

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

% Reserved on: 1st February, 2017
Decided on: 15th March, 2017

+ **CRL.A. 474/2002**

RAJ KUMAR @ ROCKY Appellant
Represented by: Mr. Adit S. Pujari with Ms.
Surabhi Dhar and Ms. Kriti
Awasthi, Advocates

versus

STATE Respondent
Represented by: Mr. Ashok K. Garg, APP for
the State with ASI Rajender
Prasad, PS Delhi Cantt.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The appellant though charged for offences punishable under Sections 363/506/377/376/511 IPC has been convicted by the learned Trial Court for offences punishable under Sections 376/511 IPC vide the judgment dated 15th May, 2002 and directed to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- in default whereof to undergo rigorous imprisonment for six months vide order on sentence dated 17th May, 2002.

2. Contention raised by learned counsel for the appellant is that the false implication of the appellant in the above-noted case is evident from the case of the prosecution itself, which is further fortified by the material discrepancies in the statement of prosecution witnesses. After having tortured the appellant, he was falsely implicated in the above-noted case. Even as per the finding of the learned Metropolitan Magistrate, the appellant

was less than 18 years at the time of alleged incident and is thus entitled to the benefit of being a juvenile in terms of the decision of the Supreme Court reported as (2009) 13 SCC 211 *Hari Ram Vs. State of Rajasthan & Anr.*. Even if this Court believes that there is no false implication, the appellant is liable to be convicted at best for offence punishable under Section 354 IPC and released on probation.

3. Case of the prosecution is based on a written complaint given by the father of the prosecutrix PW-4 vide Ex.PW-4/A received at 7.30 PM on 25th October, 1998 for an incident of 23rd October, 1998 resulting in registration of FIR No.447/1998. In the written complaint father of the prosecutrix who was a Havaladar stated that on 23rd October, 1998 around 2.00 PM when he went from his office to his residence he asked his wife about the whereabouts of his daughter who told her that she had left the house a while ago. When he asked his wife to call the daughter and she was not found, both of them went out in search of her. Since the minor daughter was not found in any of the houses, he shouted taking the name of his daughter and went to the bus stand also but did not find his daughter. When he went back to his house he found one boy coming down from the stairs hurriedly and his daughter also came down from the stairs. He saw Shiv Veer Singh running after that boy to catch hold of him. He immediately realized that the said boy had done something wrong with his daughter. His wife also shouted to catch hold of the boy, however the said boy ran towards the drain and with the help of the Chowkidar he caught hold of the boy beyond the drain. While apprehending the boy tried to run away, he fell down resulting in injuries to him. He brought back the boy to the flat where his daughter informed that the boy had asked her as to who stayed on the roof and she

should show him. The boy slapped the girl and closed her mouth. On the roof, the boy took out the underwear of the girl and rubbed his private part on her private part. He thereafter put his penis in her mouth and took out white fluid. The prosecutrix stated that the boy had a knife with him and had told her that if she shouted he would slit her neck. She further stated that the boy told her that she should come downstairs only after he moves away to some distance. It was further stated that initially the FIR was not registered because he thought that the same would bring ill-fame to him and his family.

4. On the said FIR after investigation, charge-sheet was filed and witnesses were examined. The investigating officer of the case PW-11 SI J.K. Bhardwaj during his cross-examination admitted that prior to receipt of this complaint Ex.PW-4/A on which FIR No.447/98 was registered a written complaint of the appellant was received on 25th October, 1998 at 12.30 PM where after he recorded the statement of the appellant vide Ex.PW-11/DA for the incident dated 23rd October, 1998. Further on the complaint of appellant for the incident dated 23rd October, 1998 FIR No. 449/98 was registered at PS Delhi Cantt under Sections 34/323/341 IPC at 5.50 AM on 26th October, 1998.

5. A perusal of the record shows that FIR No.449/98 was not registered on the first complaint of the appellant, the version of the appellant was changed and on the basis of disclosure statement of the appellant recorded in FIR No.447/1998, FIR 449/1998 was registered.

6. The first version of the appellant in Ex.PW-11/DA which was recorded on the 25th October, 1998 at 12.30 PM prior to receipt of Ex.PW4/A was:

“Statement of Raj Kumar, S/o Shri Bishan Dev, R/o RZ-1148 Gali No.5/5, Main Sagar Pur, New Delhi-46 Age 15 years.

I state that I stay at the above address along with my parents and was a student of 10th standard Army School, Delhi Cantt. My father is retired as a Havaladar from ASC Army. Earlier we were staying in CVD quarters. On 23rd October, 1998 at around 1.30 PM he was going to the house of his friend Sayeed, S/o Subedar S. Ahmad R/o ND quarters through 226 to supply family quarters. Near family quarters, 2nd Block 2-3 army persons were standing on the road. They called me and stated that ‘you are the same person who had come to sell honey the earlier day’. I replied that I was a student of Army School, my father is an ex-serviceman and I had come to take a copy from my friend Sayeed. On this those persons started beating me and stated that I was a thief. Other people from the quarters also collected and started beating me. They tore my pant, cut my left ear and hung me upside down by ropes from the tree. They hit me on my soles with danda blows and continued beating me till 4.00 PM. Those people took me down from the tree, dragged me on the road and again assaulted. In the meantime one officer of the Army came and I told him everything including my address, who asked those people to leave me. In the meantime one Sardarji came who was being addressed as the Commandant. After talking to those army personnel he told them to kill me. He asked them why I was not killed and thrown. Despite the fact I was writhing with pain, those officers continued beating me with legs and fists. When I asked for water one of the officers stated that I was a thief and terrorist and urinated on my face. Thereafter, they kept my hands tied and burnt me by cigarette butts. They tore my underwear and threw me outside the gate. After around 9.00 PM when I regained consciousness I contacted my friends who informed my parents on 24th October, 1998 at around 11.00 AM. Thereafter my father went to the Police Station and got me admitted in DDU Hospital.”

7. Despite this first statement of the appellant and the mandate of the law that FIR will be registered verbatim on the complaint, the contents of FIR No.449/98 registered under Sections 34/323/341 IPC are:

“Statement of Raj Kumar S/o Bishan Dev R/o RZE-1148 Gali No.5/5 Main Sagar Pur, New Delhi.

I state that I am the resident as aforesaid and student of Army School, Delhi Cant. On 23rd October, 1998 around 1.30 PM while roaming around station road I reached at Fodder Line quarters where I had an evil eye on a girl aged 4-5 years. I took her to the roof due to noise on the ground floor. I came downstairs whereafter the public ran after me and after crossing the Nala they caught hold of me and while I was running I fell down due to which I received injuries on my hand and feet. Public and the Chowkidar caught hold of me and took me to the Fodder Line when the little girl pointed towards me stating that I was the same boy who abused her. On this people present abused me and beat me with slaps. Thereafter the Company ASC told the senior officers. Due to fear I did not state anything and I did not go to my home. Later I did not tell complete facts to my father. Yesterday my father took me to DDU Hospital and got me first aid. I can recognize the officers who caught hold of me and assaulted.”

8. It is thus evident that contrary to the law not on the first statement of the appellant but his disclosure statement in case FIR No.447/1998, FIR No.449/1998 was registered. However, in the present appeal the issue is not whether FIR was wrongly registered on the complaint of appellant and no action was taken thereon but whether the appellant was falsely implicated in FIR No.447/1998, and/or whether the prosecution has been able to prove its case beyond reasonable doubt against the appellant.

9. Though PW-4 the father of the prosecutrix stood by his complaint, in his examination-in-chief he further stated that though senior officers came to

the spot and interrogated the appellant he requested them not to hand-over the appellant to the Police and let him go off in the evening. However, on his friends telling him that he should not take law in his own hands on 25th October, 1998 in the evening time he along with Havaldar Shiv Veer Singh and Capt. Soni went to PS Delhi Cant and got registered the FIR on the basis of the written complaint where after his daughter was medically examined. However, internal examination of the prosecutrix was refused. Though in examination-in-chief and the complaint, PW-4 stated that he saw the accused coming down from the stairs he denied this fact in the cross-examination. He admitted that though he suspected appellant having done something wrong with his daughter, however he raised the alarm “chor chor”. In cross-examination, he further admitted that he had not seen his daughter following the appellant or carrying her underwear, nor did she reveal any fact to him directly. He also stated that he did not cross the ganda Nala to apprehend the appellant and he was confronted with his earlier statement wherein it was so recorded. He also denied that he brought the appellant to his house which falsifies the version that when the appellant was brought to his house his daughter pointed out that he was the same boy and narrated the facts. Besides these material contradictions, on number of other issues also PW-4 was confronted. He admitted that there was no injury on the person of his daughter.

10. In her examination-in-chief the prosecutrix who was aged 5 years stated that the appellant laid on her after removing her underwear. She did not state anything else. However, in her cross-examination she stated that when her father came appellant was on the roof and he gave beatings to the appellant and other persons also gathered there and started giving beatings to

the boy. Thus, there are material contradictions between the statement of the prosecutrix and her father besides variations in her own version.

11. PW-6 the mother of the prosecutrix supported the version of PW-4 to the extent that after her husband went to the bus stop to search her daughter and when he came back in the meantime her daughter came downstairs and she was crying. She picked her up and went inside the house. She stated that her daughter told her that one boy had done something wrong with her, however the appellant was not present there. She made inquiries from her daughter on the next day as on the earlier day she was not in a position to tell. On the next day her daughter told her that she was given beating by one uncle.

12. A perusal of the statement of the three witnesses shows that there are material contradictions about the presence of the appellant at the spot and where he was apprehended. In the cross-examination PW-6 admitted her flat was on the first floor and not the ground floor and also stated that she did not notice any injury on the person of her daughter. Though she admitted that the appellant was beaten, however she denied that he was apprehended on the suspicion of being a thief and was brutally manhandled by her husband and other persons and as he received multiple injuries including fractures and when his father threatened to lodge a report against her husband and others, the above case was foisted on him.

13. As noted above, the fact that the complaint of appellant was prior in time i.e. on 25th October, 1998 at about 12.30 PM whereas the complaint of PW-4 was given at 7.30 PM on 25th October, 1998 has been admitted by PW-11 SI J.K. Bhardwaj. The version of appellant in his statement Ex.PW-11/DA is fortified by his OPD Card and MLC Ex.PW-3/A which notes

number of external injuries including swelling on multiple areas of the body, multiple bruises, ligature marks on the ankles and the wrist besides stitched laceration over left ear lobe. The appellant in his complaint has clearly stated that while he was being assaulted, his ear lobe was cut by a plier and he was beaten after being tied with ropes and hung to a tree and after he regained consciousness he went to his friend where he was given primary medical aid.

14. In his statement under Section 313 Cr.P.C. the explanation of the appellant in response to the last question is as under:

“I was staying along with my parents and was studying in Army School Delhi Cantt in Xth class. On 23.10.98 I had gone to meet my friend Md. Sayeed in the area of CVD quarters at about 1.30 PM. When I was stopped by 3/4 persons of army, they accused me of being thief. They beat me up, pulled my nails with pliers, hung me upside down, cut my ear lobe, cut my hairs, tore my dress and tortured me upto 4 PM, took me to the army lines, burnt with cigarette buds, urinated over me and further tortured me. One Sikh army officer came in between and was told that I was a thief and I had come to the area to sell honey when the said officer suggested that I should be killed and thrown away, he then asked me to be handed over to military police. I was illegally confined and thrown away at 7 PM, presumed to be dead. My clothes had been removed during tortured. I then took help from the house of my friend Yoginder in Nangal who got me medical treatment and had informed my father the next day. My father cautioned my torturers of legal action and took me DDU Hospital where my limbs were put under plaster and I was treated. Police came and met me in the hospital when I gave statement but when the army officials felt pressurized they got me falsely implicated in this case. I am innocent and falsely implicated in this case.”

15. Appellant also examined DW-1 Yoginder Sharma his friend who deposed that he was the classmate of appellant in year 1998 in Army School, Delhi Cant. On 23rd October, 1998 appellant's father telephoned him at about 8.00 PM to enquire if appellant had come to his house. Thereafter he went to enquire about the appellant from the house of Mohd. Sayeed who was also their classmate. Appellant was not found even at the house of Mohd. Sayeed. When he was returning home he saw some people standing near the Supply Depot and found Raj Kumar lying there. He was having injuries on his body and was bleeding from his ear. On inquiries from the persons standing, he was informed that some people had beaten him taking him to be a thief. Appellant informed Yoginder Sharma that some Army persons had beaten him. He took appellant to his house and called a nearby Doctor who gave him first aid and medicines. Thereafter he informed the father of the appellant that the appellant would stay with him as he had injuries. Next day morning at 10.00 AM with the help of his brother he took appellant to his house and dropped him there. Even in cross-examination by the learned APP nothing material could be elicited and he reiterated that the Doctor put bandage on the hands, put some lotion and stitched the left ear of the appellant.

16. The appellant also examined DW-2 his father who stated that when he reached back to his home at 9.30 PM on 23rd October, 1998 he did not find his son. Thus he made inquiries from his friend Yoginder and since he was not at the house of Yoginder he asked Yoginder to inquire from Sayeed as well. Rest of the version stated by DW-2 was as told to him by Yoginder. He further stated that on 25th October, 1998 he went to PS Delhi Cant to register an offence of beating of his son by Army personnel but the Police

refused to register his case and asked him to first get his son medically examined. Thus at about 12.50 PM on 25th October, 1998 he took his son to DDU Hospital where he was informed that he was suffering from grievous fracture injuries. SI J.K. Bhardwaj reached the hospital and recorded the statement of his son but did not give him a copy of the same. In the evening he and his son were taken to the hospital on the pretext of getting their statement recorded, however they were detained till 4.00 O' clock and they were made to sign some documents. On 26th October, 1998 his son was medically examined at Safdarjung hospital and remanded to judicial custody. Even when the appellant was produced before the Safdarjung hospital for examination on 2nd November, 1998 both his hands, fore-arms and both his legs were under the cast. The nature of injuries suffered by the appellant which have been duly proved from the medical record of DDU hospital even though conducted after 2 days of the incident are grievous in nature. From the injuries received by the appellant, version of the prosecution in the above-noted FIR is belied and the version of appellant in his complaint Ex.PW-11/DA is fortified.

17. Though the appellant has taken the plea of juvenility and even as per the finding of the learned Metropolitan Magistrate the appellant was above 16 years at the time of alleged incident but less than 18 years and thus entitled to the benefit of juvenility as per the decision of Supreme Court in Hari Ram (supra), this Court need not go into it as it finds that the version of the prosecution as reflected is not the true version and after the appellant gave his complaint alleging beating and torture, a false case was registered against him.

18. From the evidence on record it can be safely held that not only the prosecution has failed to establish its case beyond reasonable doubt, the appellant has been falsely implicated in the case. The impugned judgment of conviction and order on sentence are set aside.

19. Appeal is disposed of. The bail bond and the surety bond are discharged.

(MUKTA GUPTA)
JUDGE

MARCH 15, 2017
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