

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

RESERVED ON : FEBRUARY 24, 2015

DECIDED ON : MAY 22, 2015

+ CRL.A.1553/2014

GARVIT INDORA

..... Appellant

Through : Mr.K.Singhal, Advocate.

VERSUS

STATE NCT OF DELHI

..... Respondent

Through : Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 10.10.2014 of learned Additional Sessions Judge in Sessions Case No.36/14 arising out of FIR No.112/14 under Sections 376/420/506 IPC registered at Police Station Dwarka South by which he was convicted under Section 376/420 IPC, the appellant-Garvit Indora has preferred the instant appeal. By an order dated 15.10.2014, the appellant was awarded RI for five years with fine ₹50,000/- under Section 420 IPC and RI for ten years with fine ₹50,000/- under Section 376 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant, as reflected in the charge-sheet, were that on 22.01.2013 he contracted second marriage with the prosecutrix 'X'(assumed name) concealing the factum of his previous marriage with Jyoti on 29.09.2011. 'X' was dishonestly and fraudulently induced to have sexual intercourse with him. Unaware of the appellant's previous marriage, she established physical relations and became pregnant. The appellant criminally intimidated her to abort the child on the promise to marry. A comprehensive complaint (Ex.PW-1/A) dated 24.01.2014 was lodged by the prosecutrix before the SHO Police Station Dwarka South. She gave detailed account as to how and under what circumstances she was cheated by the appellant. The Investigating Officer lodged First Information Report on 28.02.2014. Statements of witnesses conversant with the facts were recorded. 'X' was medically examined at Deen Dayal Upadhyay hospital; she recorded her statement under Section 164 Cr.P.C. The accused was arrested and medically examined. After completion of investigation, a charge-sheet was laid before the court against him for committing various offences under Sections 495/420/376/313/506 IPC. By order dated 16.04.2014, the appellant was charged for the said offences to which he pleaded not guilty and claimed trial. The prosecution examined 13 witnesses to establish the

appellant's guilt. In 313 statement, he denied his involvement in the crime and pleaded false implication. He examined himself as DW-1 under Section 315 Cr.P.C. besides examining DW-2 (Naveen Katarya). The trial resulted in his conviction under Section 420/376 IPC as aforesaid. It is pertinent to mention that the appellant was acquitted of the charges under Sections 313/495/506 IPC and the State did not challenge the said acquittal. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's conviction under Section 420/376 IPC is primarily based upon the sole testimony of the prosecutrix 'X'. The said testimony, however, was not considered sufficient to convict the appellant under Section 313/495/506 IPC. In her Court statement as PW-1, the prosecutrix admitted that she and the appellant while working together in M/s Amrapali Coaching Institute, Sector-8, Dwarka had become friends and slowly their friendship turned into love relation. In January, 2013 during Jaipur trip, they solemnized marriage in a temple. After return to Delhi, she went to her parental home and did not inform her family members about the said marriage. In April, 2013 they started living together as husband and wife in a rented house at village Bagdola and had

physical relations with consent. Shortly thereafter the accused started keeping distance from her. It enraged her and she lodged a complaint against him (Ex.PW-1/A). She declined to say anything beyond that. Supporting the appellant, she informed that no force was ever used and all had occurred with her will and consent; she did not have any complaint. After seeking Court's permission, learned Additional Public Prosecutor cross-examined her. Admitting about her pregnancy, she denied to have terminated it due to appellant's pressure. She admitted the suggestion that the accused married her concealing the factum of previous marriage with Jyoti Chaudhary.

4. 'X' did not claim that physical relations were established by the appellant on the false promise to marry. Entire statement of hers is wavering. Though she levelled serious allegations in her complaint (Ex.PW-1/A) and even in her 164 Cr.P.C. statement but when the appellant was denied bail after arrest, she opted to completely exonerate him realising her mistake in lodging the complaint. She even visited the appellant in jail on several dates footing his expenses there. Ex.DW-2/A depicts details of her visits on different dates during the period from 6th March, 2014 to 28th August, 2014. Letters (Ex.DW-1/A) and (Ex.DW-

1/B) were admittedly sent by her to the accused after registration of the FIR.

5. Settled legal position is that conviction can be based upon the sole testimony of the prosecutrix provided it is reliable and is of sterling quality.

6. In *Abbas Ahmed Choudhury v. State of Assam* (2010) 12 SCC 115, observing that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully, the Hon'ble Supreme Court held:-

“Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully. In the instant case, not only the testimony of the victim woman is highly disputed and unreliable, her testimony has been thoroughly demolished by the deposition of DW-1.

7. In another case *Raju v. State of Madhya Pradesh* (2008) 15 SCC 133, the Supreme Court stated that the testimony of a victim of rape has to be tested as if she is an injured witness but cannot be presumed to be a gospel truth.

“It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

8. In *Rai Sandeep @ Deepu vs. State of NCT of Delhi*, (2012) 8 SCC 21, the Supreme Court commented about the quality of the sole testimony of the prosecutrix which could be made basis to convict the accused. It held :-

“In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any

length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have correlation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

9. In *Tameezuddin @ Tammu v. State (NCT of Delhi)*, (2009)

15 SCC 566, the Supreme Court held :-

'It is true that in a case of rape the evidence of the Prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.'

10. 'X's testimony tested on the above settled principles, is wholly unreliable due to inherent infirmities therein. In the instant case, no cogent and clinching evidence has been brought to prove valid marriage between the two in Ajmer on any particular date at a specific place. 'X' did not elaborate as to how and in what manner their marriage took place in a particular temple or if religious ceremonies were performed at that time. No documentary evidence has emerged on this aspect. Without informing her parents or family members about marriage, she established physical relations on various dates repeatedly. She even became pregnant and the pregnancy was terminated at M/s U.K.Nursing Home by PW-7 (Dr.Usha Arora) on 21.08.2013. The instant complaint was lodged after an inordinate delay of about four months from the date of abortion. In the complaint 'X' complained about physical torture and beatings. However, medical evidence did not confirm it; no visible external injuries were noticed on her body on 28.02.2014. She did not lodge any complaint for the beatings any time and did not examine herself medically for any such injury.

11. In her Court statement, it is not 'X's case that physical relations with the appellant were established on the false promise of marriage concealing the factum of his earlier marriage. 'X' used to talk to

Jyoti on her mobile given by the accused. She used to visit the house of the accused on festivals whenever she liked. No reasons have been given as to why she did not inform the accused's parents about their marriage. It is unclear why 'X' would conceal her marriage from her parents/family members/friends for so long or why she or her family members had not approached them for marriage. Even when both of them started living together in the village, 'X' did not take into confidence her parents. She never informed them that she and the appellant lived in said rented accommodation as husband and wife. PW-2 (Sant Kumar), Landlord, disclosed that rented accommodation was taken by 'X' and the appellant used to visit her regularly. In the cross-examination, he revealed that 'X' had stayed alone in the room for about one month initially. Thereafter, the appellant started visiting her two or three times in a week. Apparently, the said accommodation was not taken on rent by the appellant to stay with 'X' as a married couple. He was only a frequent visitor to 'X' who had taken the said accommodation on rent.

12. PW-12 (Vinita Shrivastava) proprietor, M/s.Amrapaali Kala Peeth Institute where both 'X' and the appellant used to work together disclosed that they both had left the institute in November, 2012. In the cross-examination, she informed that at the time of celebration of the

birthday of her son Rachit in the institute on 24.06.2012, the appellant had also given a treat to the staff in view of his marriage with Jyoti. She also spoke X's presence in the said institute on that day who had come to know appellant's marriage with Jyoti. No sound reasons exist to disbelieve PW-12 (Vinita Shrivastava) on this aspect as she had no animosity with 'X'. She was not re-examined by learned Public Prosecutor on this aspect.

13. Undoubtedly, 'X' and the appellant having love affairs had consensual sexual relations several times. However, on appellant's attitude to keep distance from her, she got enraged and lodged the instant complaint. Nothing is on record to infer that she had agreed / consented for sexual intimacy with the accused on any assurance or promise of marriage. There is nothing in her evidence to demonstrate that she was incapable of understanding the nature and implications of the act which she consented to. She was enough mature to understand as to what was happening between the two. She even became pregnant and got the pregnancy terminated. Her consent for physical relation was an act of conscious reason. If a full grown up girl consents to the act of sexual intercourse of a promise to marry and continues to indulge in such activity and became pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact. Even after lodging the complaint with

the police, she continued to have love and affection for the appellant and visited him several times in jail and met his expenses. At this juncture, she was well aware of previous history whereby the appellant had already married Jyoti. It did not deter her to express her love for him. In her evidence, she has not implicated the appellant for the offence for which he has been convicted. X's statement in its entirety is to be scrutinized to find out appellant's involvement in the crime. X's half-hearted statement is not at all sufficient to prove the appellant's guilt beyond reasonable doubt.

14. The appellant's conduct in the episode is unfair / unreasonable. Jyoti, his previous wife, is the real victim who was cheated by the appellant who indulged in consensual sex with 'X'. Observations of Hon'ble Supreme Court in similar circumstances in '*Vinod Kumar vs. State of Kerala*', 2014 (5) SCC 678 are worth-noting :

"The Appellant is not an innocent man inasmuch as he had willy-nilly entered into a relationship with the prosecutrix, in violation of his matrimonial vows and his paternal duties and responsibilities. If he has suffered incarceration for an offence for which he is not culpable, he should realize that retribution in another form has duly visited him. It can only be hoped that his wife Chitrlekha will find in herself the fortitude to forgive so that their family may be united again and may rediscover happiness, as avowedly the prosecutrix has found."

15. In the light of above discussion, appeal filed by the appellant is allowed. Conviction and sentence of the appellant are set aside. The appellant shall be released forthwith if not required to be detained in any other criminal case.

16. 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 compliance.

(S.P.GARG)
JUDGE

MAY 22, 2015
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