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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 420/2002

Reserved on: 10th May, 2018

Pronounced on: 18th May, 2018

JASBIR SINGH & ORS.

..... Appellants

Through: Mr. Pramod Kumar Dubey, Advocate
(Amicus Curiae) with Mr. Saurabh
Kumar, Advocate for Appellant No.1
Mr. Azhar Qayum, Advocate for
Appellant No. 2.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, APP for State.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA**

JUDGMENT

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 30th April 2002 passed by the learned Additional Sessions Judge ('ASJ'), Karkardooma Courts, Delhi in Sessions Case No.82/2001 arising out of FIR No.122/1996 registered at Police Station ('PS') Kalyanpuri convicting the Appellants, Jasbir Singh (Appellant/Accused No.1: A-1), Manjeet Singh (Appellant/Accused No.2: A-2) and Chander Kiran (Appellant/Accused No.3: A-3) (since deceased) for the offences under Sections 342/365/366/376(2)(g)/506(ii) read with Section 34 of the Indian Penal Code ('IPC'). A-3 was additionally convicted for the offence under Section

25/54/59 of the Arms Act.

2. The appeal is also directed against the order on sentence dated 1st May 2002 whereby each of the Appellants was sentenced:

(i) to life imprisonment with a fine of Rs.10,000/-, and in default of payment to undergo simple imprisonment ('SI') for one year for the offence punishable under Section 376(2)(g) read with Section 34 IPC;

(ii) to rigorous imprisonment (RI) for one year with a fine of Rs.1,000/-, and in default of payment to undergo SI for three months for the offence under Section 342 read with Section 34 IPC;

(iii) RI for seven years with a fine of Rs.2,000/- and in default of payment to undergo SI for six months with an identical sentence for the offence under Section 366 read with Section 34 IPC; SI for six months with a fine of Rs.1,000/-, and in default to undergo SI for three months for the offence under Section 506(ii) read with Section 34 IPC.

3. For the offence under Section 25/54/59 of the Arms Act, A-3 was sentenced to RI for one year with a fine of Rs.1,000/-, and in default of payment of fine to undergo SI for three months. The sentences were directed to run concurrently.

4. During the pendency of the present appeal, A-3 expired and, therefore, the appeal, as far as A-3 is concerned, stands abated.

Charge

5. The charge against the Appellants was that in furtherance of their common intention, they wrongfully confined the prosecutrix (PW-5) at the urinal and at the wall of Block No.15 Park, Kalyanpuri on 24th March 1996 at around 1 am, abducted her with the intent to commit illicit intercourse and in furtherance committed gang rape. They were also charged with having criminally intimidated PW-5 and her husband Ashok Kumar (PW-6) with death or grievous hurt thereby committing offence under Section 506(ii) read with Section 34 IPC.

Version of the victim

6. The case of the prosecution was based on the statement first made by PW-5 to the police. Her husband used to ply a three wheeler scooter rickshaw (TSR) and on 24th March 1996 at around 10.30 pm, he returned home and informed PW-5 that the petrol of his TSR had got run out. He had parked the TSR at Kalyanpuri Bus Stand. He had returned home to take some petrol and bring back the TSR after restarting it. PW-6 used to store petrol at his house for exigencies.

7. PW-5 and PW-6 then took the petrol and headed for the Kalyanpuri Bus Stop. At around 11 pm, as they reached near School No.1 of the Kalyanpuri Main Market before Jalebi Chowk in between Blocks No.11 and 12, three persons surrounded them. Two of them pointed a knife at her whilst the third dragged her to the backside of the market into the park where there was a urinal. One of them committed forcible intercourse with her and thereafter the two others also did so in turns. She stated that the three accused were

calling each other by their respective names and that is how she knew that A-2 raped her first and then A-1 removed her clothes while A-3 raped her. After that she was almost unconscious. The fourth accused, Anil had taken away her husband, PW-6, to one side by pointing a knife on him. According to her, the accused kept him accosted turn by turn while subjecting her to rape. While two accused would hold her, the third would commit the act and the fourth would hold the knife to her husband. First, it was committed by pushing her against the wall and thereafter they dragged her to a small temporary bathroom which was surrounded by boundary/walls. PW-5 became unconscious after this.

8. When she came to her senses, PW-5 found herself at her house. The next morning at around 7.00 am, PW-5 and PW-6 went to the P.S. and her statement was recorded (Ex.PW-5/A) and an FIR was registered.

Investigation

9. Sub-Inspector (SI) Khushal Singh (PW-15) recorded the statement of PW-6 and went to the house where PW-5 handed over to him her petticoat (Ex.P-1), blouse (Ex.P-2) and Sari (Ex.P-3) which she was wearing at the time of occurrence. Those clothes were converted into a sealed *pullanda*. PW-15 then came to the spot of occurrence along with PW-4 and PW-5 and prepared a rough site plan (Ex.PW-15/A).

10. PW-15 sent PW-5 to SDN Hospital for her medical examination along with a lady Constable where her MLC (Ex.PW-4/A) was prepared. The MLC showed that she was brought there at 2.35 pm. While there were no

external marks of injuries, there were some graze abrasions on the back, below the left armpit and lumbar region. The vaginal smear was taken on two slides, where were kept in a *pullanda*.

11 On the identification of PW-5, A-1 was arrested by PW-15. His under clothes were seized. He is also supposed to have made a disclosure statement (Ex.PW-5/B). He was then sent for medical examination.

12. On the following day, that is, 26th March, 1996, the statement of PW-5 under Section 164 Cr PC (Ex.PW5/G) was recorded by the learned Metropolitan Magistrate ('MM'). She more or less stuck to her earlier version as given by her to PW-15. She named the accused in this statement as well.

13. Inspector Samar Pal Singh (PW-13) was entrusted with the investigation of this case on 6th April 1996. On the same day, on the identification of PWs-5 and 6, he arrested A-2 from his house and got him medically examined. His blood sample was also taken. No recovery could be made at his instance. The other accused Anil subsequently surrendered in the Court and was placed under formal arrest. The test identification parade ('TIP') of the said accused was also conducted.

Trial

14. At the end of the investigation, a charge sheet was filed and by an order dated 1st March 1997, the trial Court framed charges against A-1 and A-2 in the manner indicated hereinbefore. The co-accused Kiran Singh @ Kaka

was declared a proclaimed offender ('PO') at that stage. As far as accused Anil was concerned, he was charged with abetting the aforementioned offences.

15. Later when A-3 was apprehended, separate charges were framed against him by the trial Court by an order dated 29th May, 1997.

16. On behalf of the prosecution, 20 witnesses were examined. In the present case, since we are concerned only with A-1 and A-2, only their respective statements under Section 313 Cr PC need be referred to.

17. Both A-1 and A-2 denied the incriminating circumstances put to them and claimed innocence. As far as A-2 is concerned, he claimed not to know the other co-accused. He claimed that he had been falsely implicated by PW-15 as well as PW-13 in connivance with PWs 5 and 6. He claimed to have surrendered before the police on 5th April 1996 as he knew they were after him. Later when the report of FSL was received, that evidence was put to him and he denied that as well.

18. As far as A-1 is concerned, he too denied the circumstances and claimed not to know any of the co-accused. He too claimed to have been falsely implicated by the police.

Defence evidence

19. On behalf of the defence, three witnesses were examined. Anoop Singh (DW-1) was a building contractor at Kalyanpuri who was living just

opposite the DDA Park. He stated that the locality used to remain busy as there was a market with STD booths running late into the night, a police post near Jalebi chowk, and as most residents would stay out of their houses on the road side till late in the night. He claimed that he normally used to sleep at around 12 or 12.30 am and did not notice any incident on the night of 24th March 1996 outside his house.

20. According to DW-1, the police did not make inquiries from him or in the area. He stated that there was no toilet in or around the DDA Park. DW-1 was cross-examined by the learned APP. In his cross-examination, he admitted that he was engaged only in private construction and was not a registered contractor. He confirmed the site plan in the first instance as shown to him by the APP but after objections raised by the counsel for the accused, he claimed that he was unable to follow the site plan as it was explained to him. He stated that he knew the parents of the accused present in Court who were his neighbours.

21. Satpal (DW-2) was known to A-2. He claimed to have got A-2 to surrender on 5th April 1996. He knew the father of A-2 since 1978. According to him, A-2 was not arrested by the police.

22. Parsa Singh (DW-3) is the father of A-2. He too claimed to have got A-2 to surrender in the P.S. on 5th April 1996 along with DW-2.

Impugned judgment of the trial court

23. In the impugned judgment dated 30th April 2002, the trial Court came to

the following conclusions:

(i) The testimony of PW-5 and her husband (PW-6) was supported by the medical evidence. The timing of the arrest of the accused and other discrepancies in gathering of evidence were immaterial and not sufficient to discard the testimony of PWs-5 and 6. The

(ii) The defence witnesses were neither trustworthy nor truthful. It was noticed in respect of DW-1 that he first denied the suggestion that there was no petrol pump near the DDA Park but immediately stated voluntarily that it was near the corner of the park. DWs-2 and 3 were clearly interested witnesses and, therefore, unreliable.

(iii) The evidence on record proved beyond reasonable doubt that the three accused had forcibly abducted PW-5, confined her in the park as well as in the toilet area and gang raped on knife point her one after the other.

24. By a separate order on sentence, the trial Court sentenced each of the accused in the manner indicated hereinbefore.

25. This Court has heard the submissions of Mr. Pramod Kumar Dubey, the learned counsel appearing for A-1 and Mr. Azhar Qayum, the learned counsel appearing for A-2. On behalf of the State, submissions of Mr. Hirein Sharma, the learned APP were heard.

Analysis and reasons

26. The substantive charge against the two Appellants is their having

committed the offence of gang rape of PW-5 punishable under Section 376 (g) IPC. The case of the prosecution rests on the version of the events as spoken to by the victim, PW-5. She made three distinct statements, first to the police on the basis of which *rukka* was drawn up, next before the learned MM under Section 164 Cr PC and finally before the Court.

27. The law in relation to appreciation of the evidence of a victim of sexual assault is very well settled. In *Ugar Ahir v. State of Bihar AIR 1965 SC 277*, the Supreme Court held as under:

“The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.”

28. Specific to the testimony of a victim of sexual assault, the Supreme Court in *State of Punjab v. Gurmit Singh AIR 1996 SC 1393*, explained:

“We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies

in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

29. Again, in *Om Prakash v. State of U.P. AIR 2006 SC 2214*, it was observed:

“13. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must

necessarily depend on the facts and circumstances of each case.”

30. In the present case, on the core part of the testimony of PW-5 is consistent and cogent. This core element includes the three accused along with accused Anil surrounding her; two of them pointing knives at her and the third one dragging her to the rear of the market into the park where there is a urinal; each of them in turns committing gang rape upon her while the fourth accused kept her husband confined elsewhere; her being rendered unconscious and her finding herself later at home. Since she was unclean, she washed her clothes but not enough to remove the traces of semen which were later confirmed by the FSL.

31. PW-5 was able to identify the accused who kept calling each other by their names. She was able to also identify the under-pants of A-1 which were seized in her presence by the police.

32. PW-6 more or less corroborated the version of PW-5. He too confirmed that the boys who dragged away PW-5 were having knives with them. A boy wearing a turban and having beard tried to beat PW-6 when he tried to save his wife (PW-5) while being dragged towards Block No.15 behind the market by the other two boys. When PW-6 tried to raise an alarm, the said turbaned boy started throwing bricks bats in order to deter him from saving PW-5.

33. Thereafter when PW-6 reached the market, one of the boys tried to mislead him by saying “*idhar nahin udhar jao*”. It was around 12 midnight

when he went to the urinal near Block No.15, Kalyanpuri behind the market where he found PW-5 in an unconscious state, undressed/naked and having no clothes on her body. He took her clothes which were lying nearby, put them on PW-5 and with his arm around her shoulder took her home. When he sprinkled some water on her, she regained consciousness and disclosed the facts to him.

34. Just like PW-5, PW-6 was also subjected to extensive cross-examination on behalf of the accused. On the core aspect of the testimony, this witness was also unshaken. PW-6 also identified A-3 and accused Anil in jail in the TIP.

35. The recovery of the knife at the instance of A-3 from under the pipe of the DDA Park also took place in the presence of PW-6. He was also present when A-3 disclosed that the knife had been handed over to him by A-2 at the time of commission of the offence and it was A-3 who had hidden the knife there.

36. The embellishments made about petrol being stored in the house of PWs 5 and 6 to meet the exigency and failure of the IO to seize any such bottle of petrol were really not material in the face of the clear, cogent and consistent evidence of PW-5 corroborated by the testimony of PW-6.

37. Just as was done in the trial Court, even before this Court submissions were made by counsel for the accused about the site plan which did not correctly show the place of occurrence. It is further submitted that there was

no toilet in the DDA Park and, therefore, the incident really did not take place at the place described by the victim.

38. The above submission too is of no significance since the evidence of the victim herself is clear, cogent and consistent and has not been able to be discredited in her cross-examination.

39. The presence of the semen stains on the clothes of the victim as reflected in the report of the FSL (Ex.PW-20/A to 20/D) constitutes another important piece of evidence in the prosecution. Her petticoat did contain semen stains of the 'AB' group and the under wear contained semen stains of 'B' group. Human semen was detected, apart from on the petticoat, on the vaginal smear. Only on the sari and blouse of the victim, semen stains were not detected. PW-20 was examined to prove the above report. Nothing much emerged in his cross-examination to discredit this evidence.

40. It was noted that while the petticoat was having 'AB' group, the underwear contained semen belonging to the 'B' blood group. The FSL report proved that 'B' Group found was that of A-2. This is clinching evidence as far as the involvement of A-2 is concerned.

41. As far as A-1 is concerned, the deposition of the victim herself more than adequately proves his role in committing the gang rape along with A-2. In the present case, it is safe to return a finding of guilt qua A-1 and A-2 on the basis of the unimpeachable evidence of PWs-5 and 6 which have been corroborated by the medical and forensic evidence. The Court, therefore,

concurr with the trial Court that the discrepancies pointed out as regards the time of arrest and the recoveries or even the defective site plan will not shake the unimpeachable testimonies of PWs-5 and 6.

42. As rightly pointed out, the defence evidence was far from truthful or reliable or even impartial and was, therefore, rightly rejected by the trial Court. The Court concurs with the trial Court that the prosecution has been able to prove the guilt of both A-1 and A-2 beyond reasonable doubt for the offences with which they were charged. The trial Court judgment does not, therefore, call for any interference.

43. As far as the sentence awarded to the two accused is concerned, the Court is satisfied that the ends of justice would be met if the sentence for the offence under Section 376(2)(g) IPC is reduced from imprisonment for life to RI for 10 years with the fine amount and default sentence remaining unaltered. The sentences and fines awarded to each of the Appellants for the other offences do not call for interference.

Conclusion and directions

44. Consequently, while confirming the judgment of the trial Court convicting the two Appellants for the offences with which they were charged and the order on sentence for the offences other than the offence under Section 376(2)(g) together with fines and default sentences, the Court modifies the sentence awarded to each of the Appellants for the offence under Section 376(2)(g) IPC from imprisonment for life to RI for 10 years with the fine amount and default sentence remaining unchanged.

45. The bail bond and the surety bond furnished by A-1 in terms of the order dated 15th March 2018 are cancelled. A-2 is already in custody in Andhra Pradesh in some other case.

46. A-1 is directed to surrender forthwith and in any event not later than 31st May, 2018. In other words, if the Appellant fails to surrender on or before 31st May 2018, the SHO concerned will take immediate steps to have him arrested and sent to prison to serve out the remaining period of the sentence. As far as A-2 is concerned, the SHO will coordinate with the concerned Jail Authorities in Andhra Pradesh so that as and when A-2 is released from that Jail, he will be brought in custody to the Tihar Jail to serve out the remainder of his sentence as far as the present case is concerned.

47. The appeal is disposed of in the above terms. The trial Court record be returned forthwith along with a certified copy of this judgment.

S.MURALIDHAR, J.

I.S.MEHTA, J.

MAY 18, 2018
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