

\$~6 & 7 (*common order*)

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

Decided on: 12th June, 2017

+ CRL.A. 793/2014

MONIKA

..... Appellant

Through: Mr. Rajat Bali, Advocate along with
appellant produced from JC.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State.
SI Satish Yadav, PS Dwarka North.

+ CRL.A. 787/2016

STATE NCT OF DELHI

..... Appellant

Through: Ms. Aashaa Tiwari, APP for the State.
SI Satish Yadav, PS Dwarka North.

versus

KIRAN @ KISHAN

..... Respondent

Through: Mr. Joginder Tuli, *Amicus Curiae*.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 07.05.2012, at about 2:35 p.m. upon intimation being received through Police Control Room (PCR), daily diary entry no.15-A was recorded at 2:35 p.m. in Police Station Dwarka North (Police Station) about some quarrel in the area of A Block, Sector 15, near

Mother Dairy booth. Upon inquiry being made, Sub Inspector Umesh Kumar (PW-15) met one Arun Tiwari (PW-8) who informed that a girl wanted to lodge a complaint and had gone into house No.E-202, Bharat Vihar, Sector 15, Dwarka. PW-15 proceeded to the said house and came across a girl (PW-6), aged about 19 years, a native of District Sidhi in Madhya Pradesh. The questioning of PW-6 revealed that she, besides two other girls (PW-7 and PW-14), also of same District of Madhya Pradesh had been victims of forcible sexual intercourse. PW-15 brought the said girls to the Police Station and the matter, for further inquiry, was handed over to Sub Inspector Nirmal Sharma (PW-19). PW-19 (the investigating officer) recorded the statement of the first mentioned girl (PW-6) vide Ex.PW-6/A which revealed that all the three girls had been victims of offences of rape, they having allegedly been seduced from their native place, and subjected to criminal intimidation, so as to be forced into sexual intercourse wherein the appellant Monika @ Rita Singh (Criminal Appeal No.793/2014) being wife of Kiran @ Kishan, respondent in State appeal (Criminal Appeal No.787/2016), having abetted the latter, he also having indulged in the offence of rape, besides co-convict Balram (Criminal Appeal No.190/2014). The girls were sent up for medical examination, their statements including under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) having been recorded before the Metropolitan Magistrate.

2. On conclusion of investigation, report(s) under Section 173 Cr.P.C. were laid in the court of Metropolitan Magistrate seeking trial of four persons including appellant Monika and her husband Kiran @

Kishan, the others being Balram (appellant in Criminal Appeal No.190/2014) and Pooja (since acquitted).

3. Upon the case being committed to the court to sessions, charge was framed against Balram for offence punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (IPC), the gravamen being of he having criminally intimidated PW-6 and having committed rape upon her on the night intervening 03.05.2012 and 04.05.2012 in an unknown property within the jurisdiction of the Police Station and he also having facilitated, aided and abetted rape by Kiran @ Kishan on the other two girls, they being PW-7 and PW-14.

4. Pooja was put on trial on the charge for offences punishable under Section 109 IPC and Section 6 of the Immoral Traffic (Prevention) Act, 1956 on the allegations of she having wrongfully detained PW-6 in a room of the property rented out by her and having aided and abetted her rape, besides on the accusations constituting offence under Section 3 of the Immoral Traffic (Prevention) Act, 1956 for keeping or managing a brothel house in the said tenanted room.

5. Appellant Monika @ Rita Singh was put on trial similarly for the offence of abetment of rape under Section 109 IPC by appellant Balram and her husband Kiran @ Kishan, vis-à-vis PW-6, PW-7 and PW-14.

6. Kiran @ Kishan could not be immediately apprehended. He was arrested on 27.12.2012 and brought to trial on the basis of supplementary charge sheet, formal charge having been framed against him on 22.02.2013 for offences punishable under Sections 376 and 506 IPC, the gravamen whereof was that on 03.05.2012 he had

committed rape against PW-7 and PW-14, having threatened the girls with death and, thus, having subjected them to criminal intimidation.

7. A joint trial of all the four persons was held in the course of which the prosecution examined, in all, twenty three witnesses namely, ASI Sanjeev (PW-1); WHC Usha Rani (PW-2); Ajay Singh Shekhawat (PW-3); Lady Const. Sumitra (PW-4); Dr. Soma Mitra, (PW-5); the first prosecutrix (PW-6), the second prosecutrix (PW-7); Arun Kumar Tiwari (PW-8); Lady Constable Mukesh (PW-9); Ajay Kumar (PW-10); Dr. Uday Kumar Singh (PW-11); HC Mahavir (PW-12); HC Bijender (PW-13); the third prosecutrix (PW-14); SI Umesh Yadav (PW-15); Lady Const. Deepa (PW-16); Inspector Naresh Kumar (PW-17); HC Sat Narayan (PW-18); WSI Nirmal Sharma (PW-19); HC Yudhvair Singh (PW-20); ASI Rajender Singh (PW-21); Constable Ved Prakash (PW-22) and SI Monika (PW-23).

8. By judgment dated 07.12.2013, Pooja and Kiran @ Kishan were acquitted. Appellant Monika was held guilty and convicted for offence punishable under Sections 109/376 IPC and, by order dated 16.12.2013, she was awarded rigorous imprisonment for seven years with fine of Rs.20,000/- and in default further imprisonment for nine months, with benefit under Section 428 Cr.P.C. Balram was also held guilty and convicted for the offence under Section 376 IPC, he having been sentenced to undergo rigorous imprisonment for ten years with fine of Rs.30,000/-.

9. The criminal appeal (Criminal Appeal No.793/2014) of Monika @ Rita Singh and the State appeal (Criminal Appeal No.787/2016) of the State challenging the acquittal of Kiran @ Kishan have come up

together for hearing against the above backdrop.

10. Mr. Rajat Bali, counsel for the appellant Monika @ Rita Singh and Ms. Aashaa Tiwari, Additional Public Prosecutor for the State and Mr. Joginder Tuli, appointed as *Amicus Curiae* for respondent Kiran @ Kishan, have been heard at length. The trial court record has been perused.

11. Whilst it is true that in their respective statements before the police under Section 161 Cr.P.C., and before the Magistrate under Section 164 Cr.P.C., PW-6, PW-7 and PW-14 had made allegations against all the four persons who were sent up for trial including appellant Monika @ Rita Singh and respondent Kiran @ Kishan, on close scrutiny of the evidence adduced at the trial, it is noted that there is no substantive evidence brought on record to incriminate appellant Monika @ Rita Singh or respondent Kiran @ Kishan. The evidence of the three girls, PW-6, PW-7 and PW-14, as given in the court, clearly brings out that all of them were brought from their native place by some third person, they eventually having reached the house of Monika @ Rita Singh in Delhi where she was living with her husband Kiran @ Kishan. It is clear from their court testimonies that the purpose of the girls coming to Delhi, and finding shelter in the house of Monika, was essentially to find some gainful employment.

12. The evidence of the three girls in the court reveals that on the date in question they had been sent out by Monika so that they could visit local weekly bazar (*Shani Bazar*). It is from there that they appear to have been accosted by some persons, allured so as to be taken to some other place where the sexual assault statedly took place.

Since the co-convict Balram (Criminal Appeal No.190/2014) is not pressing his appeal for hearing today, his counsel seeking adjournment on the ground he is not ready, this court refrains at this stage from making any observations with regard to allegations made against him or the role attributed to him.

13. Be that as it may, in the court, none of the three girls (PW-6, PW-7 and PW-14) made any allegations whatsoever vis-à-vis appellant Monika @ Rita Singh. PW-6 spoke about she having been subjected to rape but there is no role attributed in that regard either to appellant Monika @ Rita Singh or to her husband Kiran @ Kishan. PW-7 and PW-14, on the other hand, are totally silent with regard to allegations constituting the offence of rape, criminal intimidation or abetment.

14. It would be relevant to mention here in this context, that the evidence also reveals that the appellant Monika @ Rita Singh and her husband, respondent Kiran @ Kishan, were living in a rented accommodation. The evidence further reveals that they had a dispute with their landlord who wanted to have the rented accommodation vacated forthwith. The evidence of the three prosecutrix girls shows that while Monika @ Rita Singh had sent them out to visit the local weekly bazar, she had stayed back to look after her belongings in the house which she was expected to vacate. The statement, as made originally to the police, would further reveal that when appellant Monika @ Rita Singh later learnt about the forcible sexual intercourse against the girls, she had picked up quarrel with her husband. This would rather show that she could not have been a party to the design,

if there was one entertained by any one, for the girls who had taken shelter in her house to be subjected to forcible sexual intercourse. This would take the steam out of charge of she aiding or assisting or abetting any person involved.

15. In the above facts and circumstances, it is difficult to affirm the findings returned by the trial court vis-à-vis appellant Monika @ Rita Singh. Thus, the conviction of Monika @ Rita Singh for offence punishable under Section 109 read with Section 376 IPC will have to be set aside.

16. Since the evidence adduced in the court does not incriminate respondent Kiran @ Kishan in any of the offences, with which he was charged, the State appeal seeking his conviction cannot be allowed. After all, the statements made during investigation under Section 161 Cr.P.C. or under Section 164 Cr.P.C. cannot be treated as substantive evidence.

17. For the foregoing reasons, the Criminal Appeal No.793/2014 of appellant Monika @ Rita Singh is allowed. The impugned judgment to the extent it found her guilty and convicted her and the order on sentence whereby punishment was awarded to her are set aside. She shall be released from custody forthwith, unless she is required to be detained in any other case.

18. The Criminal Appeal No.787/2016, filed by the State against respondent Kiran @ Kishan, is dismissed.

R.K.GAUBA, J.

JUNE 12, 2017/vk