

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

Judgment Reserved on: September 26, 2016

% *Judgment Delivered on: October 19, 2016*

+ **CRL.A. 43/2015**

RUKSAR

..... Appellant

Represented by: Mr. Shaad Anwar, Adv.

versus

GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr. Ravi Nayak, APP with SI
Mohd. Faizan Ghani PS
Ghazipur.

+ **CRL.A. 404/2015**

ABDUL WAZID @ WAZID

..... Appellant

Represented by: Mr. Sumeet Verma, Mr.
Abhijeet Sharma, Advs.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP with SI
Mohd. Faizan Ghani PS
Ghazipur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vide impugned judgment dated December 5, 2014, Ruksar, the appellant in Crl. A. 43/2015 was convicted for offences punishable under Sections 109/114 read with Sections 506 and 376 IPC and Abdul Wazid, the appellant in Crl. A. 404/2015 was convicted for offences punishable under Section 376/506 IPC. Vide order on sentence dated December 19, 2014

Ruksar was sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹1,000/- for offence punishable under Section 376 read with Sections 109/114 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹500/- for offence punishable under Section 506 IPC. Abdul Wazid was also directed to undergo rigorous imprisonment for ten years and to pay a fine of ₹2,000/- for the offence punishable under Section 376 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹500/- for offence punishable under Section 506 IPC.

2. Learned counsel for Ruksar contends that there is no evidence to corroborate the oral testimony of the prosecutrix. The medical evidence does not support the version of the prosecutrix. The learned Trial Court has failed to consider the testimony of DW-1 father of the prosecutrix, who stated that PW-3 mother of the prosecutrix had animosity against the appellants. It was also contended that the prosecutrix has falsely implicated the appellants at the behest of PW-3. There was delay in lodging the FIR and no explanation was given for the delay. Alternatively, it was submitted that Ruksar be released on the period already undergone.

3. Learned counsel for Abdul Wazid, apart from the above submissions, also contends that there are contradictions in the testimony of prosecutrix and her previous statements recorded under Sections 161 and 164 Cr. P. C. The deposition of the prosecutrix that Abdul Wazid raped her in the presence of his wife Ruksar is totally implausible. It is further contended that no formal proof regarding the age of the prosecutrix has come on record, hence the appellant is entitled to be acquitted.

4. Per contra learned APP for the State submits that the nature of the offence being serious in nature, there being no contradictions in the

testimony of the prosecutrix and the same having been corroborated by the testimony of PW-3 mother of the prosecutrix, the appeal is liable to be dismissed.

5. FIR No. 247 of 2012 was registered under Sections 376/376(g)/109/114/506/34 IPC at PS Gazipur on the complaint of the prosecutrix, PW-4 who stated that she had 6 brothers and 2 sisters and she was the youngest of all. Her brother's name was Abdul Wazid who is married and lived in Gazipur as a tenant. On June 15, 2012, her brother Abdul Wazid came to their house in Khora and requested her mother to send the prosecutrix to Gazipur to look after the kids and prepare food as his wife Ruksar was unwell. Thereafter, the prosecutrix came to Gazipur with Abdul Wazid. On June 16, 2012, when Ruksar had gone out, Abdul Wazid, prosecutrix and her two nieces were at home. Prosecutrix ate the food and went off to sleep. Her nieces were also sleeping. Abdul Wazid woke up the prosecutrix and gagged her mouth, forcefully opened her salwar and removed her suit. He threatened her not to raise alarm otherwise he would kill her. Thereafter, Abdul Wazid removed his pant and did 'galat kaam' with her. After which, he told her to wear her clothes and threatened her not to disclose about the incident to anyone. After some time, when Ruksar came home, the prosecutrix narrated the entire incident to her and Ruksar also told her not to disclose about it to anyone. Thereafter, Abdul Wazid everyday sometimes during day time and sometimes during night, did 'galat kaam' with her. Once or twice, he did it in front of Ruksar also but she did not stop him. On June 23, 2016, Abdul Wazid had to go to some relative's place and around 9:00 P.M. when Ruksar was consuming liquor, one boy, named 'N' a juvenile came and Ruksar and 'N' drank liquor. Ruksar held

the hands of the prosecutrix and pushed her on the floor. ‘N’ opened the salwar of the prosecutrix and did ‘galat kaam’ with her. When the prosecutrix raised alarm, Ruksar gagged her mouth and threatened her not to tell anyone about the incident. On July 5, 2012, Ruksar dropped her at her home and on July, 7, 2012, the prosecutrix narrated the entire incident to her mother PW-3. Thereafter, on July 10, 2012, the prosecutrix visited the police station and gave the aforesaid statement resulting in registration of FIR Ex. PW-2/A.

6. After registration of the FIR, MLC of the prosecutrix was conducted. The statement of the prosecutrix was recorded by learned Metropolitan Magistrate under Section 164 Cr.P.C. vide Ex. PW-4/B. During the course of investigation, Ruksar was arrested vide arrest memo Ex. PW-4/C. ‘N’ was also apprehended and was sent to concerned JJ Board for enquiry. NBW was issued against Abdul Wazid, who was also later on arrested vide arrest memo Ex. PW-7/H.

7. The prosecutrix who was examined as PW-4 deposed in sync with her statement made before police and her statement made under Section 164 Cr. P.C. During her cross examination, she stated to have known Shamshad who was son of her Mama and used to reside with her in her mother’s house. She denied the suggestion that she was having prior intimacy with ‘N’, who was residing in Khoda. She stated that her father lived separately from them and denied the suggestion that her mother PW-3 had illicit relations with her maternal cousin Shamsad, due to which reason her father had divorced her mother.

8. PW-3 mother of the prosecutrix deposed in conformity with the statement of PW-4 the prosecutrix. During her cross-examination, she

admitted that her husband had not been residing with her for the last 6 years. She denied the suggestion that she was having illicit relations with Shamshad and Abdul Wazid and Ruksar used to object to it and due to this reason, she had grudge against them. She also denied the suggestion that Shamshad was kept by her in her house without the consent and knowledge of her husband. She stated that it was correct that Abdul Wazid had made a complaint/100 number call at PS Kalyan Puri against Ruksar alleging that Ruksar was indulging into illicit relations with boys.

9. PW-6, Dr. Usha Upreti, CMO, NFSG, LBS Hospital was examined who identified the handwriting of Dr. Snigadha who prepared the MLC and left the services. As per the MLC Ex. PW-6/A, hymen of the prosecutrix was not found intact.

10. Insofar as the contention regarding the age of the prosecutrix is concerned, the prosecution has not proved the same except a bald denial by the prosecutrix that she was not above 16 years of age. However, it is not relevant as in the present case, the defence of the appellants is of false implication and not of consent. In the statement under Section 313 Cr.P.C. the plea of Ruksar reiterated by Abdul Wazid is :

“ My mother in law had illicit relations with one Shamshad who is BC of the area. I and my husband had seen my mother in law and Shamshad in compromising position. My husband had told this to my father in law. Due to this reason my father in law had divorced my mother in law. My mother in law was nurturing enmity with me.

On 06.07.12 my mother in law demanded Rs.20,000/- from my husband on a telephone call. My husband showed his inability to pay this amount. On this, Shamshad threatened me and my husband with dire consequences and due to this reason, involving

my sister in law this false complaint was made against me and my husband. I and my husband are innocent and are falsely implicated in this case.”

11. It is trite law that conviction for the offence of rape can be based on the sole testimony of the prosecutrix if found reliable. In the present case the appellants have pleaded false implication due to animosity not only by stating in the explanation under Section 313 Cr.P.C. but also by leading defence evidence and from the cross-examination of two material witnesses i.e. the prosecutrix and her mother. The facts as noted above have been deposed by DW1 the father of the prosecutrix and appellant Abdul Wazid. DW-1 deposed that Ruksar was the daughter of his sister in law i.e. sister of his wife. His wife was opposed to the marriage of Abdul Wazid and Ruksar. He further deposed that his wife PW-3 was in relationship with her nephew Shamshad due to which, he divorced her. He further deposed that even Abdul Wazid was opposed to this relationship thus there was quarrel between the two. In cross-examination, the prosecutrix admitted that her mother was angry with Ruksar and Wazid as they married contrary to her wishes. Though she denied that mother was angry as Ruksar complained to her father about her mother's illicit relationship with Shamshad but she admitted that her father was not residing with her and her mother but Shamshad was residing with them. Even PW-3 in her cross-examination admitted that the marriage of Ruksar and Wazid was performed contrary to her wishes. Though she stated that Shamshad was residing at her house and he was kept by her husband, she admitted that after this incident i.e. after Shamshad started living with her both the appellants shifted to a separate residence at Gazipur.

12. Thus inimical relationships having been proved and admitted by PW-3 and PW-4, both the material witnesses, the testimony of these two witnesses is required to be scrutinized with care and caution. The prosecutrix in her deposition stated that she went to the house of the appellants on 15th June, 2016, was dropped back to her house on 3rd July, 2012 and she informed her mother about the incidents on the 5th July, 2012 whereas as per the mother she was informed about the incidents on 7th July, 2012. However, both the prosecutrix and her mother admit that a call was made to Wazid on 6th July, 2012 though the mother denies having demanded anything from Wazid, the prosecutrix admitted rather stated voluntarily that her mother called up Wazid on 6th July, 2012 for calling him at her house for settlement. One fails to understand what could be the settlement in a case where her daughter had been raped. This version of the prosecutrix and the admission of the mother that she made a call to Wazid on 6th July, 2012 probablizes the version of the defence that the relationship between the parties were inimical and on the refusal of Wazid to pay the demanded amount, he and his wife were falsely implicated. Testimony of PW-1 Ratan Singh, the landlord of the premises where the appellants were residing as tenants is of no avail to the prosecution as he neither identifies the prosecutrix as the sister of the appellant Wazid residing in his house nor the time period when she resides. Further the case of the prosecutrix and her mother is that the prosecutrix was taken by Wazid as Rukshar was unwell so the prosecutrix could cook the food, however first incident and thereafter two/three more instances took place when Ruksar was not at home. No anguish has been expressed by either the prosecutrix or her mother that Wazid took the prosecutrix to his house on the false pretext that Ruksar was

unwell.

13. For the discussion aforesaid, the appellants are entitled to the benefit of doubt. Appeal is accordingly disposed of acquitting the appellants of the charges framed and setting aside the impugned judgment of conviction and order on sentence.

14. Superintendent Tihar Jail is directed to release Ruksar and Abdul Wazid @ Wazid forthwith, if not required in any other case. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2016
‘vn’