

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

% *Judgment Reserved on: September 12, 2017*
Judgment Delivered on: September 19, 2017

+ **CRL.A. 425/2017**

RAVINDER SINGH @ PAPPU Appellant

Through: Ms.Saahila Lamba, Advocate
with appellant in custody

versus

THE STATE (NCT OF DELHI) Respondent

Through: Ms.Kusum Dhalla, APP for the
State

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant Ravinder Singh @ Pappu has impugned the judgment dated 28th January, 2017 and the order on sentence dated 31st January, 2017 whereby he has been convicted for committing the offence punishable under Section 376 IPC and sentenced to undergo RI for seven years with pay a fine of ₹5,000/- and in default of payment of fine, to undergo SI for one month.

2. According to the prosecution case, on 28th October, 2015 on receipt of DD No.11A Ex.PW-9/D at PS Mehraulli, the investigating officer reached the place of occurrence where they met the complainant/prosecutrix 'D' – PW-1 (name withheld to conceal the identity), who complained about being raped in the morning at about

5.00 am at her own residence by the appellant Ravinder Singh, who is her husband's cousin's son (*husband ke mama ke ladke ka ladka*). She also informed that after being raped, she managed to come out of the room and bolted the appellant Ravinder Singh in the room. She informed her husband Sh.Bhupender Singh - PW-5 on his phone about the incident and PCR was informed. The prosecutrix was sent for medical examination. The accused/appellant was also got medically examined and after completion of the investigation accused Ravinder Singh was sent to face trial for committing the offence under Section 376 IPC.

3. The prosecution examined twelve numbers of witnesses including the prosecutrix.

4. In his statement under Section 313 Cr.P.C., the appellant/accused admitted having visited the house of the prosecutrix, PW-1 in the morning but claimed the date to be 29th October, 2015 and not on 28th October, 2015 i.e. the date of occurrence. He stated that he had tea with the prosecutrix in the presence of her husband and father in law and thereafter, he left their house to visit his another uncle Sh.Balbir Singh (elder brother of husband of the prosecutrix) who was living nearby.

5. When he was questioned about him being found bolted inside the room and taken out of the room of the prosecutrix by the police on 28th October, 2015, he admitted that he was taken out of that room by the police but again insisted that the date was 29th October, 2015. He admitted that he was medically examined and subjected to potency test. As per his MLC Ex. PX, there is nothing to suggest that he is

incapable of performing the sexual intercourse. On being questioned as to why this case was against him, he stated that only prosecutrix can tell as to why she has falsely implicated him. The prosecutrix used to call him a drug addict and that is why she filed this false case.

6. After considering the testimony of the prosecution witnesses especially the prosecutrix and the medical and scientific evidence, learned Trial Court held the appellant guilty under Section 376 IPC for the following reasons:-

(i) The testimony of the prosecutrix is that on the date of incident her husband left for work at about 5.00 a.m. and accused entered her house after 15 minutes thereafter. Then he left for the house of her husband's brother but returned at about 7.00 a.m. when her father-in-law left for Gurudwara. The testimony of the prosecutrix to the effect that in the absence of her husband and father-in-law, the appellant entered in her room, closed the door from inside and pushed her on bed and committed rape on her though she pleaded with him to spare her as she was just like his mother, has been proved by her.

(ii) Her statement that after being pushed she could manage to come out of the room and bolt the door of the room from outside when the accused was still inside, has been corroborated by Ajay, PW-3 who found the prosecutrix weeping and on being asked about the reason, she informed that she had been raped by the accused Ravinder Singh and then the police control room was informed.

(iii) Testimony of PW-1, prosecutrix has been corroborated by her husband, PW-5 who stated that he left his house on 28th October, 2015 at about 5.00 a.m. leaving behind his wife and father. He also deposed

that he received a call of his wife after about 1 ½ hours thereafter. She informed him about being raped by the accused Ravinder Singh.

(iv) The incident was promptly reported and FIR exhibit PW-9/A was registered on the same day. Dr.Chitra proved the MLC of the prosecutrix Ex. PW-1/B. The alleged history of the sexual assault was given by the PW-1 which was noted on her MLC Ex.PW-1/B prepared on 28th October, 2015 at 11.45 a.m.

(v) The RFSL result Ex.PW-11/A proved that human semen was detected on the vaginal swab of the prosecutrix, Ex.1.; vulval swab of the prosecutrix, Ex. 2 and Ex.8B i.e. the Salwar, Ex.P3. The DNA profile generated from the source of the vaginal swab of the prosecutrix, Ex.1.; vulval swab of the prosecutrix, Ex. 2 and Ex.8B i.e. the Salwar, Ex.P3 matched with the DNA profile generated from the source of Ex.11 i.e. the blood in gauze collected from the accused.

7. The appellant, who is undergoing sentence, is being represented by Ms.Saahila Lamba, Advocate appointed by Delhi High Court Legal Services Committee.

8. The appellant is challenging his conviction inter-alia on the following grounds:-

(i) The learned Trial Court had convicted the appellant without appreciating the material contradictions appearing in the testimony of the prosecutrix.

(ii) The version of the prosecutrix that she was threatened by the appellant, has not been proved and the appellant has been acquitted of the charge under Section 506 IPC.

(iii) The prosecutrix was not even able to recollect the date of incident. It is unbelievable that a lady can forget the date and time of occurrence in respect of which she has undergone trauma and even initiated criminal proceedings against the appellant by getting the FIR registered.

(iv) Learned Trial Court failed to appreciate that as per the statement of PW-1, the prosecutrix the accused visited her house at 7.00 a.m. after her father-in-law left for Gurudwara and then committed rape but as per statement of her husband, PW-5 he received a phone call from the prosecutrix at about 6.00-6.30 a.m. informing about the alleged incident. Despite being aware her father-in-law was not at home she stated that she called him by saying *papa jee aa jao* which is a material contradictions.

(v) The age difference between the appellant and the prosecutrix is only of two years. The prosecutrix stated here age to be 42 years whereas the appellant was 44 years and in that case she cannot claim herself to be like his mother. The prosecutrix says that her clothes were torn but when the clothes were exhibited the clothes were not found torn.

(vi) The prosecutrix deposed that she pushed the appellant and ran out of the room then why she did not push him when he was forcing himself upon her.

9. Learned counsel for the appellant has submitted that the contradictions appearing in the testimony of the prosecutrix were sufficient to discard her version and the Court should not have convicted the appellant on the basis of her testimony. In support of her

submissions learned counsel for the appellant has placed reliance in the case of ***Biri Singh Vs. State of Uttar Pradesh 1992 SCC (Cr) 915*** wherein it was held that:

“the points and the testimonies which are in the nature of omissions, contradictions and exaggerations compel this Court to arrive to a conclusion that the evidence is tainted its interestedness and that it is unsafe to act upon his evidence and that he is unsafe to act upon his evidence and that he is not coming forward with the truth”

10. This appeal being jail appeal and the appellant being represented by the legal aid counsel, who argued in the presence of the appellant, the appellant was also given an opportunity to make submissions if he so desired. The appellant submitted before this Court that he was sitting in the adjoining house of the brother of the husband of the prosecutrix and he was doing ‘Paath’ (worship) when he was called by the prosecutrix at her house. The appellant submitted that he had sexual intercourse with the prosecutrix with her consent but he does not know why she informed the police. Though no such suggestion was given to the PW-1 - the prosecutrix when she appeared in the witness box and nor any such defence was taken during trial or his examination under Section 313 Cr.P.C.

11. The entire prosecution case stand proved beyond reasonable doubt from the statement of the prosecutrix, which has been duly corroborated by the statement of PW-3, who saw her weeping and informed the police control room, as well medical and scientific evidence. The date of incident is 28th October, 2015 as on that date at

8.28 a.m. DD No.11A Ex.PW-9/A was recorded on 28th October, 2015. FIR has been registered on 28th October, 2015. The medical examination of the prosecutrix as well of the accused has been conducted at AIIMS on 28th October, 2015. So the appellant cannot take benefit by creating confusion as to the date when he visited the house of the prosecutrix.

12. **Vide DD No.11A Ex.PW-9/D the information given by the caller was that at house No.1042/8, Mehta Chowk, Mehrauli a lady** has been raped and the accused has been bolted in the house. The information was conveyed to the SI Rajiv for necessary action. The appellant admitted that he was taken out of the room by the police. The appellant cannot take any benefit of minor contradictions or omissions appearing in the statement of the prosecutrix if she was unable to recollect the exact time/date of incident or there are some variations in her testimony about time.

13. In the decision reported as *Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC 191* while discussing the evidence adduced by rustic/illiterate villager held as under:-

“31. In Dimple Gupta (minor) Vs. Rajiv Gupta, (2007) 10 SCC 30, this Court held that a person coming from altogether different background and having no education may not be able to give a precise account of the incident. However, that cannot be a ground to reject his testimony. The court observed that in a case like rape, "it is impossible to lay down with precision the chain of events, more particularly, when illiterate villagers with no sense of time are involved."

14. When the prosecutrix was examined at AIIMS she had given the information that she was raped by her husband's brother's son namely Pappu on 28th October, 2015. During her medical examination, seven khakhi envelope containing vaginal swab, vulval swab, buccal swab, pubic hair, scalp hair, nail scraping and one big envelope yellow colour containing clothes and one sample of victim sealed with the seal of CMO AIIMS Hospital. During the examination of PW-1 – the prosecutrix, when the sealed pullanda containing salwar Ex.P3, which the prosecutrix identified to be the same she was wearing at the time of was produced, there is a Court observation that the stitching near where the string of the salwar Ex.P3 is tied, has come apart about one inch.

15. The appellant/accused Ravinder Singh was sent for medical examination where three plastic container containing blood in gauze, penile swab & control swab and one pullanda white colour containing underwear & one sample seal of him were sealed with the seal of department of forensic Medicine AIIMS, New Delhi.

16. PW-11, Sh.D.S.Paliwal, Senior Scientific Officer Biology has proved his report Ex.PW-11/A (collectively) by deposing as under:-

“On 18.11.2015 thirteen sealed parcels were received at RFSL, Chankayapuri alongwith sample seals. The present case was marked to me on 01.12.2015 for DNA examination. Upon receipt of the case parcels i.e. eight parcels were sealed with the seal of CMO AIIMS, HOPT ND, one parcel was sealed with the seal of AK and remaining four sealed parcels were sealed with the seal of Department of Forensic Medicine, AIIMS, New Delhi. I found that the seals were intact and tallied with the specimen seals as per forwarding letter. I performed the biological examination on the exhibits excluding exhibits contained in parcel no.12, 13 and 14. During my biological

examination blood was detected on exhibit 11 (blood in gauze of accused). Blood could not be detected on exhibits 1, 2, 3, 4, 5, 6, 7, 8a, 8b & 10. Human semen was detected on exhibit 1 (vaginal swab of victim), exhibit 2 (vulval swab of victim) and exhibit 8b (lady salwar). Semen could not be detected on exhibit 3, 4, 5, 6, 7, 8a and 10. I further performed DNA examination and it was concluded that the DNA profile generated from the source of exhibit 1 (vaginal swab of victim), exhibit 2 (vulval swab of victim) and exhibit 8b (lady salwar) is similar with DNA profile generated from the source of exhibit 11 (blood in gauze of accused) the detailed analysis in the form of annexure 1 and 2 having STR and Y-STR Genotype data of the exhibit 1, 2, 8b and 11 has been enclosed with the report. I prepared my detail report. Same is Ex.PW11/A (colly) (4 pages) bearing my signatures at point A on the exhibits.

After examination remnants of the exhibits sent to RFSL Chanakyapuri have been sealed with the seal of DSP RFSL –Ch- Puri New Delhi excluding parcel no.12, 13 and 14 which were returned unexamined as parcel no.11 of the accused is sufficient to conclude the results of this case.”

17. The conclusions made by PW-11, Sh.D.S.Paliwal, Senior Scientific Officer Biology are as under:-

“DNA Examination

The source of exhibit ‘1’, ‘2’, ‘8b’ & ‘11’ were subjected to DNA isolation. DNA was isolated from the source of exhibit ‘1’, ‘2’, ‘8b’ & ‘11’ and DNA profile for the exhibit ‘1’, ‘2’, ‘8b’ & ‘11’ were prepared by using Amp F1 STR Identifier Plus PCR Amplification Kit & Amp F1 Y-STR PCR Amplification Kit. STR analysis was used for the sample. Data was analyzed by using Gene Mapper ID-X Software.

Result of examination

The alleles from the source of exhibit ‘11’ (blood in Gauze of accused) are accounted in alleles from the source of exhibit ‘1’ (Cotton wool swab-vaginal swab of

victim), exhibit '2' (Cotton wool swab-Vulval swab of victim) & exhibit '8b' (lady salwar).

Conclusion

The DNA Profiling (STR analysis) performed on the exhibits provided is sufficient to conclude that the DNA Profile generated from the source of exhibit '1' (Cotton wool swab-vaginal swab of victim), exhibit '2' (Cotton wool swab-Vulval swab of victim) & exhibit '8b' (lady salwar) is similar with the DNA Profile generated from the source of exhibit '11' (blood in Gauze of accused)."

18. This is a case where PW-1/prosecutrix after being subjected to sexual assault, could manage to bolt the accused inside the room and despite being in disturbed state of mind and weeping, informed the police control room and her husband. This statement of the prosecutrix is duly corroborated by PW-3, Ajay. The appellant cannot seek any benefit by pointing out that PW-5, husband of the prosecutrix could not have received any call from her at about 6.00-6.30 p.m. which needs to be ignored as the rustic villagers cannot be expected to give exact time with precision and these are not such contradictions which go to the root of the matter.

19. This is a case where the crime was promptly reported, medical examination of the victim of sexual assault as well of the person who committed the sexual assault i.e. the appellant were conducted on the same day and the medical and scientific evidence proved that it was the appellant who committed sexual assault on PW-1, his aunt.

20. The age difference of two years between the prosecutrix and the appellant is not a ground to negate the version of PW-1 that she wanted the appellant not to violate her body as she was like his mother

for the reason that it is not the age difference but the relationship that was being referred to by the PW-1 while pleading for sparing her while being sexually abused. It is admitted by the appellant that he was son of maternal uncle of the husband of the prosecutrix.

21. It is settled legal position that the statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration and the Court may convict the accused on the sole testimony of the prosecutrix. In the instant case although no such compelling reason exists to look for the corroboration. The appellant during trial though did not take any defence that the sexual intercourse was committed with the consent of PW-1, irrespective of his submission/admission before this Court, the evidence adduced in this case by the prosecution negate the theory of consent. There was no reason for the prosecutrix who was closely related to him to level charges of rape against the appellant which had an adverse effect on the reputation of their families.

22. In the case State of Punjab vs. Gurmeet Singh & Ors. 1996 Cri.L.J. 1728 it was observed as under:-

'The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.'

23. In the present case the evidence of the prosecutrix, PW-1 has been duly corroborated by the medical and scientific evidence as well by the testimony of PW-3 Sh.Ajay and the police officials i.e. PW-4 W/Ct.Baby Yadav and PW-10 W/SI Mukti, who found the accused bolted inside the room and took him out of the room after reaching the spot. It is a case where the guilt of the accused that he committed rape on his own aunt has been proved by oral evidence duly corroborated by medical & scientific evidence beyond reasonable doubt hence he is not entitled to acquittal.

24. In view of above discussion, I am not inclined to interfere with the finding of guilt recorded by the learned Trial Court as well as the minimum sentence of imprisonment of 7 years awarded to the appellant for committing the offence punishable under Section 376 IPC.

25. The conviction of the appellant under 376 IPC and sentence awarded thereunder is upheld.

26. The appeal is dismissed.

27. LCR be sent back alongwith copy of this order.

28. Appellant be also informed through the concerned Jail Superintendent.

**PRATIBHA RANI
(JUDGE)**

SEPTEMBER 19, 2017

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