version is cogent and coherent. There was no reason whatsoever for the Trial Judge to have discredited her version. Attention has been drawn to her testimony as also the testimony of her husband who has been

examined as PW-11. It is pointed out that the money transaction if any between the parties had come to a close and this is a clear case where a false defense has been set up by the respondent arguing that because of the money dispute the respondent was sought to be implicated. This is not correct. The incident had occurred in the manner as described by PW-1.

7 The respondent has put in appearance through counsel. He has countered these submissions.

8 Arguments have been heard. Record has been perused.

9 PW-1 is the star witness of the prosecution. She was the prosecutrix as noted supra. Her testimony is running into 80 pages. She was subjected to a lengthy cross-examination on different dates. It is her testimony which has to be tested on the anvil of cogency and coherency to return a finding as to whether the respondent was rightly acquitted or not. Apart from her version there is the version of PW-11 who does not really advance the case of the prosecution as he was admittedly not an eye-witness. The other public witnesses i.e. PW-5, PW-6 and PW-8 have not thrown light upon the version set up by the

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prosecution. Thus it is largely the testimony of PW-1 which has to be appreciated.

10 PW-1 had deposed that she was not acquainted with the accused till June, 2006. She was working as a teacher in the Government School, Paschim Vihar. She was introduced to the accused in a seminar in June, 2006 at that school for the first time. This seminar continued for 20 days. One day when she was coming out along with her friend Neeta, who is also a teacher in the same school, the accused met her in a Bulero Jeep and offered a lift to her and to her friend Neeta. She accepted the same and the accused dropped her at Jivan Park. Thereafter the accused continued to give her lifts till the seminar lasted. After about 2-3 days, for the first time accused made a telephone call to her. After 2-3 days he again called her up. Her husband attended the first phone call. The accused introduced himself as a property dealer. Her husband was posted at District Barn in Rajasthan. He used to visit Delhi at a gap of about 15 days. One day the accused came to her house and over a cup of tea the accused asked her to purchase a house as he had stated himself to be a property dealer. He asked her husband to

inspect the house at Narela. PW-1 and her husband started consulting the accused for property matters. PW-1 on 06.4.2007 had given a sum of Rs.3.5 lacs by way of cheque to the accused who promised to repay the same along with 4% interest. In August, 2007, the accused asked the husband of PW-1 to inspect a house in Palam. They inspected the said house. On 17.9.2007 when PW-1 was going to attend her school, the accused told her that he would drop her at her school. After two hours he telephoned her stating that he will drop her (PW-1) back home. She told her fellow teacher Anju Bala that her son was suffering from fever so she wanted to leave. The accused stated that he would drop her to her house but on the way he told her that he had some work at the house of his friend at Janak Puri. They reached the said house and he parked the vehicle outside the house. She waited in the car; at his request she went inside the house. She sat in the drawing room. Thereafter the appellant switched on the T.V. and dragged her onto the bed. He committed rape upon her. This was at the point of a knife and a revolver. PW-1 became semi-conscious. She got scared. He threatened her that if she disclosed the incident to anyone he would ruin her and her family. Thereafter he dropped her back to Jivan Park.

to this incident she developed fever and became nervous. On 15.10.2007, the accused started asking for forgiveness and he apologized stating that he would like to apologize in the presence of his wife. He called her 2-3 times. He also stated that he would return Rs.3.50 lacs. PW-1 telephoned her husband. Her husband told her to go and collect the money. On 15.10.2007 she left her house and reached Jeevan Park bus stand where the appellant took her in his car to his house at Dwarka. She sat in the drawing room where she was informed that his wife and children had gone for a picnic. Again on that day the appellant forcefully committed rape upon her. He thereafter dropped her to the bus stop of Janak Puri. After the incident of 15.10.2007 the appellant started cracking unpleasant jokes in presence of his wife. On 5.12.2007 the accused came to their locality to see a flat as her husband had discussed about the purchase of a flat with him. Till that time PW-1 had not disclosed the incident to her husband. On 05.12.2007 the accused at the point of revolver again attempted to commit rape upon her but he could not do so. The accused threatened her that he would defame her as he had prepared a video film of hers. The victim suffered humiliation. She contacted her Vice Principal but she was told to tear

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the application wherein she had attempted to lodge a complaint against the accused. In March, 2008 she narrated the incident to her husband. On 04.04.2008 the accused called her on telephone. Her husband was present at that time. She recorded this conversation. (Relevant would it be to note that these transcripts were not produced by PW-1 to the Investigating Officer and thereafter even when produced, the conversations were not decipherable and in the absence of the certification under Section 65-B of the Indian Evidence Act, the Trial Court had rightly rejected this piece of evidence.) Further version of PW-1 is that she thereafter made a complaint to her Principal. The motive for which the accused had committed rape upon her was that she being a Jaat lady had married with a person of a Scheduled Caste and therefore he wanted to defame her.

11 PW-1 was cross-examined at length. She was confronted with various portions of her complaint Ex.PW-1/1 wherein improvements have been noted by the Trial Judge and have been discussed in paras 13 to 27 of the judgment.

12 A wholesome reading and scrutiny of the version of PW-1 discloses two incidents of rape i.e. on two different dates which were 17.9.2007 and 15.10.2007. On 04.12.2007 (later on amended to read as 05.12.2007) an attempt to rape was made. The victim was a 38 years old adult teacher and fully conscious of her acts and repercussion of the same had finally disclosed the incident to her husband only in March, 2008 i.e. after a gap of six months from the date of the first incident. Her evidence further discloses that the incidents of 17.9.2007 and 15.10.2007 were not disclosed by her to her husband as she was under the fear of the accused as he had stated to her that he would kill her and her child if she disclosed the incident to anyone. Her further version discloses that it was only after the third incident of 04-05.12.2007 that she was threatened by the accused that he would defame her as he had made a video clipping of hers. It is not her version that after the incident of 17.9.2007 and 15.10.2007 she was under a fear of defamation qua the alleged video clippings made of her. This threat of the video clipping was given to her only after the third incident. Qua the first and the second incident she was threatened that she and her child would be killed if she disclosed the incident to anyone.

13 Apart from her improvements in her version on oath in Court qua her complaint Ex.PW-1/1 it has also come on record that the accused and the appellant had various telephonic conversations and these telephonic conversations stand admitted by the appellant in her cross-examination. It had been admitted that on Valentine's Day i.e. on 14.02.2008 the accused and the victim had spoken to one another for 13 times. Between 01.9.2007 up to 30.9.2007 she had spoken to the accused 74 times. In the month of October, November and December, 2007 she had again spoken to the accused on telephone 52, 43, 82 times respectively. From January, 2008 up to February, 2008 she had again spoken to the accused on several occasions; the conversations lasted some times for more than 10-15-20 minutes. It is also an admitted fact that on 15.10.2007 it was a holiday. She was not required to go to the school. This has also come in the version of PW-1.

14 Evidence of PW-1 coupled with the evidence of PW-11 also show that the parties had a commercial dealings with one another and a sum of Rs.3.50 lacs had been advanced by PW-1 to the accused for a return on a good rate of interest as the accused had projected himself to be a

property broker. She admitted that the plot at Molar Bandh had a share of herself and her husband and a major portion of the investment was done by the accused. She admitted that a power of attorney of the Molar Bandh plot was in her name. She admitted that she and her husband were introduced by the accused and his wife for opening a bank account in Nagrik Sehkari Bank, Janakpuri as the accused stated that they would be able to obtain a loan from that bank for the purchase of a plot. She admitted all these financial dealing between herself and the accused. Defence of the accused on this score (in form of suggestions) was that PW-1 had wrongly got this Power of Attorney executed in her single name when the major investment (even as per the PW-1) was done by the accused and this was a bone of contention between the parties. It has also come on record that Rs.3.5 lacs which was advanced by PW-1 to the accused has since been returned.

15 The motive attributed to the accused by the victim for committing rape upon is again wholly un-understandable; reason being that PW-1 was from a Jaat community and had married a man of the Scheduled Caste. How and in what manner was the accused concerned

with this third person's marriage? This grudge if any could only have been by parents of the victim and not by a stranger as admittedly the parties were not known to one another till June, 2006.

16 The victim was an adult woman who was educated and teaching in a school since last several years. She was 38 years of age at the time of the incident. She had a son and a daughter. Her husband was working as a lecturer in Rajasthan. He used to visit her in Delhi once in 15 days. There were three incidents (as per PW-1) which had occurred in her life which if were forceful acts of rape would have destroyed the fabric of the lady and her not disclosing the incidents to her husband for about six months later is wholly unexplainable. Her version that she was under fear that the accused would kill her if she narrated the incident to anyone was later on modified to state that she was under fear of defamation as the accused had a video clipping of her. Admittedly there were financial dealings between the accused and the victim and her husband. There was also a grudge by the accused that for the Molar Bandh plot a single power of attorney in the name of the victim had been proposed which was behind the back of the accused and especially

when a major part of the investment had been done by the accused. This has come on record in the version of PW-1 herself. The victim also had long conversations over continuous months with the accused and on valentine's day she had 13 such telephonic conversations.

17 This factual matrix as narrated above persuades this Court to hold that this was a case of consent on the part of the victim who had made a voluntary physical relationship with the accused for which no one but the victim herself was responsible. The Trial Judge has appreciated the version of PW-1 in its correct perspective. It was rightly concluded that the testimony of PW-1 does not inspire confidence and does not make out a case of forceful acts of rape having been committed upon her.

18 The impugned judgment calls for no interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER, 21st 2015

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