

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

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Reserved on: 2nd May, 2017

Decided on: 31st May, 2017

+ CRL.A. 889/2015

SATYAJEET KUMAR JAISWAL @ SUNNI Appellant

Represented by: Mr. D.P. Singh with Ms.
Kanika Khanna and Ms.
Anushree Kapadia, Advs.

versus

THE STATE (NCT OF DELHI) Respondent

Represented by: Mr. Ashok Kumar Garg, APP
for the State with Insp. Josepha
Kujur, PS Sarita Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offence punishable under Section 376 IPC, Satyajeet Kumar Jaiswal @ Sunni challenges the impugned judgment of conviction dated 24th July, 2015 and the order on sentence dated 31st July, 2015 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹5,000/- for offence punishable under Section 376 IPC.
2. Assailing the conviction, learned counsel for the appellant submits that there are glaring contradictions in the testimony of the prosecutrix. She stated that when the appellant was trying to rape her, she did not resist. The same is evident from her examination-in-chief and cross-examination. However, later in her cross-examination, she stated that the bed sheet was torn when she was resisting the act of the appellant. Further, the MLC of the prosecutrix fortifies the fact that there was no resistance as there were no

external or internal injury marks on the body of the prosecutrix or the appellant. There are inconsistencies in the deposition of the prosecutrix as to where the appellant resided as in her examination-in-chief she stated that the appellant resided at the backside of her house whereas in her cross-examination, she stated that there were 3-4 houses in between her house and the house of appellant.

3. Learned APP for the State on the other hand submits that the impugned judgment suffers from no illegality. The contradictions in the testimony of the prosecutrix are minor in nature and from the version of the prosecutrix, factum of rape has been proved beyond reasonable doubt. Version of the prosecutrix is reliable and needs no corroboration.

4. Process of law was set into motion on 15th March, 2011 at 9:20 A.M. when information was received stating that a lady has been raped at E- Block Sarita Vihar, in jhuggi near Bijli Ghar. The aforesaid information was recorded as DD number 20A, pursuant to which PW-8 HC Rajender along with Constable Dharambir reached the spot and met PW-1 the prosecutrix. PW-16 W/SI Josepha Kujur along with PW-13 ASI Suraj Singh and Constable Ashok also reached the place of incidence. The prosecutrix stated that one boy Sunni had committed rape upon her, after which he fled away. Thereafter, the prosecutrix and PW-2, husband of the prosecutrix were taken to the police station and from there the prosecutrix was taken to AIIMS for her medical examination.

5. Statement Ex. PW-1/A of the prosecutrix was recorded wherein she stated that around 8:00 A.M., her husband left for Sadar, Delhi to buy things, both her children had gone to take tuitions and she was alone at home. Around 9:00 A.M., their neighbour Sunni @ Satyajeet Jaiswal came to her

house and forcefully committed rape upon her against her will and fled away. Thereafter, she called her husband and informed him about the incident who in turn called at 100 number. She had also called at 100 number. On this statement, FIR No. 58/2011 was registered under Section 376 IPC at PS Sarita Vihar. W/SI Josepha Kujur went to the place of incident and prepared the site plan Ex. PW-1/DA. At the instance of the prosecutrix, W/SI Josepha Kujur also took possession of the torn bed sheet found spread on the bed at the time of incident. Around 4:00 P.M., on the same day, Satyajeet Jaiswal @ Sunni was arrested from his house and taken to AIIMS hospital for his medical examination. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. by PW-10 Ms. Mona Tardi Kerketta, learned Metropolitan Magistrate.

6. Prosecutrix before the Court deposed in sync with her earlier statement. She also stated that when the appellant entered the house, she asked him to go out but he did not go. He had put his hand over her mouth and threw her on bed. Since she was not feeling well, she got perplexed and hence could not resist. He removed her sari and underwear and after that he removed his own clothes. He inserted his penis in her vagina despite being resisted by her. During her cross examination, she admitted that the appellant used to talk to her prior to the date of incident. He used to converse with her on telephone also. The bed sheet Ex. P-1 which was spread on the bed at the time of incident, was torn at the time when she resisted the act of the appellant. The appellant neither gave her tooth bite nor nail marks were inflicted while committing rape upon her. Previously, the prosecutrix had complained about the behaviour of the appellant to her husband and her husband had tried to convince him. He also convened a Panchayat of their

colony but it was of no avail. They did not lodge any complaint to the police at that time. She voluntarily stated that the appellant used to blackmail her by showing photographs, due to which they did not complain to the police. The appellant used to threaten that if they complained to the police, he would kill her children and husband and publish the photographs.

7. Husband of the prosecutrix while corroborating the version of the prosecutrix also stated that while he was standing in the queue at Sarita Vihar Metro Station to purchase token, he received a call from the prosecutrix who was weeping and stated that the appellant had entered their house and committed rape upon her. Thereafter, he contacted the police control room from his mobile phone.

8. PW-7 Raj Narain Singh stated that husband of prosecutrix and Om Prakash @ Jugnu, father of appellant, were known to him as they were his neighbours. Prior to the registration of the present case, husband of the prosecutrix had told him that the appellant had relations with the prosecutrix and was harassing her. He had called the appellant to his jhuggi in the presence of husband of the prosecutrix.

9. PW-15 Dr. Kavita Khoiwal, senior Resident Gynae, AIIMS deposed that she had seen Dr. Praganika Gurung preparing the MLC of the prosecutrix Ex. PW-15/A. As per the MLC, there was no external injury nor any internal injury was noted. Hymen old tear was found positive.

10. PW-11 Dr. Sudipta Ranjan Singh, Assistant Professor, Forensic Medicine, AIIMS stated that she had examined Satyajeet Jaiswal @ Sunni, prepared his MLC Ex. PW-11/A and there was nothing to suggest that he was incapable of performing sexual intercourse under ordinary circumstances.

11. PW-12 Dr. Dhruw Sharma, Assistant Director (Biology), FSL prepared the FSL report Ex. PW-12/A and Ex. PW-12/B. As per the FSL report, human semen was detected on Exhibits '1a', '1b' and '1c' being three microslides having faint smear described as 'vaginal swab of prosecutrix and Exhibit '2' being one blue colour underwear described to be of the prosecutrix.

12. The explanation of the appellant in his statement under Section 313 Cr.P.C. in relation to question No.22 is as under:-

“Q.22: Do you have anything else to say?

Ans: I was falsely implicated in this case by the concerned police official as well as complainant and other witnesses. On the day of alleged incident I left my home for the office at about 8:50 -9 M. I gave lift to one Aunty, namely, Neelam Pathak upto Okhla Stand. When I was about to reach at my office at Gautam Nagar I received a call from Ct Umesh about 9:15 AM and he told me that an FIR has been registered against you so come at police station and we are taking your father to the P.S. After reaching my office and fulfilling the formalities I reached at PS at about 10:30 AM where the prosecutrix was already present along with her husband. Thereafter I was arrested by police at P.S. The human semen as detected on the exhibits is not mine, it might be of the husband of the prosecutrix. The police has not investigated in the present case in proper manner as IO has not recorded the statement of the tenant of the prosecutrix namely Vinay and the statement of one shopkeepers, namely Prakash and his wife, who used to open their shop early in the morning and they close it late in the night. IO has also not recorded the statement of the tutor of children of the prosecutrix. When the husband of the prosecutrix came to know about the relations of the prosecutrix with me then he fetched the conspiracy of the present case and implicated me in the present case through the prosecutrix. I was also implicated in the present case because I was demanding the money which I have lent to the prosecutrix for the purpose of her operation.”

13. As noted above, the prosecutrix admitted her proximity with the appellant and admitted the photographs Ex.PW1/DB and Ex.PW1/DC. When this circumstance was put to the appellant in question No.17A in his statement under Section 313 Cr.P.C. he admitted that he was having intimate relationship with the prosecutrix earlier. The prosecutrix used to threaten him to implicate him in a false case and husband of the prosecutrix thus implicated him in this case. In defence, the appellant examined two witnesses DW1 Meena Devi and DW-2 Neelam.

14. Meena Devi deposed that at about 9.00 AM on the date of alleged incident, the appellant passed her house on his motorcycle and she saw Harender Chaudhary was also standing there. After 10 minutes, there was hue and cry by Harender Chaudhary and PCR van reached there. She knew Harender Chaudhary as he was son of her brother in law. She further deposed that besides wife and two children of Harender Chaudhary, his sister and mother also reside in the same house. In cross-examination of this witness, it has not been suggested that sister and mother of Harender Chaudhary were not residing with him, his wife and children. In his cross-examination, husband of the prosecutrix admitted that his mother was residing in the backside of their house though initially he stated that she was residing in the adjacent house.

15. Further Neelam the other defence witness also fortified the explanation of the appellant deposing that she was working at Okhla and her job hours are 9.30 am to 6.30 pm and at times, it extended till 9.00 PM. She deposed that the appellant resides in her locality and on the day of incident at about 9.00 AM she was with the accused who accompanied her till bus stand and from there she went to her office.

16. From the evidence as noted above, the fact that both the prosecutrix and the appellant were on intimate terms is not disputed by both the sides. Further even as per the prosecution case, this was not to the liking of the husband of the prosecutrix and thus Raj Narain Singh tried to pacify and make the appellant understand that he should not establish any relationship with the prosecutrix for which a panchayat was also called in November, 2010 wherein several persons of the locality were called. When the panchayat took place, the prosecutrix was in Bihar and since the prosecutrix and the appellant were not there in the panchayat, no decision could take place. In cross-examination, this witness admitted that the husband of the prosecutrix never told him that the appellant was harassing or blackmailing his wife by showing the photographs.

17. Further from the evidence of Meena Devi it is evident that at about 9.00 AM when the appellant left his house for his office, husband of the prosecutrix was standing there and after 10 minutes he made hue and cry. This part of her cross-examination has not been challenged. The first call to the PCR was made by the husband of the prosecutrix. From the testimony of Meena Devi, prosecutrix and husband of the prosecutrix, it is evident that when the alleged incident took place, husband of the prosecutrix was near his house and not at Sangam Vihar Metro Station as claimed and in the house besides the prosecutrix, her mother-in-law was also available. Though the prosecutrix initially claimed that she did not resist as she was unwell however later she stated that she resisted the act of the appellant however there was no injury marks on the prosecutrix. Moreover, though semen was detected on the vaginal swab and underwear of the prosecutrix however it is not connected to the appellant as though the grouping of the blood of the

appellant was B group but for the semen recovered from the vaginal swab and underwear no blood grouping was found out.

18. Though conviction can be safely based on the testimony of the prosecutrix even in the absence of corroboration if the same is reliable however as noted above in view of the evidence of the prosecution and the defence evidence, explanation of the appellant that he was falsely implicated cannot be discarded totally and appears to be probable. Hence the appellant is entitled to the benefit of doubt.

19. Consequently, the impugned judgment of conviction and the order on sentence are set aside. The appeal is disposed of.

20. The appellant who is in custody be released forthwith, if not required in any other case.

21. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

22. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 31, 2017
‘v mittal’