

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

5 to 9

Date of judgment: 17th April, 2018

+

CRL.A.1331 /2014

SANJAY @ ARUN

.....Appellant

Through:Mr. Azhar Qayum, Advocate (DHCLSC)

versus

STATE

...Respondent

Through:Mr Kewal Singh Ahuja, APP for the
State

+

CRL.A.1334 /2014

AJAY @ RINKU

.....Appellant

Through:Mr.K. Singhal and Mr Nishant Bhardwaj,
Advocates.

versus

STATE

...Respondent

Through:Mr Kewal Singh Ahuja, APP for the
State

+

CRL.A.1358 /2014

VIKRAMJEET SINGH

.....Appellant

Through:Ms. Manika Tripathy Pandey, Mr
Ashutosh Kaushik and Ms Raveena Tandon,
Advocates.

versus

STATE

...Respondent

Through:Mr Kewal Singh Ahuja, APP for the
State

+

CRL.A.1565 /2014

RITU

.....Appellant

Through:Mr. Sumeet Verma with Ms Preeti
Jakhar, Advocates.

versus

STATERespondent
Through:Mr Kewal Singh Ahuja, APP for the
State

+ **CRL.A.1132 /2015**
STATE OF NCT OF DELHIAppellant
Through: Mr Hirein Sharma, APP for the State

versus

SALAUDDIN @ SANJAY @ ANR ...Respondents
Through:Mr. Kartickey Mathur and Mr Sanket
Gupta, Advocates for R-1.
Mr Harsh Prabhakar, Advocate (*amicus curiae*)
with Mr Anirudh Tanwar and Mr Jay Kumar
Bhardwaj, Advocates for R-2

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

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These five appeals, four by the accused and one by the State, are directed against the common impugned judgment dated 3rd June, 2014 passed by the learned Additional Sessions Judge-01 ('ASJ') West in Sessions Case No.40/2013 arising out of FIR No.42/2009 registered at Police Station ('PS') Ranhola convicting Sanjay @ Arun (Accused No.1 – 'A-1'); Ajay @ Rinku ('A-2'); Ritu @ Monam ('A-3'); Kamlesh ('A-7') for the offence punishable under Section 347/34 of the Indian Penal Code ('IPC'); A-1, A-2

and Vikramjeet Singh ('A-4') for the offence punishable under Section 376 IPC; A-1, A-2 and A-3 for the offence punishable under Section 372/34 IPC; A-7 for the offence under Section 373 IPC; A-1, A-2 and A-3 for the offence punishable under Sections 363/366/34 IPC; and A-3 and A-7 for the offences punishable under Sections 109/376 IPC.

2. As far as the appeals of the accused are concerned, they are also directed against the order on sentence dated 6th June, 2014 whereby:

(i) Sanjay @ Arun (A-1) was sentenced to rigorous imprisonment (RI) for two years and a fine of Rs. 1000/- and in default to undergo simple imprisonment (SI) for 7 days for the offence punishable under Section 347/34 IPC; RI for Seven years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 376 IPC; RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence under Section 372/34 IPC; RI for three years and a fine of Rs. 1000/- in default to undergo SI for 7 days for the offence punishable under Section 363/34 IPC; RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 366/34 IPC.

(ii) Ajay @ Rinku (A-2) was sentenced to RI for two years and a fine of Rs. 1000/- in default SI for 7 days for the offence punishable under Section 347/34 IPC; RI for Seven years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 376 IPC, RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 372/34 IPC; RI for

three years and a fine of Rs. 1000/- in default SI for 7 days for the offence punishable under Section 363/34 IPC, RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 366/34 IPC.

(iii) Smt. Ritu @ Monam (A-3) was sentenced to RI for two years and a fine of Rs. 1000/- in default SI for 7 days for the offence punishable under Section 347/34 IPC, RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 372/34 IPC; RI for three years and a fine of Rs. 1000/- in default SI for 7 days for the offence punishable under Section 363/34 IPC; RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 366/34 IPC; RI for seven years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 109/376 IPC.

(iv) Smt. Kamlesh (A-7) was sentenced to RI for two years and a fine of Rs. 1000/- in default SI for 7 days for the offence punishable under Section 347/34 IPC; RI for five years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 373 IPC; RI for seven years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 109/376 IPC.

(v) Vikramjeet (A-4) was sentenced to RI for seven years and a fine of Rs. 5000/- in default SI for 15 days for the offence punishable under Section 376 IPC.

The benefit of Section 428 Cr PC was given to all those sentenced. The sentences were directed to run concurrently.

3. As far as the appeal by the State is concerned, it is directed against the acquittal by the trial Court of Salauddin @ Sanjay (A-5) and Kumar Sambhav @ Kaku (A-6) of all the offences with which they were charged.

The charges

4. The charges against the accused, who were originally eight in number, were that

(i) after 1st December, 2009, all of them with their common intention wrongly confined the prosecutrix (PW-6), at that time below 18 years of age, compelled her into prostitution which facilitated the offence of rape; sold a minor for the purposes of prostitution, criminally intimidating her thereby committing the offence punishable under Section 347/34 IPC;

(ii) A-1, A-2 and A-4 were charged with committing her gang rape thereby committing an offence punishable under Section 376(2)(g) IPC;

(iii) A-1, A-2, A-3, A-5 along with co-accused Rachna @ Neha [later declared a juvenile in conflict with the law (JCL)](hereafter referred to as JCL) were charged with using PW-6 for the purposes of prostitution and other unlawful and immoral purposes, in furtherance of their common intention, thereby committing the offence punishable under Section 372/34 IPC;

(iv) A-1, A-3, A-5 and the JCL were charged with abducting PW-6 from her

lawful guardianship at around 6 pm on 1st December, 2009 from her house at Yadav Enclave, Vikas Marg, Delhi and thereby committed an offence punishable under Section 363/34 IPC and with the intention that she be compelled to engage in illicit intercourse thereby committing an offence punishable under Section 366/34 IPC;

(v) A-7 was charged with buying PW-6 for employing her for the purposes of prostitution thus committing an offence punishable under Section 373 IPC and further threatening PW-6 with injury to her person thereby committing an offence punishable under Section 506 IPC;

(vi) A-3, A-4, A-5, A-7 along with the JCL were charged with abetting the commission of rape upon PW-6 and thereby committing offence punishable under Sections 109/376/34 IPC;

(vii) A-2 along with A-1, A-3, A-4 and the JCL were charged with kidnapping PW-6 from her lawful guardianship and thereby committing an offence punishable under Section 363/34 IPC; and

(viii) further A-2 along with A-1, A-3, A-4 and the JCL were charged with kidnapping her with an intent that she may be compelled into illicit intercourse thereby committing an offence punishable under Sections 366/366A read with Section 34 IPC.

Statement of PW-6

5. Mahender Pal Singh (PW-5) went to the PS Ranhola on 4th December, 2009 to give a complaint that his daughter, PW-6 aged about 16 years, had

been missing since 6 pm on 1st December, 2009. On the basis of this complaint, FIR No.42/2009 was registered.

6. After about six months, PW-6 returned home on 6th April, 2010. On that date her statement under Section 161 Cr PC was recorded. On the next day i.e. 7th April, 2010, her statement was recorded under Section 164 Cr PC before the learned Metropolitan Magistrate ('MM'). In that statement, PW-6 stated that in the year 2009, she had been asked to make tea by her father in the evening. However, she stepped out to play with her friends. After some time, all her friends had gone back home and it was just her and a small girl Kajal playing near the house.

7. Rachna (the JCL), whom she had known for the past 2/3 years, and who was a neighbour came there and told PW-6 that her car was standing on the road and invited her to see it. While Kajal continued playing by herself, PW-6 accompanied the JCL to the car. The JCL then invited PW-6 to open the door of the car. As she opened it, the JCL pushed her into the car from behind. Ritu (A-3) was seated in the car and pulled her inside. She found 4/5 persons inside the car. Arun (A-2) was in the driving seat. Arun was related to Rachna who would refer him as her *jija* (brother-in-law). A-3 kept her hand pressed against the mouth of PW-6 and also raised the windows of the car.

8. They then took PW-6 to Prem Nagar. On the way, PW-6 tried to bang on the glasses of the car and even screamed but the road on which the car was travelling was silent and empty. Throughout the entire time, her mouth was kept shut by the accused. They took her to a house at Prem Nagar and kept

her locked there. When she shouted or resisted, they threatened her with imprisoning her family members and also started beating her. They kept her there for 3-4 days. There Arun (A-2) and his brother-in-law Ajay raped her repeatedly. PW-6 remembered that along with them there was another person present there namely one Sahil. Those people called Kamlesh (A-7). In the meanwhile, the JCL, A-2 and A-3 would often come there and when PW-6 asked them as to why she had been brought to that house by them, they told PW-6 that they were in the business of kidnapping young girls for trafficking.

9. According to PW-6, A-7 came there at the house, saw her and liked her. A-7 purchased her (PW-6) for Rs.2 lacs and in the presence of PW-6 gave the same to A-2, in the presence of Ajay, the JCL, A-3. A-7 then took her to Yamuna Nagar to a house near the Huda Market, which she had taken on rent. She was used as a domestic help there. There was another girl Rinki, who also worked as a domestic help there. In the night, A-7 called 3-4 men to the house, showed PW-6 to them, and these men proceeded to rape her in turns. Afterwards, when PW-6 was wearing her clothes, A-7 abused her and asked why she was putting on her clothes as more people were coming. She was again raped by 5/6 more people that night and A-7 threatened to kill her if she disclosed this to anyone.

10. This state of affairs at the house in Yamuna Nagar continued for months and PW-6 was repeatedly raped. There was no opportunity for her to escape. There was no access to any telephone either. One day, A-7 took her to Dehradun. She was first kept at the Danapani Hotel where she was handed

over to one Rakesh by A-7 on contract basis for a sum of Rs.22,000/-. Rakesh then took her to Hotel Shiv Palace and kept her locked inside a room there. The manager there was Vikramjeet (A-4). Rakesh used to keep her locked inside the room in the hotel and would keep bringing persons there who would rape PW-6. Rakesh himself also committed rape of PW-6 over a period of 5-6 days.

11. PW-6 also recollected that in between, A-4 had also raped her. One day, Rakesh sent her to a house. The police somehow rescued her from there and caught hold of the persons to whom house she was sent. The police then put her in a bus with Rs.300/- and she reached Delhi on 6th April, 2010, after which she told her family the events that had unfolded since she went missing.

Investigation and trial

12. The police then arrested A-1, A-2 and A-3 from Delhi. A-4 and A-5 were arrested from hotel Shiv Palace. A-6 and A-7 were arrested from Yamuna Nagar, Haryana.

13. After completion of investigation, a charge-sheet was filed. The charges were framed by the trial Court against the accused persons as indicated hereinbefore by order dated 22nd November, 2010.

14. 14 witnesses were examined for the prosecution. When the incriminating circumstances were put to the accused, each of them denied them and claimed to have been falsely implicated. Assistant Sub Inspector ('ASI') Narsingh was examined on behalf of the defence as DW-1. He brought the

record of FIR No.101/2010 dated 4th February, 2010 of PS City Yamuna Nagar registered under Sections 3, 4, 5 and 7 of the Immoral Traffic Prevention Act in which a charge-sheet was filed against one Jyoti, daughter of Tilak Raj (which is the new name used by the accused for PW-6), Kamlesh (A-7) along with Vimal and Shiv Kumar. DW-1, however, could not state whether the Jyoti mentioned in the above FIR and PW-6 were the same girl or not.

Impugned judgment of the trial Court

15. In the impugned judgment, the learned trial Court came to the following conclusions:

- (i) The date of birth of PW-6 as has emerged from the school record, is 1st July, 1995 (Ex.PW-7/B). It is the correct date of birth. Therefore, PW-6 was less than 15 years as on the date of commission of the offence.
- (ii) While there was no evidence to prove that A-4 had kidnapped PW-6, her testimony corroborated by her statement recorded under Section 164 Cr PC proves beyond reasonable doubt that she was kidnapped by A-1, A-2 and A-3 and was raped by A-1 and A-2.
- (iii) The testimony of PW-6 also proves that A-1 to A-3 sold her to A-7 for the purposes of prostitution and that A-7 had in fact bought PW-6 for that purpose. Her testimony also proved that A-1 to A-3 and A-7 had wrongly confined PW-6 and compelled her into prostitution. There was no evidence, however, to prove that A-4, A-5 and A-6 had wrongly confined PW6.

- (iv) The testimony of PW-6 also proved that she had been raped by A-1, A-2 and A4. However, there was no evidence of them having committed gang rape on her.
- (v) There was no evidence to show that A-5 and A-6 intentionally aided in the act of rape upon PW-6. The defence of the other accused that PW-6 was involved in prostitution with consent was without merit. There was no conviction of PW-6 in the cases registered against her at PS City Yamuna Nagar.

16. The trial Court proceeded to convict the aforementioned accused and sentence them in the manner indicated hereinbefore.

17. This Court has heard the submissions of learned counsel for the Appellants and the learned APP for the State.

Age of PW-6

18. It was first submitted by counsel for the Appellants/accused that the prosecution had not been able to prove beyond reasonable doubt that PW-6 was a minor, i.e., less than 15 years of age at the time of the alleged abduction. The Court's attention was drawn to the evidence of her father Mahender Pal Singh (PW-5) in this regard. It was pointed out that according to PW-5, he was married at the age of 15. His first child was born one year after the marriage and she was 24 years as on the date of his deposition in the Court, that is, 20th January, 2011. His next child (a daughter) was born after one year, and after a gap of another year, a son was born to him. One

year after the son was born, PW-6 was born. It is argued that in terms of this statement, PW-6 was 20 years old as on 1st December, 2009.

19. Attention was also drawn to the fact that PW-5 has admitted that “as per the ESI card the date of birth of all my children falls on 1st July”. The Court is unable to agree with the above submissions. The prosecution examined Satender Kumar (PW-7), a Primary Teacher of MCD School at Ranhola where PW-6 was admitted in the first standard on 3rd August, 2000. Her name got struck off from the school register due to long absence on 6th November, 2007. In terms of the admission register maintained by the school, her date of birth is 1st July, 1995.

20. Although in the cross-examination, PW-7 stated that no date of birth certificate was given by the parents of PW-6 at the time of her admission, the fact remains that the school register is sufficient proof of the date of birth of the child even in terms of the rules made under the Juvenile Justice (Care and Protection of Children) Act, 2000 (‘JJ Act’). It is a settled legal position that this can form a reasonable basis even for the determination of age of PW-6 in a case of sexual assault [See *Jarnail Singh v. State of Haryana (2013) 7 SCC 263*]

21. There was no question put to PW-7 that the school records are false or are not maintained in accordance with law. As far as replies elicited from PW-5 are concerned, a reading of his entire testimony shows that he does not recollect the exact date of birth of any of his children and only offers approximation in that regard. However, he categorically denied the suggestion that PW-6 was 20 years of age as on 1st December, 2009. On the

contrary, in his very first statement to the police while giving his complaint about her having gone missing on 1st December, 2009, he mentioned her age as being about sixteen years. Even in her statement under Section 164 Cr.P.C. recorded on 7th April, 2010, PW-6 disclosed her own age as 16 years. The Court is, therefore, not persuaded to accept the submission that the trial Court erred in acting as per the school record as far as age of PW-6 was concerned.

The evidence of PW-6

22. As far as the deposition of PW-6 herself is concerned, none of the counsel were able to point out any glaring inconsistency in her first statement to the police under Section 161 Cr PC recorded on 6th April, 2010, her subsequent statement before the learned MM under Section 164 Cr.P.C. on 7th April, 2010 and her deposition in the Court. The discrepancies sought to be pointed out did not shake her essential version of her abduction, confinement, rape and subsequently being sold for prostitution. The fact that the police did not investigate her stay at Dana Pani hotel in Dehradun or did not examine Rakesh who is named as being involved in her prostitution does not really discredit PW6 herself.

23. On account of a number of incidents of rape having happened to her over a period of four months, her inability to specify the dates and time of her rape will again in no way discredit the testimony of PW-6. In this context, the following observations of the Supreme Court in ***Ugar Ahir v. State of Bihar AIR 1965 SC 277***, with regard to appreciation of the testimony of rape victims require reiteration:

"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."

24. 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."

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

"11. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after staking her own prestige and honour.

XXXXX

13. A victim 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 victim 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 victim must necessarily depend on the facts and circumstances of each case. But if a victim is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence."

26. Appearing for Vikramjeet (A-4), Ms. Manika Tripathi, learned counsel, pointed out that in her cross-examination PW-6 admitted that A-4 had raped her 'once' whereas in her statement under Section 164 Cr PC. she made it appear that he had raped her more than once. The Court finds that her statement before the Court that A-4 raped her once is sufficient to prove his guilt for the offence under Section 376 IPC and this again does not discredit her testimony.

27. The evidence of DW-1 to the effect that there was a complaint against PW-6 along with some of the other accused under the ITPA in fact substantiates the case of the prosecution that the accused had intentionally sold PW-6 into prostitution. There is not a shred of evidence to show that PW-6 willingly entered into prostitution. On the other hand, her consistent versions before the police and before the Court substantiate the prosecution version that she was forced into prostitution. The absence of any medical record to prove the rape of the victim in the present case is not fatal to the prosecution at all. This is a case where the victim has been raped multiple times over a period of four months and in fact sold into prostitution. In such

circumstances to expect specific medical evidence of rape is not being realistic at all.

28. The unimpeachable evidence of PW-6 in the present case is sufficient to bring home the guilt of the Appellants for the offences with which they have been charged. Therefore, there is no merit in any of the appeals of the accused as far as their conviction is concerned.

Appeal of the State

29. Turning now to the appeal filed by the State (Crl.A.1132/2015) against the acquittal of A-5 and A-6, the Court finds that the trial Court has discussed in detail the evidence gathered against these two accused. As rightly pointed out by the trial Court, the evidence of PW-6 as regards these two accused is not consistent. In her initial statement (Ex.PW-6/A), PW-6 did not mention A-5 at all. Again as regards A-6, the position is the same. In her initial statement (Ex.PW-6/A) under Section 164 Cr PC she did not name A-6.

30. Both A-5 and A-6 are, therefore, entitled to the benefit of doubt with regard to the charge of their abetting the act of rape. Consequently, the Court finds no merit in the appeal of the State either.

31. The orders on sentence *qua* the accused who have been convicted are not shown to be suffering from any legal infirmity at all. That too does not call for interference.

32. For all the aforementioned reasons, these appeals are dismissed but with

no order as to costs. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 17, 2018
rd/ 'anb'

