

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

Date of Decision: 3rd June, 2016

+ CRL.A. 327/2015

MOHD BILAL QURESHI

..... Appellant

**Through: Mr.Rajesh Kumar Kadyan,
Advocate**

versus

STATE

..... Respondent

Through: Mr.Akshai Malik, APP

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to a judgment dated 12.09.2014 of learned Addl. Sessions Judge, Delhi in Sessions Case No. 27/14 arising out of FIR No. 113/14 PS Sadar Bazar by which the appellant Mohd. Bilal Qureshi was convicted for committing offences under Sections 366/376(2)(n)/506 IPC. By an order dated 12.09.2014 he was sentenced to undergo various prison terms.

2. Briefly stated, the prosecution case as set up in the charge- sheet was that the appellant repeatedly committed rape upon 'X' (assumed name) against her consent. Written complaint (Ex.PW-2/A) lodged by 'X' on 28.02.2014 formed the basis of First Information Report registered on same day. 'X' was medically examined; she recorded her statement under

Section 164 Cr.P.C. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant for commission of offences under Sections 366/376(2)(n)/506IPC. The prosecution examined eight witnesses to substantiate its case. In 313Cr.P.C statement, the appellant denied his involvement in the crime and pleaded false implication. He admitted about his friendship with the prosecutrix. He stated that he had no physical relations with the prosecutrix. On 26/27/02/2014 he was noticed by husband of the prosecutrix when he was roaming with the prosecutrix. He did not examine any witness in defence. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has filed the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's conviction is primarily based upon the solitary testimony of 'X'. 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. In her complaint (Ex. PW2/A), the prosecutrix stated that she became friendly with the accused when she was learning stitching from stitching center at Quresh Nagar. She stated that accused used to sit near

the stitching centre. Accused gave his mobile number to her and said that he wanted to become her friend. Accused used to meet her outside the stitching centre. She also gave her mobile number to him. They started meeting each other in the gali near PS Sadar Bazar. In November, 2013 accused asked her for a loan of Rs. 50,000/- on the ground of constructing his house. She withdrew Rs.50,000/- from her bank account on 14/11/2013 and handed over the same to accused. When prosecutrix demanded her money back she was asked by the accused to meet in the public toilet near Rehmat Wali Gali. At about 4:00 AM she met the accused. Prosecutrix stated that accused established physical relation with her forcibly. When she tried to raise alarm she was threatened by the accused saying that he would disclose everything to her husband which would harm her reputation. She further stated that accused forcibly established physical relations with her several times. She, being fed up with the situation, disclosed entire story to her husband. In her 164 Cr.P.C statementsent she reiterated the facts which she had stated in her complaint.

5. In her Court statement as PW-2, 'X' deposed that she was learning the work of stitching at Quresh Nagar since May 2013. Accused used to follow her, when she went for stitching classes, for the last 8-9 months. They became friendly and used to meet behind PS Sadar Bazar. They

exchanged mobile numbers. In November 2013 accused requested her to give him Rs. 50,000/- for construction of his house. She withdrew the amount and gave it to him. He assured her of returning money. When she asked him to return money he told her not to demand money from him on phone and to do so only when she would meet him personally. Accused called her to meet in the gali at 4:00 AM stating that he would return money to her. She further stated that she met him in a public toilet which is at corner of Rehmet Wali Gali where accused established physical relations with her forcibly. She was threatened not to raise alarm. After 1 week accused again called her to meet him at about 8 PM behind PS Sadar Bazar. She went to meet him. Accused again established physical relations with her behind the cars parked near PS Sadar Bazar. She did not object to act of accused as she was afraid that her husband would beat her. Accused, after few days again called her in the gali and again established sexual relations with her without her consent. She deposed that accused committed rape on her 3-4 times. Finally, being fed with this entire incident she disclosed the facts to her husband. In cross-examination, she has deposed that she developed friendship with the accused about 2-3 weeks before giving Rs.50,000/- to him. She admitted that prior thereto she used to meet accused near Police Station Sadar Bazar. She might have met him 20-25 times before

lending him Rs.50,000/-. Sometimes they used to meet during day and sometimes at night. She further admitted that when she met with the accused for the first time at the public toilet, she made a call to him at 4:00 AM on that day. She further deposed that when she became friendly with the accused for the first time, she felt good. She also used to feel good thereafter whenever she met him. Accused never committed any offending act like kissing etc. whenever she met him prior to the incident. She further deposed that her husband came to know about the withdrawal of Rs.50,000/- by her from the bank account about one or two days prior to the registration of FIR. He gave her beatings upon coming to know about the accused after seeing the call made to her by the accused at midnight.

6. PW-5 is the husband of the prosecutrix. He deposed that his wife used to go to the stitching centre at Kasab Pura to learn stitching. About two days prior to arrest of accused he saw a phone call on the mobile phone of his wife. On enquiry his wife told him that it was a wrong number. When he insisted she disclosed that one person used to tease her when she goes to the stitching center. He further deposed that on questioning of his wife she narrated the entire incident to him and told him that accused approached her to have friendship with him. She told

him that he committed rape upon her and blackmailed her. She gave her Rs. 50,000/- for construction of his house.

7. On scanning the various statements given by the prosecutrix at various stages of investigation/trial, it reveals that she is not consistent. Admitted position is that both the prosecutrix and the appellant were well acquainted with each other before the incident and had friendly relations. The prosecution has failed to prove beyond reasonable doubt if at the time of first encounter in November 2013 the prosecutrix was raped 'forcibly' by the appellant against her wishes. 'X' did not raise any alarm at that time; nor she lodged any report with the police for the forcible rape committed upon her. If the prosecutrix was not a consenting party, there was no occasion or reason not to report the incident to the police for the heinous crime committed by the appellant to have physical relations forcibly against her wishes. The accused continued to have sexual intercourse with her. The place of incident of crime is a public toilet/ public parking/ gali. No cogent evidence has emerged on record to show that the physical relations were established with the prosecutrix without her consent. She was mature enough to fully understand as to what was happening between the two. There is nothing in her evidence to demonstrate that she was incapable of understanding the nature and implications of the acts which she consented to. Her consent for physical

relationship (if any) was an act of conscious reason. If a fully grown up lady consents to the act of sexual intercourse and continues to indulge in such activity for long, it is an act of promiscuity on her part. As per medical evidence the prosecutrix was examined on 28th February, 2014. She refused to undergo internal medical examination. The MLC (Ex. PW5/A) recorded that accused forced her to have sexual intercourse with him. This went for 3½ months. 'X' is not believed to allow the appellant to have physical relations repeatedly without complaining. It was only when the victim's husband got suspicious on seeing the missed call on her phone and enquired about the same, the victim was compelled to tell him about the physical relations.

8. Inordinate delay in lodging the FIR has remained unexplained. The incident happened for the first time in November 2013. The incident was thereafter repeated for number of times. X's husband came to know about the appellants' involvement in the crime and lodged the report with the police or else there was no plausible explanation to delay the lodging of the FIR for 3 months.

9. Settled legal position is that conviction can be based upon the sole testimony of the prosecutrix provided it is reliable and is of sterling quality.

10. 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."

11. 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."

12. 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."

13. 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."

14. In the instant case, the prosecutrix has miserably failed to establish if her consent for physical relationship was obtained under threat.

Physical relations (if any) between the two were consensual. It cannot be inferred with certainty that the consent of the prosecutrix was obtained

for physical relationship under threat. X's testimony tested on the above settled principles, is wholly unreliable due to inherent infirmities therein.

15. The appeal filed by the appellant is accordingly allowed. Conviction and sentence of the appellant are set aside. The appellant shall be released forthwith if not required to be detained in any other criminal case.

16. 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 compliance.

(SUNITA GUPTA)
JUDGE

JUNE 03, 2016
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