

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

RESERVED ON : 13th MAY, 2016

DECIDED ON : 30th MAY, 2016

+ CRL.A.143/2014

BIHARI MUKHIYA Appellant

Through : Mr.S.B.Dandapani, Advocate.

VERSUS

STATE (GNCT OF DELHI) Respondent

Through : Mr.Vinod Diwakar, APP.

AND

+ CRL.A.407/2014

CHAUDHRY MUKHIYA Appellant

**Through : Mr.Chetan Lokur, Advocate with
Mr.Nitish Chaudhary, Advocate.**

VERSUS

STATE (GNCT OF DELHI) Respondent

Through : Mr.Vinod Diwakar, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 25.10.2013 of learned Addl. Sessions Judge in Sessions Case No.17/2013 arising out of FIR No. 163/2009 PS Shahbad Dairy by which the appellants – Bihari Mukhiya (A-

1) and Chaudhary Mukhiya (A-2) were convicted for committing offences under Sections 376(2)(g) IPC, they have filed the instant appeals. By an order dated 29.10.2013, they were sentenced to undergo RI for ten years with fine ₹10,000/- each.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 04.07.2009 in the fields of Alipur, the appellants in furtherance of common intention with accused Raju Mukhiya (since Proclaimed Offender) committed gang-rape upon the prosecutrix 'X' (changed name) aged around 17 years. On 05.07.2009 PW-15 Seema, Para Legal Worker in Nav Srishti NGO while going to her office in the morning noticed a girl sitting at Metro Vihar bus stand. In the evening, again she found the said girl still sitting at there. Suspecting something amiss, she enquired from the said girl as to why she was sitting there. She informed that Raju had gone in search of rented accommodation and had left her there. She further informed her that Raju had brought her on 04.07.2009; kept her in Alipur during the night and had left her in the morning at bus stand Metro Vihar. Since no lady police official was available at the police post, she took the prosecutrix to her house. On the next day, she along with PW-9 (Najma Khan) went to the police station. The Investigating Officer after recording victim's statement (Ex.PW-2/A) lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. The appellants were arrested and medically examined. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Efforts were made to find out Raju but he could not be traced and was finally declared Proclaimed Offender. Upon completion of investigation, a

charge-sheet was filed against the appellants. In order to establish its case, the prosecution examined twenty witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred by them.

3. I have heard the learned counsel for the parties and have examined the file. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error to rely on the uncorroborated testimony of the prosecutrix. Considerable delay in lodging the FIR remained unexplained. Number of glaring infirmities and inconsistencies emerging in the statements of the prosecution witnesses were ignored without cogent reasons. 'X' was major and a married lady. None of the appellants was present at the spot. Learned Addl. Public Prosecutor urged that there are no valid reasons to disbelieve the testimony of the prosecutrix.

4. In her complaint (Ex.PW-2/A), the victim disclosed that she was working as 'maid' at Kamla Nagar. Raju also worked in a nearby kothi and wanted to marry her. On 04.07.2009 at around 07.10 a.m. he took her along with him on the promise to marry her. Thereafter, both of them went to Alipur bus stand by bus. From there, the accused Raju took her to the fields (of Alipur) and kept her during night there. The appellants and Raju committed rape upon her at night. On 05.07.2009 at around 05.00 a.m. she was left at Metro Vihar Phase-I. At around 06.00 p.m. she met one Seema who brought her to the police post. Since there was no lady constable, Seema took her to her residence at 10.00 p.m.

5. In her 164 Cr.P.C. Cr.P.C. statement recorded on 07.07.2009, she implicated three individuals Raju Mukhiya, A-1 and A-2 to have committed rape upon her in the fields of Alipur.

6. In her Court statement as PW-2, she deposed that on the 4th of the said month, she was working as maid in a kothi at Kamla Nagar. Raju also used to work in a kothi nearby. Raju enticed her to marry and on that pretext, took her to Alipur in a bus. He, thereafter, took her to fields of Alipur where both the appellants were present. During night, all the three committed rape upon her turn-by-turn. On the next day, she was made to board Metro rail. One Seema met and took her to the police station. Her statement (Ex.PW-2/A) was recorded. In the cross-examination, she disclosed that she was from West Bengal and had come to Delhi approximately two years before the incident. She was illiterate. She denied to have performed marriage with Ranjit after elopement. She fairly admitted that her parents had not attended their marriage and she had no connection with them. She met her husband Ranjit once after her employment at Kamla Nagar kothi. She elaborated that she and Raju used to meet each other on the roof when she used to go there to dry clothes. On 04.07.2009, both of them met each other at the gate of kothi at about 10.00 a.m. She took all her belongings with her and went along with Raju in a bus. She further reiterated that both the appellants A-1 and A-2 met her at around 09.00 p.m. on 04.07.2009 in the agricultural fields of Alipur. She was not acquainted with them before that. She further explained that when they reached the fields, there was no light and nothing was visible in the surroundings. They all remained in the fields during night. First, Raju committed rape upon her and thereafter, she was raped by the appellants. She had raised alarm at that

time. She disclosed her date of birth as 07.12.1984. She denied that the appellants were falsely implicated as on their persistence, Raju had refused to marry her.

7. On scanning the testimony of the prosecutrix in entirety, it transpires that she has proved the version given to the police and before the Court without any major variation / deviation. She was categorical to identify both the appellants to be the individuals who along with Raju had committed rape upon her against her wishes. Since the prosecutrix had remained in the appellants' company throughout the night and on the next morning, she was left at metro station on the pretext for search of a rented accommodation, the prosecutrix aged around 18 years had fair opportunity to recognize and identify the assailants. Material facts deposed by her in the examination-in-chief remained unchallenged and unrebutted in the cross-examination. No ulterior motive was attributed to the prosecutrix for falsely implicating the appellants with whom, she had no prior acquaintance. In the absence of any animosity or ill-will, the illiterate prosecutrix who was from outside Delhi was not expected to falsely implicate the appellants. Specific and definite role has been assigned by her to each of the rapists. The appellants did not deny their presence at the spot during that night. They did not furnish any explanation as to what had prompted them to go to the fields of Alipur during odd hours that night without any particular reason or purpose. They also did not deny their acquaintance or familiarity with co-accused Raju. Suggestion put by the accused in the cross-examination that due to their persistence Raju had declined to marry her confirms the prosecutrix's claim of their presence at the spot. The prosecutrix was acquainted with Raju who worked in a nearby kothi and friendship had

developed between the two. On the pretext to marry the unsuspecting girl, he took her to Alipur fields where during night she was ravished by all of them. After committing the sexual assault, the appellants and Raju left the prosecutrix abandoned at the metro station and fled on the pretext to arrange some rented accommodation. The helpless victim kept waiting for their arrival till evening at the said metro station but none of the perpetrators of the crime arrived there. When PW-15 (Seema) happened to see the prosecutrix in miserable condition from morning to evening, she became suspicious and enquired from the prosecutrix who narrated her ordeal to her. PW-15 (Seema) had no ulterior motive to make a false statement as she was having no prior familiarity with the appellants. PW-9 (Najma Khan) from NGO Nav Srishti, Nangloi, also supported the version narrated by PW-15 (Seema). She had the occasion to interact with 'X'. She also came to know from the prosecutrix that Raju and two others had committed rape upon her during night in the fields at Alipur. They moved the police machinery into motion and DD No.37B (Ex.PW-6/A) was lodged. This independent witness from NGO had taken the victim to the police station in the performance of her duties and no extraneous consideration can be attributed to her.

8. In 313 Cr.P.C. statements, the appellants did not submit plausible explanation to the incriminating circumstances proved against them. An unsuccessful attempt was made by A-2 by examining DW-1 (Shatrughan Kamant) to prove that at the relevant time, he was with him at his residence. This defence deserves outright rejection as no such plea was taken prior to the examination of DW-1 (Shatrughan Kamant); even this defence was not pleaded in 313 Cr.P.C. statement. No suggestion was put to

any of the prosecution witnesses about the plea of 'alibi'. The defence is inconsistent with the stand taken whereby Raju was impressed by the appellants not to marry the prosecutrix.

9. Medical evidence is in consonance with ocular statement of the prosecutrix. Soon after the occurrence, she was medically examined vide MLC (Ex.PW-10/A). The alleged history recorded therein states that the victim was sexually assaulted on 04.07.2009; hymen was found ruptured. As per FSL reports (Ex.PW-20/A & Ex.PW-20/B), human semen was detected on Ex.5 (salwar of the prosecutrix), Ex.7 (semen sample), Ex.8 (underwear of A-2), Ex.11 (semen sample) and Ex.13 (underwear of A-1). The appellants did not explain as to how and under what circumstances, semen happened to be there on their clothes. Human blood was detected on Ex.1 (blood sample), Ex.6 (blood sample) and Ex.12 (blood sample).

10. Reposing trust upon Raju, 'X' had accompanied him with the hope to marry him. She had taken all her belongings without informing her employer. PW-17 (Kamna) disclosed that on 04.07.2009 when she returned from school situated IRI Pusa at about 01.15 p.m. she did not find her maid in the house. On enquiry from the neighbourhood, she did not get any response. Her belongings and other articles were also missing. Finally, she lodged a complaint (Ex.PW-12/A) at Police Station Roop Nagar. After some days, the prosecutrix was brought at her residence for identification. The victim had no other reason to go alone to a far away secluded place in the fields of Alipur. It appears that Raju had already planned to have physical relations with the prosecutrix and had taken the victim to the said place on the alleged promise to marry. He had also joined the appellants to have physical relation with the innocent and hapless girl.

11. The Trial Court has discussed all the relevant aspects minutely in the impugned judgment. Minor discrepancies and infirmities highlighted by learned defence counsel are of no consequence. The victim was an illiterate and rustic woman. She being native of West Bengal was unable to express herself as she knew very less Hindi. Nothing more can be expected from a witness of this nature. Conviction can be based on the uncorroborated testimony of the prosecutrix if it inspires confidence. Conviction recorded by the Trial Court based upon fair and proper appreciation of the evidence is affirmed.

12. Sentence Order is also based upon fair reasoning. It requires no modification except that default sentence for non-payment of fine ₹10,000/- shall be one month each instead of two years. Other terms and conditions of the sentence order are left undisturbed.

13. The appeals stand disposed of in the above terms. 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

MAY 30, 2016 / tr