

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

RESERVED ON : 3rd MARCH, 2016

DECIDED ON : 15th MARCH, 2016

+ CRL.A.821/2004

KAPIL RAVI DAS Appellant

Through : Mr.K.K.Jha, Advocate with
Mr.Kamal Kartar Singh, Advocate.

VERSUS

THE STATE OF NCT OF DELHI Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 20.07.2004 of learned Addl. Sessions Judge in Sessions Case No.99/2000 arising out of FIR No.362/1999 PS Subzi Mandi by which the appellant – Kapil Ravi Das was held guilty for committing offences punishable under Sections 376/506-II IPC, the instant appeal has been filed by him. By an order dated 28.07.2004, he was sentenced to undergo RI for seven years with fine ₹5,000/- under Section 376 IPC and RI for two years with fine ₹1,000/- under Section 506-II IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on the night intervening 17/18.09.1999 at around 02.00 a.m. at jhuggi Mithai Pul Patri, Tis Hazari, Delhi, the appellant committed rape upon the prosecutrix 'X' (changed name) aged around 25 years and criminally intimidated her. The incident was reported to the police but no action was taken. The complainant moved an application under Section 156(3) Cr.P.C. before the learned Metropolitan Magistrate which resulted in lodging the FIR. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. The accused was arrested and medically examined. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of the investigation, a charge-sheet was filed against him in the Court. The prosecution examined twelve witnesses to prove its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Unexplained delay in lodging the FIR was overlooked by the Trial Court without

cogent reasons. No injuries whatsoever were found on the body of the prosecutrix to infer forcible rape. Non-examination of victim's husband is fatal. The victim has already deserted her previous husband and married someone else who has met with similar fate. Learned Addl. Public Prosecutor urged that there are no valid reasons to disbelieve the prosecutrix.

4. Admitted position is that both the prosecutrix and the appellant lived in neighbourhood. 'X' was a married lady, aged around 25 years, mother of two children. The occurrence took place on the night intervening 17/18.09.1999. The incident was reported to the police promptly but they did not lodge FIR. The complainant / victim filed a complaint on 21.09.1999 itself before the learned Metropolitan Magistrate for directions to the investigating agency to lodge the FIR. Subsequently, the FIR was lodged by the police. Apparently, delay in lodging the FIR is not due to any lapse on the part of the prosecutrix. It was the Investigating Agency / police which did not co-operate and abdicated their duty to bring the real culprit to book after investigating the victim's complaint. Delay has been duly explained and it cannot be considered a ground for acquittal of the accused.

5. In her complaint, 'X' gave detailed account as to how and under what manner, she was ravished by the accused on the night intervening 17/18.09.1999 at around 02.00 a.m. when she was present along with her two children in the jhuggi and her husband was sleeping on the 'rehri' outside it. She further informed that the accused had threatened to kill her in case the matter was lodged with the police. In her 164 Cr.P.C. statement, the prosecutrix reiterated her version in entirety without any variation. She implicated the accused as the perpetrator of the crime and gave vivid description of the incident. The learned Presiding Officer had put number of questions before recording her 164 Cr.P.C. statement to ascertain if she was making her statement voluntarily without any fear or pressure. After recording satisfaction, the statement under Section 164 Cr.P.C. was recorded. She further disclosed that when she raised alarm, the accused had showed her a knife and threatened to kill her. On her raising alarm, the accused was apprehended. However, he succeeded to escape. She further informed that after about an hour, he brought 4 / 5 individuals and threatened her husband to remain mum. In her Court statement as PW-4, she proved the version given in her 164 Cr.P.C. statement without any improvement. She deposed that on the night intervening 17/18.09.1999 at around 02.00 a.m. when she was

sleeping with her two children in the jhuggi and her husband Raghubir was sleeping outside the jhuggi on the 'rehri' the accused entered inside the jhuggi, stuffed her mouth with a handkerchief and raped her forcibly. She somehow forcibly pushed the accused and took out the handkerchief from the mouth and shouted. The accused then showed her a knife and told not to raise alarm. On hearing her alarm, many people gathered from the nearby jhuggies and caught hold of the accused but he freed himself and escaped. After about an hour, he brought 3 / 4 individuals and threatened her husband to run away or else he would kill him. On that, her husband fled the spot. She called her 'Biradari' people and the accused was summoned by them but he did not appear. Thereafter, she lodged the report. Ex.PW-4/A is the complaint lodged by her for getting the FIR registered. In the cross-examination, she denied if ₹10,000/- was demanded from the accused after registration of the FIR to settle it. She admitted that the accused belonged to her village and they were from the same 'Biradari'. She further admitted that there was no 'door' in the jhuggi. Her father had accompanied her to the police station. She expressed ignorance if her husband Raghubir had taken ₹2,000/- from the accused. She proved that handkerchief (Ex.P1) used by the accused in the crime was seized vide seizure memo (Ex.PW-4/C).

6. On scrutinising the statement of the prosecutrix in entirety, I find no material discrepancies or infirmities to suspect her version. It is not the appellant's case that physical relations with the prosecutrix were consensual. A married lady whose husband was sleeping outside of the house is not expected to level false allegations of commission of rape at odd hours i.e. 02.00 a.m. to put her own honour at stake. No ulterior motive has been assigned to the prosecutrix to make false statement about commission of rape. In the absence of prior enmity or ill-will, the prosecutrix who had come to Delhi from her native place is not imagined to falsely rope in the accused. Her statement is consistent throughout.

7. PW-5 (Moti Das) victim's father, who lived in a nearby jhuggi, has corroborated her version. On hearing noise of 'chor-chor' on the night intervening 17/18.09.1999, he went to the spot. The accused slapped him on his face with pressure twice or thrice; abused him and threatened to kill if he raised alarm and succeeded to flee towards the bridge. He informed that after sometime her daughter 'X' told him that the accused had committed rape upon her. In the cross-examination, he disclosed that on next morning, he along with his daughter went to the police station Subzi Mandi to lodge the complaint. He further informed that after registration of the FIR, the accused had lodged a criminal case

against him and other six individuals at village Jamui, Bihar. This witness, victim's father, who arrived at the spot immediately after the occurrence had seen the accused near the crime spot. The accused did not explain his presence at dead hours at victim's jhuggi. PW-10 (Chintu) who lived in the neighbourhood deposed that on hearing the noise of 'pakro-pakro' on the night intervening 17/18.09.1999 at about 02.30 a.m. he saw the accused running away from the spot being chased by victim's husband who succeeded to apprehend him with the assistance of one or two individuals. He told them that the accused had committed rape upon his wife in the jhuggi. This independent witness who had no animosity with the appellant had no oblique reasons to give a false statement particularly when the victim was not related to him.

8. True, in her medical examination vide MLC (Ex.PW-9/B), no external injuries were found on X's body. This circumstance is of no help to the accused. The prosecutrix was a married lady; she was medically examined after a gap of 18 days. Obviously the sign of forcible intercourse would not persist for that long period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the internal or external body parts of the victim. In the instant case, 'X' clearly deposed that she was not in a

position to put up any struggle as her mouth was gagged by a handkerchief and she was intimidated by a knife. Non-examination of victim's husband is inconsequential as he was not a witness to the incident of rape. Moreover, it is the case of the accused himself that the victim has since abandoned Raghbir and had married with one Raj Kumar. Under these circumstances, Raghbir was not supposed to support the prosecution case. Non-recovery of the crime weapon i.e. knife is not fatal.

9. The accused categorically claimed that ₹2,000/- were given in cash and kind to the victim's husband. In his 313 statement, he stated that in September, 1999 both the victim and her husband Raghbir had demanded ₹2,000/- and he gave ₹1,500/- in cash and pulses / rice for ₹500/-. They promised to return it after a month. When he demanded the money on 2 or 3 occasions and finally on 15.09.1999, Raghbir abused him and threatened to either give ₹10,000/- to him or else he would implicate him in a rape case. On 26.09.1999, on receipt of a letter from his village, he left on 30.09.1999. This defence has not been established by producing any cogent evidence. The accused did not examine Raghbir in his defence to prove if any amount was borrowed by him. In the cross-examination, the victim declined if her previous husband Raghbir had

taken ₹2,000/- from the accused. Moreover, for a petty amount of ₹2,000/- the victim is not expected to level serious allegations of rape to bring herself in disrepute. Certain discrepancies pointed out by the appellant's counsel are of no relevance as they do not affect the core of the prosecution case. It is well settled position in law that conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. The Trial Court has dealt with all the relevant aspects and has based its findings on proper appreciation of the evidence which warrant no intervention.

10. After considering the entirety of the case, no cogent reason to interfere with the findings of fact recorded by the Court below exists. The appeal lacks merit and is accordingly dismissed.

11. The appellant shall surrender before the Trial Court on 22.03.2016 to serve out the remaining period of sentence awarded by the Trial Court. 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 information.

(S.P.GARG)
JUDGE

MARCH 15, 2016 / tr