

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

RESERVED ON : 8th NOVEMBER, 2016
DECIDED ON : 11th NOVEMBER, 2016

+ **CRL.A.1166/2014 & CRL.M.B. 7704/2015**

HARI RAM Appellant

Through : Mr.Rajendra Kumar Tiwari, Advocate
with Mr.O.P.Saxena & Mr.Deva Mani
Mishra, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through : Ms.Meenakshi Dahiya, APP.

AND

+ **CRL.A.1488/2014 & CRL.M.B. 68/2016**

SURESH @ PINTU Appellant

Through : Mr.R.K.Padhi, Advocate.

versus

STATE Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in these appeals is a judgment dated 24.07.2014 of learned Addl. Sessions Judge in Sessions Case No.194/2013 arising out of FIR No. 207/09 PS Aman Vihar whereby the appellants – (Hari Ram & Suresh @ Pintu) were held guilty for committing offences punishable under Section 376(2)(g) IPC. By an order dated 28.07.2014, they were sentenced to undergo RI for ten years with fine ₹10,000/- each.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 14.06.2009 at about 06.00 p.m. the appellants in furtherance of common intention committed gang rape upon the prosecutrix 'X' (Changed name) after confining her at factory premises belonging to the appellant – Hari Ram. The incident was reported to the police on 17.06.2009. The Investigating Officer after recording victim's statement (Ex.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 appellants were arrested and medically examined. Upon completion of investigation, a charge-sheet was filed against both the appellants in the Court. In order to establish its case, the prosecution examined fourteen witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. Trial resulted in their conviction as aforesaid. It is relevant to note that the appellants were acquitted of the offences under Sections 342/366 IPC and State did not challenge their acquittal under those heads. Being aggrieved and dissatisfied, the instant appeals have been preferred by the appellants.

3. I have heard the learned counsel for the parties and have examined the file. The prosecutrix was aged around 28 years and was a married lady.

4. Appellants' conviction is primarily based upon the sole testimony of the prosecutrix '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.

5. In the instant case, on perusal of the statements of the prosecution witnesses and various exhibits proved on record, it reveals that vital infirmities or inconsistencies have emerged on record making it unsafe to base conviction on the solitary testimony of the prosecutrix without independent corroboration.

6. The occurrence took place on 14.06.2009 at around 06.00 p.m. at the factory premises of the appellant – Hari Ram where the victim had allegedly worked for around a month. Allegedly, she was not given her wages and on the day of occurrence, she had gone to collect her wages. At the time of alleged commission of rape by the appellants turn-by-turn, the prosecutrix did not raise alarm or hue and cry. She conveniently came to her residence and even did not bother to inform her husband or any other family member. She maintained complete silence for three days and only on 17.06.2009 lodged First Information Report. The delay in lodging the FIR has remained unexplained. It is relevant to note that the appellant – Suresh @ Pintu in 313 Cr.P.C. statement stated that physical relations with the prosecutrix were with her free consent. Only when victim's husband came to know about their intimate relationship 'X' was forced to lodge complaint.

This defence inspires confidence as the prosecution did not examine the victim's husband. In 164 Cr.P.C. statement (Ex.PW-3/B) recorded on 20.06.2009 before the learned Metropolitan Magistrate the victim had categorically claimed that physical relations with the appellant – Suresh @ Pintu were with her free consent and no rape was committed upon her by the appellants. She completely exonerated the appellant – Hari Ram and did not ascribe any role whatsoever to him in the incident. She even claimed that Suresh @ Pintu was innocent and FIR was lodged by her when her husband had seen both of them in compromising position.

7. In her Court statement as PW-3 the victim did not assign any role whatsoever to appellant – Hari Ram in committing rape upon her. She gave a clean chit to him. She merely deposed that accused Suresh @ Pintu had committed rape upon her. She explained that the incident was not reported by her to her husband due to fear of being beaten. She, however, informed subsequently to her sister-in-law Kamlesh who took her to the Police Station. She further revealed that at the time of commission of rape by Suresh @ Pintu, the other appellant – Hari Ram was present but had not done anything with her. She was cross-examined by learned Addl. Public Prosecutor after seeking Court's permission. She was confronted with her statement (Ex.PW-3/A) made to the police regarding the role assigned to the appellant – Hari Ram. She again reiterated that she had not stated facts implicating the appellant – Hari Ram in the statement (Ex.PW-3/A).

8. She was further cross-examined by the learned counsel for the appellants on the same day. In the cross-examination, she admitted that Suresh @ Pintu was known to her since the time she was working in the factory. She further admitted that physical relations with Suresh @ Pintu

were with her free consent. She was not allured or threatened by the accused persons that day.

9. On scrutinising the conflicting statements of the prosecutrix at various stages of the investigation, no reliance can be placed on her statement to base conviction under Section 376(2)(g) IPC. The prosecutrix was medically examined vide MLC (Ex.PW-9/A) and no vital physical injuries on body parts including private parts were found on her person. It ruled out commission of forcible rape by two grown-up individuals against her wishes.

10. No independent public witness from the factory was examined. Nothing has come on record to show if the prosecutrix had worked in the appellant – Hari Ram's factory for any specific duration or any wages for about a month were due or that on the day of occurrence, she had gone merely to collect her arrears of wages. Nothing has come on record to show if during her employment in the factory for about a month, the appellants had an evil eye upon her or had attempted any time to outrage her modesty. No complaint whatsoever was filed by the victim against any of the appellants any time.

11. Considering the inconsistent and conflicting versions narrated by the prosecutrix at different stages of investigation, conviction and sentence of the appellants cannot be sustained in the absence of independent corroboration. The appellants deserve benefit of doubt.

12. Resultantly, the appeals filed by the appellants are accepted. The conviction and sentence recorded by the Trial Court are set aside. The appellants shall be released forthwith if not required to be detained in any other case.

13. Pending applications also stand disposed of.
14. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information / compliance.

(S.P.GARG)
JUDGE

NOVEMBER 11, 2016 / *tr*

