

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

RESERVED ON : 26th APRIL, 2016
DECIDED ON : 4th MAY, 2016

+ CRL.A.694/2014

NARENDER @ NIKHIL Appellant

Through : Ms.Nikita Sharma, Advocate with
Mr.Ajit Kumar, Advocate.

VERSUS

THE STATE (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 a judgment dated 15.05.2014 of learned Addl. Sessions Judge in Sessions Case No.96/2013 arising out of FIR No.53/2013 PS Uttam Nagar by which the appellant – Narender @ Nikhil was held guilty for committing offence punishable under Section 376 IPC read with Section 420 IPC. By an order dated 16.05.2014, he was sentenced to undergo RI for ten years with fine ₹50,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that in June / July, 2012 at B-456, Hastal, J.J.Colony, Uttam Nagar, the appellant committed rape upon the prosecutrix 'X' (changed name) aged around 19 years on the false promise to marry and extorted ₹50,000/- from

her. The incident was reported to the police on 30.01.2013. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. 'X' was medically examined. Statements of the witnessed 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 investigation, a charge-sheet was filed against the appellant under Sections 420/376/384 IPC. In order to establish its case, the prosecution examined nine witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction under Section 376 IPC read with Section 420 IPC. It is pertinent to note that the appellant was acquitted of the charge under Section 384 IPC and the State did not challenge the said acquittal. Being aggrieved and dissatisfied, the instant appeal has been preferred by the appellant.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's conviction is primarily based upon the solitary statement of the prosecutrix 'X'. Needless to say, conviction can be based upon 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 the prosecutrix and the appellant were acquainted with each other. The prosecutrix used to travel in a staff bus on which the appellant was a conductor. Friendship developed between the two and the appellant started visiting her house. Admittedly the prosecutrix was

major on the day of incident and was working in a factory on daily basis at Manesar. She worked there for about a year.

5. In her complaint (Ex.PW-1/A), the prosecutrix informed the police that the appellant developed friendship with her and started having acquaintance with her mother and other relations. He promised to marry her. One day when she was present at the residence of her maternal grandparents at B-456, Hastal, J.J.Colony, Uttam Nagar, the accused came there in the absence of her family members and taking advantage of her loneliness established physical relations with her despite her objecting to it. Physical relations took place several times in the said house. She informed her mother about it. The appellant promised to marry her repeatedly. He also extorted ₹50,000/- from her on various occasions on false pretexts. On 04.07.2012 when she was present at 'Dwarka Mor' waiting for staff bus, she was abducted and gang raped by some boys who arrived there in Eco car. She lodged FIR No.147/2012 under Sections 365/376(g)/34 IPC PS Chawala. She was pressurized by the appellant to change her statement so that he could marry her. She exonerated the assailants in the said FIR. Subsequently, the appellant declined to marry her. She came to know that the appellant had married some other girl.

6. In her Court statement as PW-1, 'X' deposed that she joined the private job at Manesar on 15.06.2012. She used to travel from her office to her residence at Uttam Nagar in the company's bus. The accused used to travel in the said bus. Slowly friendship developed between the two and they exchanged phone numbers and started having conversation on phone. The accused expressed his desire to marry her and met her mother in June, 2012. Her mother responded that she would first talk to other family

members. 'X' further deposed that her maternal grand-parents used to live at B-456, Hastal and occasionally she used to stay with them. One day when she was alone in the house, the accused established physical relations with her against her wishes stating that they were about to marry each other. This incident took place in June, 2012. Thereafter, physical relations took place between the two on number of times on the pretext of marrying her. She also deposed about rape incident occurred on 04.07.2012 leading to the registration of the FIR at PS Chawala. She further deposed that the appellant started demanding money from her on the pretext of financial problem. She in all gave ₹50,000/- after withdrawing from Canara Bank. Subsequently, the appellant denied to fulfil his promise to marry and married someone else.

7. In the cross-examination, she admitted that the accused was a conductor in the bus in which she used to travel to her office at Manesar. She was unable to tell as to when the accused had met her mother first time for discussion about marriage. She was unable to tell the exact date when for the first time physical relations took place between the two. She added that it was in July, 2012 in between 11.00 a.m. to 12.00 noon. The accused has established physical relations with her for the last time on 07.12.2012 at 06.00 p.m. She further disclosed that the accused had told her that she would get ₹2.5 lacs from the assailants in the rape case to turn hostile. She elaborated that the accused had taken that amount and had not given any money to her. She denied that she opted to turn hostile on getting offer of ₹2.5 lacs to her.

8. On scanning the testimony of the prosecutrix, it reveals that physical relations (if any) between the two were with her free consent. No

cogent evidence has emerged on record to prove if the accused had promised to marry her before obtaining her consent for physical relationship for the first time at B-456, Hastal, J.J.Colony, Uttam Nagar. Appellant's parents were never contacted in this regard by the prosecutrix or her mother PW-3 (Shanti Devi). Nothing has come on record to show if the prosecutrix or her mother had visited the specific residence of the appellant for having any negotiation for marriage between the two. Allegedly the physical relations took place for the first time in June / July, 2012. There was no occasion for the prosecutrix to establish physical relations with consent several times with the appellant when the appellant had not fulfilled his alleged previous promise to marry her. In the cross-examination, the prosecutrix disclosed that she had informed her mother about the accused having physical relations with her in December, 2012. PW-3 (Shanti Devi) contradicted her and stated that her daughter had informed her about it at that time when the accused had made physical relations with her. She admitted that her daughter had informed her that physical relations with the accused were with her consent. She admitted that she did not make any efforts to verify if the accused had married some other girl. Admittedly, she did not visit the house of the accused. She did not meet his parents when the accused expressed his desire to marry her daughter.

9. Statement of the prosecutrix cannot be taken on its face value. She lodged FIR No.147/2012 at PS Chawala alleging that she was gang raped by six individuals on 04.07.2012 when she was present at Dwarka Mor waiting for the staff bus. Contents of the FIR on record shows that the prosecutrix had given her residential address as B-456, Hastal, J.J.Colony, Uttam Nagar; and her age as 19 years. She had stated that on 04.07.2012 at

around 08.30 p.m. she had left her house to meet her friend Sangeeta at village Kakrola. She had got RTV bus from Uttam Nagar bus stand to go to Najafgarh. When she was on the way, she got a call on her mobile as to where she was. The caller disclosed his name as Sonu. She informed him that she was going to her friend - Sangeeta's residence and was about to reach at Dwarka Mor railway station. There, she was dragged in a car and was gang-raped. This version is contrary to the one given in this case. In her testimony, she disclosed that on 04.07.2012 when she was going to Dwarka Mor from her residence to go to her office at Manesar, she was kidnapped and gang raped at Dwarka Mor. Sangeeta has not been examined. The FIR was lodged against six individuals. However, the prosecutrix did not opt to support the prosecution and completely exonerated all the assailants implicated in the FIR; they were acquitted. She deposed that the accused Sonu therein was previously known to her and she had met him in Dwarka area on 04.07.2012 at 08.30 p.m. Thereafter, both left for a party near Chawala in a bus. In the party accused Sonu introduced her to his friends. She denied if any of them had committed rape upon her. What reliance can be placed on the statement of such a witness?

10. MLC (Ex.PW-8/A) reveals that there was a history of induced abortion by MTP pills intake in August, 2012. What inference can be drawn from it? Another glaring feature of this case is that the prosecutrix had visited the appellant in jail several times. She had written letter dated 03.07.2015. These documents were placed on record by the appellant. Information was sought about the authenticity of these documents. Superintendent Jail responded that the prosecutrix had visited the appellant in jail on various dates. She was asked to appear in person in the Court to

verify the genuineness and authenticity of the letter dated 03.07.2015. On 26.04.2016, she admitted that the said letter was written by her. In this letter, she disclosed that she had gone to meet the appellant in jail on 26.06.2015 and had apologized. She further stated that she had falsely implicated the appellant in greed to get some money; though she was aware that he was a married person and had a son. Considering the previous conduct of the prosecutrix, it appears that no implicit reliance can be placed upon the uncorroborated testimony of the prosecutrix to base conviction. Her testimony was found deficient by the Trial Court and her assertion to have given ₹50,000/- to the appellant on various dates on the pretext of financial difficulty was not accepted and the appellant was acquitted of the said charge under Section 384 IPC.

11. The prosecutrix was medically examined vide MLC (PW-8/A). No external injuries whatsoever were found on her body including private parts. FSL report (Ex.PW-9/C) also does not connect the appellant with the crime. The prosecution did not examine the maternal grand-parents of the prosecutrix to ascertain that the prosecutrix used to stay on certain occasions or that on the day when physical relations took place between the two for the first time, none of them was present at the house. Delay in lodging the FIR, of course, has not been explained. No call details record was collected by the Investigating Agency. No independent witness was associated at any stage of the investigation.

12. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the instant case, the unexplained delay in FIR, the non-examination of material witnesses, the testimony of

the prosecutrix, the associated circumstances and the medical evidence leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. It shows several lacunae. There are various serious contradictions in her statement and actions, from which it can safely be concluded that she was not telling the truth.

13. 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.

14. 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.”

15. 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 co-relation 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."

16. 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.'

17. In the light of above discussion, I am of the considered view that the impugned judgment cannot be sustained. The appeal is accordingly allowed. Conviction and sentence recorded by the Trial Court are set aside.

The appellant shall be released forthwith if not required to be detained in any other criminal case. 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

MAY 04, 2016 / *tr*

