

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

**RESERVED ON : 2nd MARCH, 2016
DECIDED ON : 15th MARCH, 2016**

+ CRL.A.113/2014

PREM PAL Appellant
Through : Mr.S.H.Ansari, Advocate.

VERSUS

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Through : Mr.Vinod Diwakar, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 17.12.2013 of learned Addl. Sessions Judge in Sessions Case No.97/2013 arising out of FIR No.211/2011 PS Shalimar Bagh whereby the appellant – Prem Pal was held guilty for committing offence punishable under Section 376 IPC. By an order dated 19.12.2013, he was sentenced to undergo RI for ten years with fine ₹10,000/-.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 06.06.2011 at 12.00 noon at jhuggi No.188, Ayurvedic Camp, Haiderpur, Delhi, the appellant committed rape upon the

prosecutrix 'X' (changed name) aged 30 years against her consent. The incident was reported to the police at 07.08 p.m. and Daily Diary (DD) No.82B (Ex.PW-4/A) came into existence at PS Shalimar Bagh. The information conveyed by the victim's husband was that a 'neighbour' had committed rape upon his wife. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. 'X' was medically examined. 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 sixteen 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. I have heard the learned counsel for the parties and have examined the file minutely. Admittedly, the prosecutrix and the appellant were acquainted with each other before the incident. The appellant is the brother of the victim's 'Jethani' Urmila who lived in the said premises.

The prosecutrix, a married lady, was aged around 30 years and mother of an infant aged around one month.

4. Appellants' conviction is primarily based upon the solitary statement of the prosecutrix 'X' which has not been corroborated by any other independent source. Needless to say, conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case, the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration.

5. The occurrence took place on 06.06.2011 at around 12.00 noon. However, the incident was not reported promptly to the police. The information was conveyed by victim's husband PW-3 (Subhash) at 07.08 p.m. to the police on 'phone' as a result of that Daily Diary (DD) No.82B (Ex.PW-4/A) came into existence at 07.08 p.m. PW-3 (Subhash) admitted in his statement that he was not informed about the occurrence by his wife at the place of his duty. As usual, he came at the jhuggi at around 01.00 p.m. for lunch and there he found his wife weeping. On enquiry, she informed him about commission of rape by the accused. He did not offer any explanation as to why he did not rush to the police station to lodge the report immediately. In the cross-examination, he admitted that after coming to know about the occurrence, he called his brothers. His brothers,

brother-in-law, mother-in-law and father-in-law accompanied them to the police station. The police, however, did not record their statements and no such individual was examined during trial. Apparently, the FIR was lodged after due deliberations and consultation. The prosecutrix was not taken for medical examination soon after the incident. The delay in lodging the FIR has not been explained satisfactorily.

6. In the initial version (Ex.PW-1/A), the victim had disclosed that at about 11.00 a.m. the appellant and her husband were having conversation on the roof of her jhuggi. When her husband proceeded to his place of work, he asked the appellant to accompany him. The accused came downstairs but returned soon. When her husband went to his place of work, at about 12.00 noon, the accused finding her alone caught hold of her hands; made her lie on the bed and committed rape upon her. He asked her not to disclose the incident to anyone and went away. At around 01.00 p.m. when her husband returned, she apprised him of the incident. In this complaint, there is no mention if at the time of crime, she had raised any alarm or had offered any resistance. She did not state if she was criminally intimidated or threatened by the accused or her mouth was gagged by him. Her husband PW-3 did not corroborate her if he and the appellant were in conversation on the roof of the jhuggi on that day at

about 11.00 a.m. or he had requested the accused to accompany him while going to his place of work. He rather claimed that on 06.06.2011 at about 10.00 a.m. he had gone to his work and returned at about 01.00 p.m. The victim appearing as PW-1 in her examination-in-chief made improvements and deposed that due to resistance, her daughter had fallen down from the bed. The accused went from the spot threatening her to kill if she disclosed the incident to anybody. No explanation has been offered as to why all these facts were omitted to be recorded in her initial complaint. In the cross-examination, the victim disclosed that on her raising alarm, her jeth Kailash arrived at the spot to help her. However, the prosecution did not examine Kailash. Kailash did not take the prosecutrix to the hospital for medical examination; he even did not report the incident to the police. PW-3 (Subhash) did not claim if he came to know about the incident from Kailash. In the cross-examination, the victim admitted that at the time of incident, the door of the house was in open condition. All the neighbours / tenants were present in their respective rooms but none came to rescue or help her. She had raised alarm for more than an hour but to no effect. She further admitted that a quarrel had taken place on that day in the morning between her and appellant's sister. In that eventuality, there was no possibility of the

appellant and her husband to have friendly conversation on the roof at 11.00 a.m. as alleged.

7. It has come on record that the crime spot was surrounded by number of residential houses and any noise raised from there could have been heard by the inmates of the adjoining houses easily. No such neighbor was examined by the Investigating Officer to corroborate the prosecutrix version. In Daily Diary (DD) No.82B (Ex.PW-4/A), victim's husband did not name the appellant despite having familiarity with him. The prosecutrix was medically examined vide MLC (Ex.PW-8/A). However, no visible external injuries were found on her body including private parts to infer forcible rape. The FSL reports (Ex.PW-13/A & Ex.PW-13/B) do not connect the accused with the crime. Human semen was detected on Ex.'1j(a)' and Ex.'1j(b)' i.e. two micro slides having faint smear. Semen could not be detected on the appellant's clothes. Blood of human origin of 'AB' group was detected on Ex.'1A' i.e. victim's salwar, however, it has not been proved if this is the appellant's blood group. 'Semen' could not be detected on other exhibits collected by the Investigating Agency.

8. It is relevant to note that earlier also the prosecutrix had lodged a case under Sections 376/506 IPC vide FIR No.392/2008

registered at PS Shalimar Bagh against one Shiv Prashad @ Babbu. Judgment dated 14.07.2011 in SC No.21/08 'Ex.DX' has been placed on record whereby the accused Shiv Prashad @ Babbu was acquitted of the charge. The Court observed that the prosecutrix was not reliable witness; her testimony did not inspire confidence and appear to be contradictory, unnatural and untruthful. It is relevant to note that the prosecutrix and her husband were the only material witnesses in the said FIR.

9. 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.”

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.”

10. 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.”

11. 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.'

12. On consideration of the totality of the facts and circumstances, it will be unsafe to convict the appellant as there are so many infirmities, holes and lacunas in the prosecution version. No implicit reliance can be placed on the testimony of the prosecutrix as well.

13. In '*Sadashiv Ramrao Hadbe vs. State of Maharashtra & Anr.*', 2006 (10) SCC 92, the Apex Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of the prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful

while accepting the testimony when the entire case is improbable and unlikely to have happened. This is what has been stated :

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

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

15. 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 / compliance.

(S.P.GARG)
JUDGE

MARCH 15, 2016 / tr