

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

**RESERVED ON : 6th FEBRUARY, 2017
DECIDED ON : 1st MARCH, 2017**

+ CRL.A.47/2015

SANT RAM

..... Appellant

**Through : Mr.Pramod K.Dubey, Advocate with
Mr.T.Vishnu & Mr.Rahul Tripathi,
Advocates.**

versus

THE STATE (GOVT. OF NCT) DELHI

..... Respondent

Through : Mr.Arun K.Sharma, APP.

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

S.P.GARG, J.

1. Aggrieved and dissatisfied by a judgment dated 09.07.2014 of learned Addl. Sessions Judge in Sessions Case No.61/13 arising out of FIR No.390/12 PS Dabri by which the appellant – Sant Ram was convicted for committing offences punishable under Sections 376/109 IPC and Sections 3, 4, 5 & 6 of Immoral Traffic (Prevention) Act, 1956 (In short 'ITP Act'), the instant appeal has been preferred by him. By an order dated 17.07.2014, the appellant was sentenced to undergo various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that a month prior to 03.10.2012, Madan Lal Rana and Raman Kumar (since acquitted) committed gang rape upon the prosecutrix 'X'

(changed name) at their office at Kakrola, New Delhi and at House No.RZ-120, C-2, Mahavir Enclave Part-I, New Delhi. The appellant and one Jyoti (facing trial before Juvenile Justice Board) were implicated for abetment of commission of rape by co-accused Madan Lal Rana, Raman Kumar and some unknown individuals upon the prosecutrix 'X' aged around 19 years; using premises No. RZ-120, C-2, Mahavir Enclave Part-I, as 'brothel' for prostitution; knowingly living on the earnings of the prosecutrix and procuring her for prostitution and pushing her into prostitution.

3. On 03.10.2012 after recording victim's statement (Ex.PW-6/A) the Investigating Officer lodged First Information Report. 'X' was medically examined; she recorded 164 Cr.P.C. statement. The appellant and his associate were arrested. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant, Madan Lal Rana and Raman Kumar for committing various offences. In order to establish its case, the prosecution examined eighteen witnesses and relied upon various documents. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. He examined DW-1 (Vijay Kumar) in defence. After evaluating the evidence and on appreciation of the evidence, the Trial Court by the impugned judgment acquitted Madan Lal Rana and Raman Kumar of the charges. It is relevant to note that State did not challenge their acquittal. It is unclear as to what is the outcome of the proceedings pending against Jyoti before Juvenile Justice Board.

4. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix 'X' was major on the day of occurrence. In her complaint, she claimed herself to be of 19

years old. The Investigating Agency, however, did not collect any cogent document to establish her exact date of birth. Ossification report (Ex.PW-9/A) prepared by the Board set up in DDU Hospital of which PW-9 (Dr.Uma K.) was one of the members opined X's age in between 20 – 25 years.

5. Appellant's conviction is primarily based upon the sole testimony of the prosecutrix 'X'. 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.

6. In the instant case, various infirmities, inconsistencies and discrepancies have emerged in the statement of the prosecutrix making it unsafe to base conviction upon her sole testimony without independent corroboration. Impugned judgment records that the prosecutrix had made certain improvements in her deposition before the Court. The Trial Court was, however, of the view that these did not relate to or affect the core spectrum of the prosecution case. It is pertinent to note that during investigation, the prosecutrix had implicated Madan Lal Rana and Raman Kumar to be the individuals who had committed gang rape upon her against her wishes. She had identified both of them to be the perpetrators of the crime and had identified Raman Kumar in Test Identification Proceedings conducted at Tihar Jail. Certain recoveries were also effected pursuant to their disclosure statements in the presence of the complainant. However, in her Court statement, she completely exonerated them and declined to identify them to be the individual who had committed gang rape upon her after she was taken to their office by the appellant and Jyoti for monetary consideration. She was declared hostile by the learned APP and was cross-

examined. She had the audacity to claim that the statement recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate was at the behest of the police. She at no stage lodged any complaint against any police official compelling her to make false statement before the learned Metropolitan Magistrate. Seemingly, the prosecutrix has settled the dispute with Madan Lal Rana and Raman Kumar and has opted to resile from her previous statement to give clean chit to them. Otherwise, she had no reason to identify Raman Kumar to be one of the rapists in the Test Identification Proceedings. Apparently, the prosecutrix has not presented true facts.

7. The prosecutrix was not a stranger to the city. Her testimony as PW-6 reveals that she was residing in Delhi for the last around 8 years and had worked as 'maid' in various houses at Shalimar Bagh for about 7 years. She had gone to her native place and had come back to Delhi. She did not elaborate as to where she used to reside; what was the name of her uncle and aunt with whom she used to reside; what was the names of his cousin with whom she used to go to a nearby park where she happened to meet Jyoti. She did not produce and reveal her mobile number. The Investigating Officer was unable to collect any Call Detail Record showing her conversation with Jyoti or her family members. It has come on record that the victim had a mobile and even had a talk with her brother. The Investigating Officer did not examine any of her relations to ascertain as to where and in what circumstances 'X' lived at House No. RZ-120, C-2, Mahavir Enclave Part-I with Jyoti and the appellant. It is highly unbelievable that after return from her native place, the appellant and Jyoti would allow her to stay with them without providing any job as alleged. The victim did not offer any plausible explanation as to why she did not

inform her relatives with whom she used to stay before going to her native place and why all of a sudden she contacted Jyoti, a child aged around 12 years, to provide her a job. Jyoti herself seems to be a victim of circumstances. It is highly unbelievable that she could prevail upon the prosecutrix aged around 20 – 25 years to indulge in prostitution. ‘X’ did not furnish any reason as to why she did not complain about appellant’s conduct to her brother at the time of having conversation with him on telephone. It is not acceptable that victim’s brother or her relatives would not make efforts to find her whereabouts for so long. Admittedly, the prosecutrix remained with the appellant and Jyoti for about a month. During this period allegedly she established physical relations with so many individuals. At no stage, she raised alarm. She did not try to escape from the spot despite having opportunity. It has come on record that the appellant used to go at his place of work. There is nothing on record to show if the victim was confined forcibly in the premises in question. In her complaint, she had alleged physical beatings and torture by the appellant and his associate. Soon after lodging the complaint, the victim was medically examined vide MLC (Ex.PW-16/A). No external injuries whatsoever were found on her body.

8. It is to be noted further that DNA reports (Ex.PA) falsified her version qua Madan Lal Rana and Raman Kumar. FSL result showed that the DNA profile isolated from the underwear of the prosecutrix, bed-sheet, clothe piece and towel seized by the police and the ‘chunni’ of the prosecutrix was not found similar to the DNA isolated from the blood sample of Madan Lal Rana and Raman Kumar. Since nothing incriminating had come against them, even statement under Section 313 Cr.P.C. was dispensed with and both of them were acquitted of the charges. Since

Madan Lal Rana and Raman Kumar were not found guilty whatsoever of commission of offence under Section 376(2)(g), there was least possibility of its abetment by the appellant and his associate Jyoti. Victim's statement was found insufficient or scanty to base conviction qua them. What reliance or sanctity can be placed upon the testimony of such a witness who has resiled from her previous statement and has made vital improvements?

9. The investigation carried out is not up-to-the-mark. The statements of the neighbours where allegedly the 'brothel' was being run were not recorded. Nothing has come on record if any neighbour residing nearby had suspected objectionable or illegal activities going on in the tenanted premises. No such complaint was ever lodged by any neighbour with the police. Call Details Records were not collected. The Call Details Records pertaining to phone Nos. 9958552898 and 9717958461 are of one Ms.Ashrita Bhengura and Mr.Ansar Ahmed. Similarly, call details records pertaining to mobile Nos. 9873663266, 9999065877 and 9654972436 pertain to Madan Lal Rana and one Mira. It has not been explained how these call details are relevant in the instant case. The call details of the prosecutrix and that of the appellant have not been brought on record. The Investigating Agency did not verify if the appellant had married Jyoti, and if so, on what date. The victim has given contrary and conflicting statement regarding it. No material has surfaced on record to find out if the appellant had married Jyoti. Detailed particulars of Jyoti, her parents and her place of residence were not verified. It is not clear as to how and in what manner, she happened to stay in the premises in question or whether she herself was a victim. It is on record that the appellant was married to one Mira, the Call Details Record of whom were collected. PW-7 (D.S.Chouhan), the landlord,

identified Mira who used to stay in the tenanted premises with the appellant. She was not examined by the prosecution to find out where she lived or whether her husband used to stay with Jyoti in the premises in question. PW-17 (Insp.Naresh Kumar) admitted in the cross-examination that as per school record obtained by him, Jyoti was aged around 12 years. The victim did not disclose the name of any individual with whom she had established physical relation at the appellant's behest. Nothing was revealed as to how much money was received by the appellant forcing 'X' to indulge in prostitution. PW-17 (Insp.Naresh Kumar) admitted in the cross-examination that the victim had not mentioned any particular amount of money taken by the appellant from the customers.

10. Victim's statement reflects that she had come into contact with Jyoti in a park. Friendship had developed between the two and they remained in contact even when she had gone to her native place. Subsequently, she was allegedly pushed into prostitution by Jyoti and the present appellant. The victim, however, did not explain as to why she preferred to stay with Jyoti after coming to know that she herself was engaged in sex trade. Apparently, 'X' was a willing and consenting party in the entire episode. Victim's statement cannot be taken on its face value to base conviction of the appellant without independent corroboration which is lacking in the instant case.

11. In '*Sadashiv Ramrao Hadbe vs. State of Maharashtra & Anr.*' 2006 (10) SCC 92, the Apex Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of the prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful while accepting the

testimony when the entire case is improbable and unlikely to have happened. This is what has been stated:

"It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the 'whole surrounding circumstances are highly improbable and belie the case set; up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

12. 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."

13. Hon'ble Supreme Court in the decision reported as (2012) 7 SCC 171 '*Narender Kumar Vs. State (NGT of Delhi)*' held :

"23. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of the witnesses which are not of a substantial character.

*However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide *Tukaram Vs. State of Maharashtra* (1979) 2*

SCC 143 and Uday Vs.. State of Karnataka 2003 II AD (S.C.) 358)

24. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected."

14. Resultantly, the appeal is allowed. Conviction and sentence recorded by the Trial Court are set aside. The appellant shall be released forthwith if not required to be detained in any other case.

15. Trial Court record be sent back forthwith with the copy of the order.

16. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MARCH 01, 2017 / tr