

\$~2

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

DECIDED ON : JUNE 06, 2017

+ **CRL.A. 932/2016**

VIJAY VAIDH

..... Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE

.... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Challenge in this appeal is a judgment dated 18.04.2016 of learned Additional Sessions Judge in Sessions Case No.199/2014 arising out of FIR No.524/2014 registered at Police Station Kotla Mubarak Pur, whereby the appellant was held guilty for committing offences punishable under Sections 376/307 IPC. By an order dated 30.04.2016, he was sentenced to undergo Rigorous Imprisonment for ten years with fine ₹15,000/- under Section 376 IPC and Rigorous Imprisonment for seven years with fine ₹10,000/- under Section 307 IPC. Both the sentences were to operate concurrently.

2. Briefly stated the prosecution case as reflected in the charge-sheet was that on 24.06.2014 at about 10.15 a.m. at the first floor of House No.A-13/14, Amrit Nagar, South Extension Part-I, New Delhi, the appellant committed rape upon the prosecutrix 'X' (changed name) and also attempted to commit her murder. The incident was conveyed to the police promptly and DD No.21A (Ex.PW-3/1) came to be recorded at Police Station Kotla Mubarak Pur, at 11.00 a.m. The investigation was assigned to SI Ram Saran. The complainant lodged the complaint (Ex.PW-6/A). The investigating officer lodged the FIR. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The appellant was arrested and medically examined. Exhibits collected during investigation were sent to FSL for examination. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of offences punishable under Sections 376/307 IPC. In order to establish its case, the prosecution examined twelve witnesses. In 313 Cr.P.C. statement the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction, as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been filed.

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

4. Appellant's counsel, on instructions, informed that the appellant has opted to give up challenge to the findings recorded under Sections 376/307 IPC by the Trial Court. She prayed to take lenient view and to modify the sentence order as the appellant has undergone substantial period of substantive sentence. He is not a previous convict and has a family to

support. He has a marriageable daughter for whom he has to search a groom. Injuries on the victim's body were not fatal.

5. Since the appellant has given up challenge to the findings recorded under Sections 376/307 IPC, the conviction is affirmed. Besides this, there is overwhelming evidence to establish that the appellant not only committed rape upon the prosecutrix but also attempted to kill her. The FIR was lodged without any delay. The incident took place at around 10.15 a.m. The police came into motion when DD No.21A (Ex.PW3/1) came to be registered at 11.00 a.m. In her complaint (Ex.PW6/A), the complainant gave graphic detail as to how and in what manner, the appellant had attempted to kill her. When he failed to do so, he committed rape upon her. She was medically examined by MLC (Ex.PW-6/B). PW-8 (Dr.Preeti Bala Patel) noted various injuries on her body detailed as under:

- (a) Nail marks on right and left cheek.
- (b) Nasal bridge bruises redness.
- (c) Nail marks on right arm.
- (d) Bruises of 2 X 3 cm on right thigh (lateral aspect)
- (e) Bruises and redness 2 X 3 cm below mandible angle left side.
- (f) Abrasion over right shoulder posterior.

6. The prosecutrix in her comprehensive statement before the court implicated the appellant and assigned a specific and definite role to him in the incident. She gave vivid detail of the incident as to how and in what manner she was put to fear and was criminally intimidated. Despite resistance offered by the prosecutrix, the appellant not only attempted to kill her but also ravished her. Her statement has been corroborated by PW-2 (Priya Sangwan), her maid who happened to reach as usual around 11.00

a.m. She found the appellant in the victim's room at the relevant time. Various exhibits were collected during investigation. FSL report and DNA report connect the appellant with the crime. The prosecutrix had no previous animosity or ill-will against the appellant to falsely implicate him in the serious case of sexual assault. The conviction based upon fair appreciation of entire evidence deserves no intervention.

7. The sentence order is based upon fair reasoning and no sound reasons exist to modify it. The appellant was acquainted with the prosecutrix. He was previously working as a driver with the victim's father-in-law and was subsequently removed from the job. The appellant, was however, on visiting terms with the prosecutrix and she used to address him 'bhaiya'. She had even assisted him to provide a job and impart tuitions to his children. The appellant gained entry inside the house on the unfortunate day on the pretext to have water. Unsuspectingly, the victim permitted him to come inside the house. The appellant was under the influence of liquor. Once he went to the first floor where the victim was alone, taking advantage of it, he executed his nefarious plan. He not only put the innocent lady to fear but attempted to strangle her; he throttled her neck with a pillow/mobile charger and also attempted to kill her. When he did not succeed in his attempt due to resistance given by the victim, he committed rape upon her. She begged mercy but it had no impact upon him. Timely arrival of the maid prevented more harm. The appellant on his own went after taking 100 rupees from the prosecutrix on the arrival of the maid. The appellant had betrayed the trust of the victim. The appellant exhibited animal instinct at the time of commission of the crime. 'X' was in a state of shock. Even at the time of her deposition before the court, she continued to

weep throughout. She was defiled for no fault of hers. The appellant had pre-planned to commit the crime. In the early hours of morning he had consumed liquor. He was well-aware that the prosecutrix was alone at her residence. During the crime, he claimed that it was due to revenge against her father-in-law. Possibility of the appellant to be doing the horrible crime at someone's behest cannot be ruled out. The court can well understand the trauma of an educated victim (post-graduate) when she had to suffer sexual assault at the hands of the individual who worked as a driver of her father-in-law.

8. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could no longer endure under such serious threats.

9. The Trial Court in the sentence order has noted sufficient reasons to award the penalty which are reproduced as under:

“The convict in this case has committed the vile act of rape upon the prosecutrix. He also attempted to kill her. It is true that the convict is aged about 45 years and has a family to support but on the other hand we must see the plight of the prosecutrix, who was subjected to rape, which is universally considered to be amongst the most morally and physically, reprehensible crime in society and assault on the body, mind, privacy and the entire fabric of the victim. Her dignity is shredded. The social stigma attached to this crime is such that many a times, a crime would go unreported by the victim.”

10. No different view needs to be taken. The appeal lacks in merits and is dismissed.

11. Trial Court record (if any) be sent back forthwith along with the copy of the order. Copy of this order be sent to the concerned Jail Superintendent for information.

(S.P.GARG)
JUDGE

JUNE 06, 2017

sa

