

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

Judgment Reserved on: August 10, 2016

% *Judgment Delivered on: October 19, 2016*

+ **CRL.A. 811/2000**

SHEESHPAL @ PALE & ANR.

..... Appellant

Represented by: Mr.K.K.Manan, Sr.Adv. with
Mr.Ankush Narang, Ms. Anjali
Rajput, Advs.

versus

STATE

..... Respondent

Represented by: Mr.Ashok Kumar Garg, APP

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vide impugned judgment dated November 24, 2000, Sheeshpal alias Pale and Virender alias Kalu were convicted for offences punishable under Sections 376/342/34 IPC. Vide order on sentence dated November 26, 2000, they were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹1,000/- for offence punishable under Section 376 IPC and rigorous imprisonment for period of six months and to pay a fine of ₹500/- for offence punishable under Section 342 read with Section 34 IPC.
2. Learned counsel for the appellants contends that the prosecutrix has made several material improvements in her examination-in-chief and has been confronted with her statements recorded under Section 161 and 164 Cr. P.C. Brother of the prosecutrix Yogesh has neither been examined by the investigating agency under Section 161 Cr. P.C. nor as a witness before the

Court. Furthermore, the prosecutrix has neither handed over her clothes to the investigating officer nor the investigating agency has asked for the same and this aspect has been admitted by the Investigating Officer PW-12 SI Lokenter Singh in his cross-examination.

3. It is further contended that PW-4 mother of the prosecutrix has admitted in her cross-examination that she was running a Dhaba. She also admitted that she used to sell liquor from that Dhaba, which further establishes the defense of the appellants. The testimony of PW-10, Dr. Rachna Yadav reveals that the age of the prosecutrix was more than 14 years but less than 16 years. The learned Trial Court erroneously held that after taking a margin of 2 years, her age comes to be less than 18 years. Lastly, it was contented that there was a considerable and unexplained delay of 14 days in recording the statement of the prosecutrix under Section 164 Cr.P.C. on December 3, 1997 while the FIR was registered on November 18, 1997.

4. Learned APP for the State on the other hand contends that the date of birth of the prosecutrix as per the school record exhibited as Ex. PW-7/A is March 8, 1985 and the same is also evident from the school certificate exhibited as Ex. PW-7/B. Thus, no plea of consent can be taken.

5. FIR No. 574/1997 was registered under Sections 363/342/376/506/34 IPC at PS Vasant Kunj on the complaint of the PW-1, prosecutrix who deposed in the Court that Sheeshpal and Virender were residing in the same locality with only one house in between her house and their house. She had gone to the market to purchase a notebook. Both the appellants were standing at the door of their house and Sheeshpal told her that mother of Virender was calling her. Virender also told her that his mother was calling her upstairs. When she went up to the house of Virender, both the appellants

took her inside the room and closed the door. Virender gagged her mouth with a piece of cloth. Sheeshpal removed her salwar and underwear and then both committed rape upon her. Virender also kicked and slapped her. She was threatened by Sheeshpal that in case she disclosed about the incident to anybody, he would kill her father and also she will get beatings from his mother. Sheeshpal had first committed rape on her and then Virender. Both the appellants had committed rape twice against her wishes and consent. After the incident, she felt giddy. Next day, she told the incident to her brother who then told it to her mother on November 14, 1997. She deposed that the rape was committed on her on November 13, 1997. On November 14, 1997, her father had gone out to the village and he returned back on November 17, 1997 and her mother PW-4 informed him about the incident. Her father had lodged a report on November 18, 1997. She stated that her clothes were neither seized by the police nor by the doctor. She further stated that her statement was recorded before the learned Metropolitan Magistrate on December 3, 1997. During her cross examination, she stated that at the time of incident she was studying in 8th standard in Sarvodya Vidhalaya at Mahipalpur. She deposed that she had gone to the police station to lodge the report in evening. She further stated that on the day of incident her father had gone to Datiana. The appellants had committed rape on her by laying her down on the ground but she had not received any injury mark on her back. She stated that she had not mentioned about the incident to her mother out of fear and had not reported the matter to police between November 13, 1997 and November 17, 1997. During her cross-examination, she also deposed that Inder Singh, who is also the uncle of appellant, was the landlord of the house where they were residing at the time of the

incident. She stated that her father had neither kicked on the private part of the appellant on the day of the incident nor hurled abuses on him.

6. PW-3, father of prosecutrix, deposed that he had gone to the village and returned back on November 17, 1997. PW-3 corroborated the version of PW-1 the prosecutrix. He deposed that the age of the prosecutrix was approximately 13, 13 and a half or 14 years at the time of incident. He stated that the FIR was lodged on November 18, 1997 as PW-4, his wife was threatened by some villagers not to lodge the report.

7. PW-4 mother of prosecutrix deposed that the prosecutrix had told about the incident to her younger brother who in turn informed her about it. She stated that PW-3, father of the prosecutrix had gone to village on November 3, 1997 and returned back on November 17, 1997 and thereafter a report was lodged with respect to the incident on November 18, 1997. On the day of incident, when the prosecutrix came back from market her clothes were dirty. When she asked her, after the prosecutrix had changed her clothes, as to how her clothes had become dirty, the prosecutrix stated that she had undergone menses. She denied the suggestion that there was quarrel between her and the appellants as they desired that she should stop running the dhaba. During her cross-examination, she deposed that she had given the clothes of prosecutrix, which she was wearing at the time of incident, to a beggar. Further, she deposed that elderly people of village had tried to reconcile the matter on November 19, 1997.

8. PW-5, Dr. S.C. Tiwari, Deptt of Skin and Sexually Transmitted Diseases, Safdarjung Hospital, examined Sheeshpal on November 21, 1997 and prepared the MLC Ex.PW-5/A and according to which there was a cut mark on the penis. PW-5 also examined Virender and prepared the MLC

Ex.PW-5/B.

9. PW-10, Dr. Rachna Yadav, Senior Resident, Deptt of Obst and Gynae, Safdarjung Hospital identified the handwriting of Dr. Kiran Kamblay and Dr. Anuradha who prepared the MLC of the prosecutrix Ex.PW-10/A. She stated that on November 18, 1997, the prosecutrix was brought to the hospital with the alleged history of rape. She stated that the hymen of prosecutrix was torn at 3^o and 9^o clock position recently, there was bleeding per vagina, through the OS and there were no marks of external injury. She opined that sexual intercourse was not ruled out. She stated that as per the opinion of Dr. Anuradha (Ex.PW-10/B), age of prosecutrix was more than 14 years but less than 16 years. In her cross examination though she deposed that bleeding was not because of any injury of rape and that the prosecutrix was neither examined by her nor in her presence, the recent tear of hymen corroborates the version of the prosecutrix.

10. The case of the appellants is that in view of the improvements and contradictions in the testimony of three material witnesses, they are liable to be acquitted. Merely because in the statement under Section 161 Cr.P.C. and before court the prosecutrix stated that both Virender and Sheeshpal were standing on the gate of the house whereas in the statement under Section 164 Cr.P.C. she stated that Sheeshpal was standing on the door who took her upstairs will not discredit the version of the prosecutrix.

11. The defence of the appellants is that the mother of the prosecutrix was running a dhaba where she was selling liquor and on the appellants objecting to the same, they were falsely implicated. Appellants have examined two defence witnesses, however, both the witnesses had not witnessed the quarrel and their evidence was hearsay.

12. Considering the evidence on record in the form of statement of the prosecutrix and her mother duly corroborated by the MLC and age of the prosecutrix being opined between 14 and 16 years, I find no infirmity in the judgment of conviction and order on sentence. Appeal is accordingly dismissed.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2016
‘vn’