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

Judgment Reserved on: May 24, 2016

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Judgment Delivered on: June 03, 2016

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CRL.A. No.1004/2014

ALAM

..... Petitioner

Through: Mr.Arvind Kumar, Adv.

versus

STATE

..... Respondent

Through: Mr.Amit Ahlawat, APP for the State.

PRATIBHA RANI, J.

1. This appeal has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than five years and upto seven years).
2. The appellant has preferred this appeal against the judgment dated 28.10.2013 and order on sentence dated 12.11.2013 whereby he has been convicted for committing the offence punishable under Section 376 IPC and sentenced to undergo RI for seven years with fine of ` 10,000/- and in default of payment of fine, to undergo SI for two months.
3. The appellant has challenged his conviction mainly on the following grounds:
 - (i) Delay in lodging the FIR i.e. in respect of the rape incident dated 04.06.2011, FIR has been lodged on 27.06.2011.
 - (ii) Conduct of the prosecutrix that she did not raise any alarm or made any complaint either to the wife of the appellant or any neighbour or lodged

the report to the police immediately after the incident though she was sleeping in the house of the appellant alone in another room during the night.

(iii) Version of the prosecutrix of being assaulted and given beatings by belt being falsified by the MLC which records no visual injury was present on her body.

(iv) The prosecutrix was a consenting party.

4. On behalf of State, it has been submitted that the prosecutrix in this case was 18 years. She was married but claimed that her marriage was not consummated due to the cruel treatment meted out to her by her husband. Learned APP for the State has further submitted that prosecutrix came to Delhi in search of job and the appellant provided her employment at 2-3 places where she could not work for longer duration. On 04.06.2011 when she left the job at Shipra Mall, she was brought by the appellant to his house in Kalkaji. After sending his wife and children out, he committed rape on her and also threatening her not to disclose to anyone about the incident or she would be killed by showing knife to her.

5. Learned APP for the State has also submitted that the prosecutrix was illiterate. She was brought from her village just two months prior to this incident. She could not approach the police immediately after the occurrence may be in view of her physical, mental and financial condition and she being new to Delhi. Hence, delay in reporting the incident cannot be termed fatal to the case of prosecution, hence the appeal may be dismissed.

6. I have considered the rival contentions. The appellant does not dispute that the prosecutrix was brought from Patna and provided job by him i.e. to work at some house near Shipra Mall. The appellant also does not dispute having physical relations with her on the date of occurrence which

fact can be established from the following suggestion given to the prosecutrix by the appellant but denied by her:-

'It is wrong to suggest that I had consented to the physical relations with the accused that is why I did not raise alarm at the time of commission of rape.'

7. In the MLC while giving the history about the sexual assault, the prosecutrix has stated that the appellant has used condom while doing the sexual act. Her hymen was found ruptured.

8. Now the question arises that if the prosecutrix was consenting party to the sexual act then where was the necessity for her to lodge the report against the appellant after more than three weeks of the incident. It is not disputed by the appellant that on the next day i.e. on 05.06.2011 he took the prosecutrix by bus and got her employed in a house in Paschim Vihar where she worked for about three weeks. There is some discrepancy in the testimony of the prosecutrix as to whether she worked there upto 27th June or 28th June but at this stage, it is insignificant to discuss the issue of dates.

9. The FIR in this case has been registered on 27th June, 2011. The mere delay in registration of the FIR is not fatal to the case of prosecution. It was so held by the Supreme Court in the case of **Rahul @ Budh Prakash vs. State** in CrI.A. No.561/2009 decided on 05.02.2010. The relevant paragraph of the report is extracted as under:

'21. The argument sounds very attractive but is no more than a fairy tale. A victim of rape is overcome by various emotions as a result of not only her body being defiled but even the soul being defiled. Fear, Shame, Helplessness, Dejection and Anguish would be the negative feelings simultaneously stirring in the mind. All these negative feelings would pull the victim inwards and tend to make her a recluse. Simultaneously Anger,

Hatred, Desire for Retribution and Desire for Punishing the accused would put her towards positive acts qua the accused. All these negative and positive feelings would be competing in the mind at the same time. At one moment one feeling may outweigh the others and if the same is a negative feeling drawing the victim inwards, her actions would be to suffer the shame and the humiliation in quiet. The very next moment the feeling of hatred or retribution may surface and this would lead the victim towards positive steps to report the crime so that the accused is brought to justice. It is apparent that the conduct of a rape victim would be an inchoate mix of apparently irreconcilable opposites. But if viewed in the aforesaid perspective, nothing is inchoate and nothing is irreconcilably opposite.'

10. In the instant case, the prosecutrix was just 18 years old when she came to Delhi in search of employment. At the time of leaving her village for Delhi to seek job, she was totally dependent and in the hands of those persons who bring young girls from the villages promising employment to them and getting them employed as maids in houses. With no near relatives around them and financial condition also not being sound, such girls who come to Delhi in search of job, are totally dependent on the persons running such type of placement agencies. The prosecutrix also was wholly dependent on the appellant for getting employment. In that situation, to report the matter to the police would have made her to think about the pros and cons of lodging the report. Thus, mere delay of three weeks in reporting the matter to the police cannot be termed so fatal as to giving finding of acquittal of the appellant.

11. The next question to be considered is as to whether the prosecutrix was the consenting party in this case. The arguments advanced on behalf of the appellant though appeared to be having force but it need to be examined

in the light of natural human conduct of a girl away from her family. It has come in the testimony of the prosecutrix i.e. PW-1 'M' that when wife of the appellant returned home after purchasing the vegetables, she (prosecutrix) was weeping. Neither the wife of the appellant questioned the prosecutrix about her weeping nor the prosecutrix disclosed to her. It is difficult to interpret this type of conduct for the reason that it might be a routine affair for the wife of the appellant. No doubt, the MLC does not record any injury on the person of the prosecutrix but it cannot be ignored that as per version of the prosecutrix, she was shown the kitchen knife while threatening her and given beatings with belt. She has nowhere stated that she was beaten black and blue with the belt. The prosecutrix might have been hit once or twice with the belt to terrify her and such marks must have disappeared due to the time gap from the date of incident i.e. 04.06.2011 and date of medical examination i.e. 27.06.2011. Absence of injury marks is not fatal to the case of prosecution.

12. So far as the prosecutrix being consenting party is concerned, had she been a consenting party, there was no reason for her to lodge the report after 23 days. She might have taken her own time to muster the courage to lodge the report against the appellant because lodging of the report could have resulted in losing the employment in this capital city.

13. No doubt, the clothes of the prosecutrix were not found torn when wife of the appellant reached home nor she complained to her about the incident of rape but that itself is not sufficient to infer consent on the part of the prosecutrix.

14. In the case *Kaptan Singh vs. State of Madhya Pradesh* MANU/MP/0345/2008, the Court has interpreted the consent as under:-

'The crux of the offence of rape under Section 375, IPC is sexual intercourse by a man with a woman against her will and without her consent under any one of the six circumstances mentioned in the section.

Consent is of paramount importance to determine the liability of a person for the offence of rape. Consent exonerate the accused from liability altogether. It may be either express or implied depending upon the nature and circumstances of a case. A woman is said to consent, only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled (not hampered) right to forbid or withhold what is being consented to, it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

Consent of the woman in order to relieve the accused of the charge of rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure.'

15. When the testimony of the prosecutrix is examined in the light of above legal position, it cannot be inferred that prosecutrix was a consenting party. I may add here that the statement under Section 164 CrPC of the prosecutrix was recorded by the learned MM on 28.06.2011 wherein she has specifically stated that on 04.06.2011 the appellant brought her to his house. He sent his wife and children out on some pretext and when she was alone he had physical relations with her against her wishes. She was also shown the knife and given beatings with belt threatening not to disclose this incident. The last line of her statement reads as under:-

‘Main chahti hoon ki Alam ki saja ho.’

16. During her examination before the Court as PW-1, when her examination-in-chief was commenced just after deposing a few lines about being brought to Delhi and then after being brought from Anand Vihar to Kalkaji by the appellant, she started weeping and she was made comfortable by the Court and then her further examination commenced. She has fairly admitted that when wife of the appellant returned home and she found her weeping, she did not disclose about the incident of rape. She has also admitted that on that day during night she had her food at the house of the appellant and slept in another room and accompanied the appellant to Paschim Vihar next day where she was provided job in a house in Paschim Vihar. This conduct of the prosecutrix to remain silent about the incident for about three weeks, is not sufficient to disbelieve the testimony of the prosecutrix which has been found convincing and reliable to prove the guilt of the appellant.

17. In the case ***Bharwada Bhoginbhai Harjibhai Vs. State of Gujarat*** AIR 1983 SC 753, the Apex Court has held as under :-

‘7. It is now time to tackle pivotal issue as regard the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court in Rameshwar Vs. State of Rajasthan (1952) 3 SCR 377 at p. 386 : AIR 1952 SC 54 at page 57 has declared that corroboration, is not sine qua non for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time gap of three decades which have whistle past in the inimitable voice of Vivian Bose, J. who spoke for the Court :-

The Rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of

corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge.....

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the Jury, as the case may be and he understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.'

18. Version of the prosecutrix about the rape being committed by the appellant being reliable and trustworthy, no further corroboration was required to prove the guilt beyond reasonable doubt.

19. The learned Trial Court had rightly appreciated the testimony of the prosecutrix and convicted the appellant for the offence punishable under Section 376 IPC.

20. Finding no illegality or infirmity in the impugned judgment and order on sentence, the appeal is hereby dismissed.

21. Appellant be informed through the concerned Jail Superintendent about the orders passed.

22. TCR be sent back alongwith copy of this order.

PRATIBHA RANI, J.

JUNE 03, 2016

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