

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

RESERVED ON : 4th FEBRUARY, 2016

DECIDED ON : 19th FEBRUARY, 2016

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CRL.A.634/2013

ARVIND

..... Appellant

Through : Mr.Sitab Ali 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. Present appeal has been filed by the appellant – Arvind to challenge the legality and correctness of a judgment dated 22.12.2012 of learned Addl. Sessions Judge in Sessions Case No.19/2011 arising out of FIR No.89/2011 PS Gazipur by which he was convicted for committing offence under Section 376 IPC. By an order dated 22.12.2012, he was sentenced to undergo RI for seven years with fine ₹10,000/-.

2. Briefly stated the prosecution case as stated in the charge-sheet was that on 20.03.2011 at about 01.00 a.m. at House No.51, Gazipur village, Gali No.6, Delhi, the appellant committed rape upon the prosecutrix 'X' (changed name), aged 55 years, against her will. The

incident was reported to the police on 20.03.2011 and Daily Diary (DD) No.18A (Ex.PW-11/A) came into existence at the Police Control Room in the early morning. After assignment of investigation, ASI Shankar Lal and SI Harpal went to the spot. After recording victim's statement (Ex.PW-7/A), Investigating Officer lodged First Information Report. Victim was medically examined. Statements of the witnesses conversant with the facts were recorded. Documents collected during investigation were sent to Forensic Science Laboratory for examination. The accused was arrested and medically examined. Upon completion of investigation, a charge-sheet under Section 376 IPC was filed against the appellant in the Court. To substantiate its case, the prosecution produced 12 witnesses and relied on various documents. In 313 Cr.P.C. statement, the accused pleaded false implication due to a quarrel that had taken place with the victim's son. 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. The occurrence took place on the night intervening 19/20.03.2011 at around 01.00 a.m. The incident was reported to the police promptly on 20.03.2011 at around 09.00 a.m. vide Daily Diary (DD) No.18A (Ex.PW-11/A). Initially, it was informed to the police that

a 'quarrel' had taken place with a 'lady'. When the Investigating Officer arrived at the spot and reported back the occurrence, it was reported that the two individuals Arvind and Raees, victim's neighbours had committed rape upon her.

4. In her initial version (Ex.PW-7/A), the victim gave vivid account of the incident and implicated the appellant by name for committing rape upon her. In her Court statement as PW-7, identifying the appellant to be the perpetrator of the crime, she deposed that when she was sleeping on the night intervening 19/20.03.2011 near stairs outside the tenanted room of her sons, the accused Arvind, who lived in the said premises as tenant came and forcibly took her after gagging her mouth. She resisted and attempted to escape from his clutches. The accused forcibly committed sexual intercourse "Mere sath balatkar kiya". Due to the fear from the accused and for the sake of her reputation, she maintained silence and did not inform her sons during that night. It was only when she felt pain, developed fever and became unconscious in the morning, she apprised her son Krishan Singh about the incident. Krishan Singh called the accused Arvind immediately and a quarrel took place between the two. The police arrived at the spot and recorded her statement (Ex.PW-7/A). She had handed over her Petticot (Ex.P1) seized by the

police vide seizure memo (Ex.PW-6/C). In the cross-examination, she elaborated that due to paucity of tenanted accommodation consisting of one room only, she used to sleep in the stairs. She denied that the accused was falsely implicated as a quarrel had taken place about fifteen days prior to the incident with her son.

5. On scanning the testimony of the aged lady in its entirety, it reveals that despite searching cross-examination, no infirmity could be elicited to disbelieve or suspect her version. 'X' who hailed from a village Begum Sarai Dhava District, Nalanda, Bihar used to visit Delhi occasionally to see her sons at village Gazipur. The accused lived in the said premises on a rented accommodation and there was no familiarity between the two. The victim was aged around 55 years and was mother of two adult children. In the absence of prior animosity or ill-will, she was not expected to falsely implicate the accused for the heinous crime. Due to fear and shame, she was even unable to disclose the incident to her sons soon after the occurrence. Only when she became unconscious due to pain and fever, the incident was disclosed by her. Statement of the prosecutrix is consistent throughout. No suggestions were put to her in the cross-examination if the accused was not present at the spot at the time of occurrence. The victim had no oblique motive to make a false statement

against the appellant. Accused did not produce any cogent and worthwhile evidence on record to show if any quarrel had taken place between him and the prosecutrix or her sons any time. He also did not elaborate as to on what account the quarrel had taken place. No report about the said alleged quarrel was made to the police. Moreover, for a petty quarrel (if any) between the appellant and victim's son, the victim is not expected to level so serious allegations to put her honour at stake. She was not going to be benefitted by implicating the appellant aged around 24 years who was like her 'son'.

6. X's statement has been corroborated by PW-6 (Krishan Singh), her son in all particulars. In his testimony, he informed that her mother used to remain alone during night in the house as he and his brother Bhim Singh used to go at their places of work. On 20.03.2011 when he returned back to home from his duty, 'X' told her that when she was sleeping in the night at around 01.00 a.m. the accused Arvind had committed rape upon her. In the cross-examination, he explained that due to shortage of accommodation, her mother used to sleep in stairs; she also used to feel hot inside the room. The police machinery was set in motion by him by making call from his mobile No.9654643924. Material facts

deposed by the witness remained unchallenged and uncontroverted in the cross-examination.

7. The prosecutrix was medically examined vide MLC (Ex.PW-9/A) on 20.03.2011 at around 02.00 p.m. Alleged history mentioned therein specifically records 'sexual assault on 20.03.2011 at around 01.00 a.m. by a neighbour'. Multiple small abrasions over external vaginal orifice were noticed on her body. FSL reports dated 23.12.2011 on record lend credence to her version. As per FSL reports, human semen was detected on exhibits '1b' (body fluid collection), '1j1' (vaginal secretion), '1j2' (vaginal secretion), '1j3' (vaginal secretion), '1k' (cervical mucus collection), '1l' (culture), '1m' (washing from vagina), '2' (one dirty petticoat) & '5' (one dirty underwear).

8. The accused did not furnish plausible explanation to the incriminating circumstances appearing against him in 313 Cr.P.C. statement. Contradictions and improvements as pointed out by the appellant's counsel are trivial in nature and do not affect the core of the prosecution case. The defence in fact, was one of complete denial of the prosecution allegations. It is no gains-saying that the evidence of a victim of sexual assault stands almost on par with the evidence of an injured witness and to an extent is even more reliable. The evidence of a victim of

sexual offence is entitled to great weight, absence of corroboration notwithstanding. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime, but is a victim of another person's lust.

9. The Trial Court has dealt with all the aspects minutely and the judgment premised on fair appreciation of the evidence warrants no intervention; the conviction is upheld. No sufficient and adequate reasons exist to modify the Sentence Order as minimum sentence of seven years prescribed under Section 376 IPC has been awarded by the Trial Court to the appellant. Moreover, the victim in this case was akin to appellant's mother.

10. The appeal lacks merit and is dismissed. 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

FEBRUARY 19, 2016 / tr