

\$~33

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

DECIDED ON : MARCH 27, 2017.

+

CRL.L.P. 251/2016

‘X’ (ASSUMED NAME)

..... Petitioner

Through : Mr.B.Mahapatra, Advocate.

versus

STATE & ANR

..... Respondents

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. The Prosecutrix ‘X’ (changed name) has preferred the instant petition for leave to challenge the legality and correctness of a judgment dated 31.03.2016 of learned Addl. Sessions Judge in Sessions Case No. 60/2014 arising out of FIR No. 460/2013 PS Amar Colony by which the respondent No.2 (hereinafter referred to as ‘respondent’) was acquitted under Section 376/506 IPC.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that for about three years till 20.11.2013 at House No.20/7, Gali No.4, Main Market Gali, New Delhi and at various other places, the respondent committed rape upon the prosecutrix against her will on the

pretext to marry her; she was criminally intimidated. The Investigating Officer lodged First Information Report after recording victim's statement (Ex.PW-4/A) on 20.11.2013. 'X' was medically examined; she recorded her statement under Section 164 Cr.P.C. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the respondent for commission of the offence under Section 376/506 IPC. The prosecution examined fifteen witnesses to prove its case. In 313 Cr.P.C. statement, the respondent denied complicity in the crime and pleaded false implication. The trial resulted in acquittal as mentioned previously. Being aggrieved and dissatisfied, the instant leave petition has been preferred by the prosecutrix.

3. I have heard the learned counsel for the petitioner and have examined the file.

4. Admitted position is that both the prosecutrix and the respondent were acquainted with each other. The prosecutrix was aged around 33 years and was married to PW-14 (Mahesh Arya) in 2010. The respondent was brother-in-law (Jija) of the victim's husband. It is also not in dispute that the respondent was running a company under the name and style of Royal Blue Holidays in which the victim had 50% share. The victim was also running a tour and travel company under the name and style of Yatharth Travels since 2007. In 2011, the victim's husband had allowed the respondent to run the said company from their office situated at Amrit Puri, East of Kailash.

5. In her complaint (Ex.PW-4/A), 'X' disclosed that she was sexually assaulted by the respondent for around three years on the false assurance to marry her. She became pregnant thrice and the pregnancies

were terminated/aborted. She further disclosed that on 12.08.2013, she had gone to her parents' house and waited for the respondent for three months to marry her. She further disclosed that misusing the relationship for his personal gains, the respondent pressurized her to divorce her husband.

6. In 164 Cr.P.C. statement (EX. PW2/B), 'X' disclosed that one day when the respondent was sitting in a separate room in the office, he committed rape upon her forcibly; she was criminally intimidated not to disclose the incident. It continued for around two years. Thereafter, she convinced her husband to shift the accused out of the office. The respondent, thereafter, vacated the office in August, 2012 but continued to have physical relations with her. She informed that she was pregnant in November 2011, March 2012 and May 2012 and the pregnancies were terminated. In August, 2013 she mustered courage and apprised her husband about the relationship. She was kicked out of the house and her husband filed a petition for divorce. In her court statement, she reiterated the version given to the police and in her statement under Section 164 Cr.P.C.

7. On perusal of the statements of the prosecutrix recorded at different stages, and the other materials on record, it appears that physical relations on several occasions between the prosecutrix and the respondent (if any) were consensual. 'X' even became pregnant thrice. However, at no stage she informed her husband or any other family members about her relations. In her court statement, she did not claim if initial physical relationship was with her consent on the promise to marry. 'X' has given conflicting and divergent versions. She had no real apprehension not to inform her husband or any other family members about the illicit relationship. Both continued to have joint business. Subsequently, there

was dispute over money and after about two years, the respondent shifted the office from where he used to run his agency. The complainant in her testimony disclosed that the accused even used to take her to his sister's house and have physical relation there. There was no occasion for the prosecutrix, a married lady, to indulge in extra marital affairs with the respondent who was closely related to her. It is highly unbelievable that the respondent would continue to violate victim's body for around three years against her wishes and the victim would maintain complete silence.

8. Divorce petition filed by the parties for dissolution of marriage by mutual consent was later on withdrawn by PW-14 (Mahesh Arya). It has, however, not explained as to what had prompted both of them to first file the divorce petition and then to withdraw it. At present, both of them are living together.

9. Delay in lodging the FIR has not been explained. After a quarrel took place between the respondent and victim's husband on 20.11.2013, PW-14 (Mahesh Arya) and the victim were taken to the police station. During her presence at the police station, she lodged the present complaint apparently to implicate the respondent.

10. There was no question of 'X's misconception of fact to give consent to coitus on the promise to marry as to her own knowledge, the respondent was already married and had three children. There was no occasion/chance of his marrying the prosecutrix without first getting divorce from his wife. There was no move any time to initiate any proceedings to seek divorce by the respondent from his wife.

11. The prosecutrix has not presented true facts and the complaint filed by her seems motivated. The Trial Court did not commit any error to

conclude that physical relationship with the respondent was with her consent.

12. There was no corroborating evidence to lend credence to the victim's statement. FSL report did not indicate the respondent's involvement in the crime. Nothing has come on record if any time, the prosecutrix had offered resistance or had suffered any injury on her body to infer forcible rape; she never got herself medically examined. When allegedly for the first time, she was raped by the respondent in the office, she remained mum and went conveniently to her house of her own without raising hue and cry. She even did not inform her husband that night or soon thereafter.

13. The prosecutrix aged 33 years was already married. It is difficult to believe that such a lady in her 30's and already married would get deceived by any kind of promise or assurance from the respondent, who was none other than her own brother-in-law. It can't be inferred with certainty that the prosecutrix was cheated and her consent for physical relationship was obtained, on false promise to marry.

14. 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.

15. In 'Abbas Ahmed Choudhury v. State of Assam', MANU/SC/1966/2009 : (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."

16. In another case 'Raju v. State of Madhya Pradesh', MANU/SC/8353/2008 : (2008) 15 SCC 133, the Supreme Court stated that the testimony of a victim of rape has to be tested as if she is an injured witness but cannot be presumed to be a gospel truth.

"It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

17. In 'Tameezuddin @ Tammu v. State (NCT of Delhi) ', MANU/SC/1621/2009 : (2009) 15 SCC 566, the Supreme Court held :

"It is true that in a case of rape the evidence of the Prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to

the very principles which govern the appreciation of evidence in a criminal matter."

18. X's testimony tested on the above settled principles, is wholly unreliable due to inherent infirmities therein.

19. The prosecution has miserably failed to establish that physical relations with the prosecutrix were on the false promise to marry.

20. The findings recorded by the trial court based on proper appreciation of evidence can't be faulted.

21. No sufficient ground for grant of leave to file appeal. The petition is dismissed.

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

(S.P.GARG)
JUDGE

MARCH 27, 2017

sa