

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

RESERVED ON : 8th MARCH, 2016

DECIDED ON : 15th MARCH, 2016

+ CRL.A.770/2013

MUKESH KHANNA Appellant

Through : Mr.V.K.Vats, Advocate.

VERSUS

THE STATE (NCT) OF DELHI & ORS. Respondents

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 18.03.2013 of learned Addl. Sessions Judge in Sessions Case No.106/2013 arising out of FIR No.280/2010 PS Vijay Vihar by which the appellant – Mukesh Khanna was held guilty for committing offences punishable under Sections 376/506/342 IPC. By an order dated 23.03.2013, he was sentenced to undergo RI for ten years with fine ₹10,000/- under Section 376 IPC; RI for three years with fine ₹5,000/- under Section 506 IPC and RI for one year with fine ₹1,000/- under Section 342 IPC. All the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 07.08.2010 at around 10.00 a.m. at House No.C-171, Sector-24, Rohini, Delhi, the appellant committed rape upon the prosecutrix 'X' (changed name) after criminally intimidating and wrongfully confining her. The incident was reported to the police on 10.08.2010 and DD No.8A(Ex.PW-8/A) came into existence at PS Vijay Vihar at 08.05 a.m. The Investigating Officer, after recording victim's statement (PW-3/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 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 thirteen 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. Appellant's 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.

4. Admitted position is that 'X' was 'major' on the day of occurrence. The appellant used to run a placement agency under the name and style of 'Khanna Ji Enterprises' at his House No.C-171, Sector-24, Rohini, Delhi, where he lived along with his wife Ganga, mother-in-law and son. Undeniably, on 21.05.2010, PW-2 (Lakshmi) – victim's sister was brought to Delhi. In her Court statement, PW-2 (Lakshmi) disclosed that Tanu (Ganga's sister) had brought her to Delhi on the pretext that she would get her a good job. After coming to Delhi, she started living at Ganga's house. Subsequently, she was employed in a house at Bahadurgarh. In the cross-examination, she admitted that prior to her job at Bahadurgarh, she was employed by the appellant at two other places. PW-11 (Tarundeep Mahipal) in his Court statement disclosed that he had paid ₹4,000/- as 'commission' to the appellant who used to run a placement agency known as 'Khanna Ji Enterprises' at Shakarpur. He was

provided a maid Rukmani aged about 18 years on a monthly salary of ₹2,000/- by the appellant. On 10.08.2010, when he came to know that the said maid was wanted by the police of Police Station Vijay Vihar, he handed over that girl to the police. PW-2 (Laskshmi) did not complain if during her employment with PW-11 (Tarundeep Mahipal), she was ever sexually abused or assaulted. She did not level any allegations of molestation or rape against the appellant. She had accompanied Tanu, her acquaintance in the village, to Delhi after getting her uncle's permission and consent to get a Job. In her Court version, she categorically stated that during her employment with PW-11 (Tarundeep Mahipal), she was quite physical well and never informed her sister or anyone else that she was not feeling good or was suffering from any ailment.

5. The victim claimed that she came to Delhi on 04.08.2010 along with Tanu, who had informed her in the village that her sister Lakshmi (PW-2) was unwell and she should bring her back to the village. After coming to Delhi, the victim lived at the appellant's residence. When she expressed her desire to talk to her sister PW-2 (Lakshmi), the appellant informed that she would return on 12.08.2010. 'X' continued to live at the appellant's residence. Allegedly on 07.08.2010, she was sexually assaulted by the appellant at around 10.00 a.m. when she was

sleeping on the second floor of the house. She informed that the accused had brought her to first floor in his lap and committed rape upon her there. Thereafter, she was confined for two days in the room. After getting an opportunity, she managed to approach a nearby 'aunt' who informed the police.

6. Apparently, there is inordinate delay in lodging the report with the police. No proper explanation has been offered by the prosecutrix for lodging the complaint with the police after about three days of the incident. Nothing has come on record if 'X' raised any hue and cry at the time of crime or soon thereafter. She continued to live at the appellant's house after the crime for two days. She did not reveal as to where his son, mother-in-law were during these two days. In her medical examination on 10.08.2010 vide MLC (Ex.PW-9/A), no visible external injuries were found on her body including private parts to infer forcible rape. There were no struggle / violence marks on her body to show if the sexual assault was resisted by her. A number of material discrepancies and infirmities have emerged in her deposition which makes her testimony unreliable. It is unclear if she was acquainted with Alok Nandini before the occurrence. The victim in her cross-examination claimed that she used to talk with her in Oriya. In further cross-examination, however, she

changed her version and stated that she did not know her. PW-10 (Alok Nandini) who lived at C-199, J.J.Colony, Sectore-24, Rohini, Delhi, did not furnish explanation as to why soon after victim's arrival at her residence, she did not alert the police. The prosecutrix was kept by her at her house throughout the night without informing the police. The prosecutrix claimed that on 09.08.2010, she had a talk with Ganga (appellant's wife) on his phone (walky-talky) and apprised her about the rape incident. Ganga told her to go to the 'Aunt' and stay there till her return from the village. The prosecution did not examine Ganga – appellant's wife. The victim further informed that a 'boy' used to live in the appellant's house and he remained there till 08.08.2010. The prosecution did not examine the said 'boy' and produced him as a witness. The accused had not put any lock on the door while leaving the house on 09.08.2010. She claimed to have informed the 'boy' who lived with the appellant on 07.08.2010 about the rape incident. She was unable to reveal as to who opened the door to allow the said boy in on 07.08.2010.

7. The prosecution also did not examine 'Tanu', who had allegedly brought the girls to Delhi on the pretext to provide them jobs. PW-3 'X' contradicted the statement of PW-2 (Lakshmi), her sister, who categorically stated that she was physically fit. There was no occasion for

Tanu and Ganga to pretend that Lakshmi (PW-2) was unwell and the victim should come to Delhi to take her back to the village.

8. After recording victim's statement in detail implicating many others, the Investigating Officer lodged FIR under various Sections i.e. 356/365/368/374/376/342/506/120B IPC. Upon completion of investigation, a charge-sheet was also filed for commission of the said offences. However, Ganga and Tanu were given clean chit and were not prosecuted; they were kept in column No.12. It is relevant to note that the Trial Court did not take cognizance against them for committing any offence. Vide order dated 14.12.2010 charges under Sections 376/506/342 IPC were settled only against the present appellant. Apparently, the victim had attempted to implicate not only the appellant but Ganga and Tanu also. In her 164 Cr.P.C. statement, however, she did not assign any role to them. It is true that in FSL reports 'semen' has been detected on the appellant's garments as well as that of the prosecutrix. However, nothing surfaced on record if the 'semen' found on the clothes of the victim was that of the appellant. Moreover, the appellant has put suggestions that physical relations were with the consent of the prosecutrix which possibility can't be ruled out.

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

10. 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.”

11. 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.

12. 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