

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

RESERVED ON : 01st FEBRUARY, 2017
DECIDED ON : 13th FEBRUARY, 2017

+ **CRL.A.392/2014**

RAMESH @ PEELA Appellant
Through : Mr.Manish Kumar, Advocate with
Mr.Tajinder Singh, Advocate.

VERSUS

THE STATE Respondent
Through : Mr.Akshai Malik, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 27.01.2014 of learned Additional Sessions Judge in Sessions Case No. 105/13 arising out of FIR No.379/2010 registered at Police Station Vijay Vihar whereby the appellant was held guilty for committing offence punishable under Section 376 IPC. By an order dated 29.01.2014, the appellant was sentenced to undergo RI for ten years with fine ₹20,000/-; default sentence being RI for two years.

2. Briefly stated the prosecution case as reflected in the charge-sheet was that in between May, 2010 and 31.10.2010 at House No. B-66, Sardar Colony, Sector-23, Rohini, the appellant committed rape upon the prosecutrix 'X' aged around 32 years. PW-4 (Ashok Singh) running a

grocery shop adjacent to the place of incident moved the police machinery into motion and made a telephone call 100 when the prosecutrix 'X' came to his shop and informed that co-accused Rani who had brought her from Azamgarh was getting wrong deeds done from her. DD No.23B (Ex.PW-12/A) came into existence at 01.26 p.m. on 31.10.2010 at PS Vijay Vihar. The investigation was assigned to SI Ramesh Thakur who alongwith lady Const. Santosh reached the spot. After recording victim's statement (Ex.PW-12/B), the Investigating Officer lodged First Information Report. 'X' was medically examined. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant and one Rani (since acquitted) in the Court. In order to establish its case, the prosecution examined eighteen witnesses. The appellant pleaded false implication and denied his involvement in the crime. Trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. It is relevant to note that co-accused Rani was charged for commission of offence punishable under Section 376 IPC read with Sections 109/506 IPC and Sections 3 & 4 of ITP Act by an order dated 04.03.2011. However, by a judgment dated 02.02.2012 in Sessions Case No.108/2011 she was acquitted of all the charges. It appears that Rani's acquittal has not been challenged by the State.

4. Admitted position is that the prosecutrix 'X' was aged around 32 years on the day of occurrence. It is unclear as to how, in what manner and by whom she was brought to Delhi from her village Azamgarh. In the complaint (Ex.PW-12/B), she disclosed that she was residing with Rani for

the last about one month. She was introduced to her by one Shakuntala, her acquaintance. She further informed that Rani got her marriage performed with her known individual Vijender who lived at Noida (U.P.). Since her husband used to consume liquor and harass her, she apprised her father who left her at the residence of her mama 'jeth' at Rohini. Due to paucity of accommodation there, she came to stay at Rani's residence at B-66, Sardar Colony, Sector-23, Rohini. She further informed that Rani forced her to indulge in prostitution and she collected money from the customers. She further informed that one day Peela (the appellant) committed rape upon her. On 31.10.2010, Rani informed her that she would have to establish physical relation with the appellant Peela who would arrive at about 01.00 p.m. Finding an opportunity, she fled the spot and went to Pradhan of colony who made a telephone call at 100.

5. In her Court statement as PW-14, giving conflicting version, she deposed during her stay with Rani, she (Rani) used to bring the appellant at her house to have 'galat kam' (physical relations) with her on getting money. Rani was introduced to her by one Shankuntala and thereafter Rani got her married with one Vijender who used to harass her and also force her to have physical relationship. Due to the harassment at the hands of Vijender, she left to stay at the residence of her 'mama jeth' in Rohini. He also started giving beatings to her. She came at the residence of Rani and started residing there; she used to take her to different customers for prostitution for money. In the cross-examination, she admitted that Rani did not take any money from any customer in her presence. She was kept at Rani's house for about two months. She was not aware as to for how many

times the appellant had committed rape upon her. She volunteered to add that it was done by him on two times.

6. On perusal of the entire statement of the prosecutrix, it appears that conflicting and contradictory statements have been given by her. She has made vital improvements at various stages. It is unclear as to when she started residing at Rani's residence. She did not inform her father about her intention to stay with a stranger Rani. She continued to have physical relations with so many customers at Rani's residence without any demur. At no stage, she lodged any complaint against Rani for pushing her into prostitution. PW-4 (Ashok Singh), Pradhan in the colony, was known to her but she did not complain about Rani's conduct to him. Nothing has come on record to show if at any stage the victim had raised hue and cry when allegedly she was forced to have physical relations with various customers. Victim's statement to establish Rani's complicity in the crime was not believed by the Trial Court. While acquitting her by a judgment dated 02.02.2012, the Trial Court came to the conclusion that the prosecutrix had enough opportunity to run away from the house or at least to reach to someone. It was further observed that Rani, a middle age lady of 47 having a weak body structure could not have forced the prosecutrix a young lady aged around 25 / 26 years to indulge in prostitution against her wishes. The Trial Court was of the view that either the prosecutrix was a willing party to sexual intercourse or nothing had happened with her.

7. In the instant case, in her Court statement, she did not depose if physical relations were established by the appellant with her against her wishes forcibly. Her plea is that Rani used to ask her to establish physical relations with various customers, the appellant being one of them on receipt

of money. Victim's grievance is that Rani used to collect the money and she was forced to have sexual intercourse with the customers. Apparently, the prosecutrix was willing and consenting party to the coitus. Nothing has come in her deposition if any time she offered any resistance to the physical assault or attempted to flee the spot. It has come on record that the victim was not confined inside the house and she used to answer call of nature at a nearby place outside Rani's residence. Major discrepancies have emerged as to how many times physical relations were established by the appellant with the prosecutrix. In her complaint (Ex.PW-12/A) the complainant had talked about commission of rape by the appellant only on one occasion prior to the lodging of the FIR. However, in the testimony at one stage she has stated that it was on five times and at other stage at two occasions. No detailed particulars of the incident of rape has been described or given. X's conduct to maintain complete silence for so long and not to lodge any complaint is unacceptable and unnatural.

8. It is further relevant to note that soon after the lodging the FIR the prosecutrix was taken for medical examination. Initially, 'X' did not disclose to the examining doctor if she was a victim of any sexual assault. She even declined to get herself medically examined. Subsequently at about 11.45 p.m. she was again brought for medical examination where her hymen was found torn. However, there was no external injury whatsoever on any body part including private parts to infer forcible rape. In her deposition before the Court the prosecutrix not only leveled allegations of commission of rape against the appellant but also against one Vijender and the individual at whose residence she had stayed at Rohini after leaving Vijender's house.

9. No independent witness was associated at any stage of the investigation. The premises in question were located in a busy residential locality. No neighbour was examined to ascertain if any objectionable activity was being carried out at Rani's residence. PW-4 (Ashok Singh) who had a shop nearby never lodged any complaint despite his acquaintance with the prosecutrix. He has given a conflicting version that after making telephone call at 100, he had sent 3 or 4 ladies at Rani's house who was not found present there. He did not reveal the names of the ladies who were sent to Rani's residence. In the cross-examination, he admitted that he had not gone to Rani's house prior to the call to the police. He informed that he had gone to Rani's house with the police but she was not present. They stayed there for about five minutes. He volunteered to add that Rani was seen coming there from other side and was apprehended by the police. PW-13 (ASI Baljeet Singh) who along with Investigating Officer SI Ramesh Thakur on receipt of DD NO.23B reached the spot, has given a contradictory statement. He deposed that they had come to know that the complainant had already been taken to Police Station Vijay Vihar by the PCR officials. SI Ramesh Thakur had made inquiry but nothing was revealed. In the cross-examination, he further disclosed that the caller who had made a call to the police did not meet them. The prosecution has failed to reconcile the two conflicting versions about Rani's apprehension.

10. Appellant's conviction is primarily based upon the sole testimony of the prosecutrix. Undoubtedly, in cases involving offence of rape, the testimony of the prosecutrix, if found to be worthy of credence can be relied on to base conviction without corroboration. However, if for some reasons, the Court is hesitant to place implicit reliance on the testimony of

the prosecutrix, it may look for some other evidence on record, which may lend assurance to her testimony.

11. In the instant case, the testimony of the prosecutrix cannot be taken on its face value due to various deficiencies referred above. The delay in FIR, the non-examination of material witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, discussed above leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon without independent corroboration. Apparently, the prosecutrix has not presented true facts. Possibility of her to be a consenting and willing party cannot be ruled out.

12. Resultantly, appellant's appeal is allowed; conviction and the 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.

13. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 13, 2017 / tr