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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement reserved on: 06th May, 2019
Judgment pronounced on: 20th May, 2019

CRL.A. 765/2004

ICHCHA RAM

..... Appellant

Through: Mr. Bipin Kumar, Advocate

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State
With SI Raju Yadav, PS Sultanpuri

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL. J

1. Present appeal has been filed by the appellant under Section 374 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C') and is directed against the impugned judgment dated 28.02.2004 and order on sentence dated 09.03.2004 passed by Additional Session Judge, Delhi in Session case No. 171/2001 in FIR No. 1489/1996, registered under Sections 302/376/506-II of the Indian Penal Code (hereinafter referred to as 'IPC') at PS, Sultanpuri, whereby the Learned Additional Sessions Judge has found the appellant guilty and has sentenced him as follows:

"I, therefore, sentence the convict Ichcha Ram to life imprisonment with Rs. 10,000/- (ten thousand) as fine and in default of payment of fine to further undergo one-year SI, for the offence punishable U/s 376 IPC.

I also sentence convict to life imprisonment with Rs. 10,000/-(ten thousand) as fine and in default of payment of fine to further undergo one-year SI, for the offence punishable U/s 302 IPC.

I also sentence the accused to undergo RI for the period of seven years with Rs. 10,000/-(ten thousand) as fine and in default of payment of fine to further undergo SI for one year, for the offence punishable U/s 506-II IPC.

All the 3 sentences shall run concurrently, subject to benefit of section 428 Cr.P.C.”

2. Brief facts of the case are as under:-

“(i) That DD No. 7-A was registered at Police Station Sultan Puri, on 27.12.1996, in receipt of the information that some incident has occurred at H. No. A-33, Mange Ram Park, BudhVihar. The said DD was marked to SI Ram Pal Singh(PW-14), and accordingly SI Ram Pal Singh along with the other police staff arrived at the spot. On their arrival, a semi naked dead body of a girl named Deepika was found lying on a bed with injuries present on her neck. Statement of all the family members were recorded wherein Diwakar (brother of the deceased) deposed that on 26.12.1996, he along with his sister Deepika and his brother Amit were sleeping in H.No. A-33 Mange Ram Park, BudhVihar and the accused Ichcha Ram was sleeping in another room of the same house. During the night, he heard the noise of his sister wherein he saw that the accused Ichcha Ram was lying on his sister and was committing penetrative sexual assault with her. On the following instance when he tried to intervene, the accused throttled his neck and threatened to kill him, due to which his body became insensate.

(ii) Based on his statement recorded and the inspection of the dead body, FIR No. 1488/1996, was registered under Section 302/376/506-II of the IPC. On the same day, accused Ichcha Ram was arrested, his underwear

was seized vide seizure memo Ex.PW5/D and was thereafter medically examined.

(iii) After committal, arguments on the point of charge were heard and charges u/s 302/376/506-II IPC were framed against the accused, to which he pleaded not guilty and claimed trial.”

3. To bring home the guilt of the accused the prosecution has examined 17 witnesses in all. Statement of the accused was recorded under Section 313 of Code of Criminal Procedure wherein he claimed innocence and stated that he has been falsely implicated in the present case. The appellant chose to produce DW-1 Ms. Suman in his defence.
4. Mr. Bipin Kumar learned counsel for the appellant, opened his submissions by contending that the impugned judgment dated 28.02.2004 is based on conjectures and surmises and the same is against the facts and the settled proposition of law; that the learned Trial Court has ignored and omitted the material evidences and has disregarded the cogent evidences in favor of the appellant; that there are material contradictions in the testimonies of PW-3(Amit Pandey) and PW-5(Diwakar); that the conduct of PW-5 (Diwakar), the brother of the deceased is most unnatural and has been wrongly relied upon by the trial court; that it is highly unrealistic that the deceased and her brothers PW-3(Amit Pandey) and PW-5 (Diwakar) were sleeping on the same bed and despite that the accused committed rape and murder of the deceased; that the seizure of underwear of the appellant is doubtful as no public witness has joined the investigation; that the learned trial court has wrongly placed

reliance on the scientific evidence as well as serological report produced by the prosecution; that the trial court fell into error by disbelieving the testimony of DW-1 (Suman) who clearly deposed that the accused was with her at the relevant time when the alleged offence happened; that the report obtained by the prosecution (*Ex PW-12/A*) in relation to matching finger print of the accused on the body of the deceased is a fabricated and manipulated document as PW-12 in his examination-in-chief has deposed that no chance prints were found on the body; that the investigation in the case has been conducted by an officer below the rank of an Inspector which is in violation of departments own circular/practice directions where it has been observed that the investigation in a murder case is to be carried out by an officer not below the rank of Inspector and sought acquittal of the accused.

5. Ms. Aashaa Tiwari, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and submitted that the impugned judgment is based on proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.
6. We have heard learned counsel for the parties and have also perused the material placed on record.
7. At the outset we deem it appropriate to peruse the testimonies of the prosecution witnesses.

Prosecution Witnesses

8. The case of the prosecution is based on the testimonies of two eye witnesses as such at the outset we deem it appropriate to peruse the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey). PW-3 (Amit Pandey) during his examination-in-chief deposed as under:-

“On the night of 26.12.96, I along with my brother Diwakar Pandey and sister Deepika was sleeping in the house of my relation Ichcha Ram who is present in the Court today. I heard some noise and I and my brother Diwakar woke up. I saw that accused Ichcha Ram present in Court was pressing the throat of my sister with one hand and pressing a pillow on his face with another hand. My sister was moving her hands and legs and after sometime, she stopped moving her hands and legs. When we tried to stop Ichcha Ram, he threatened both of us that in case we raise alarm, he would kill both of us and after that he left for his room. My parents were sleeping in our house which we have sold and which was opposite to the house of Ichcha Ram and as that house was very small. We three brothers and sisters were sleeping in the house of Ichcha Ram. At dawn we went to our parents and informed them as to what had happened and they informed the police.”

PW-3 (Amit Pandey) during his cross examination deposed as under:

“I was sleeping with Deepika on the bed and my brother Diwakar was sleeping on the floor. We tried to save our sister by removing the hands of the accused when he extended the threat. After that we saw that our sister had stopped moving her limbs, we did not sleep.”

9. PW-5 (Diwakar Pandey), the brother of the deceased during his examination-in-chief deposed as under:-

“On 26.12.98 in the night about 12-1 am I, my sister Deepika and younger brother Amit were sleeping in the room, which was taken from accused on rent and my parents were sleeping in another house, which they have already sold, which was opposite house No.A-33 and there was a street between these two houses. In the H.No.A-33, accused, his wife and two children were residing. In the night, at about 12-1 am, I felt someone in my room, so I awakened and I saw accused was lying on my sister after opening his pant and underwear and my sister was lying semi naked. Accused had pressed the mouth of my sister with one pillow, with one hand and with his second hand he pressed her throat and when I tried to stop this, the accused threatened to kill me by throttling my neck and due to this threat I kept mum and thereafter, I saw that the hands and legs of my sister were stopped moving and she became unconscious and

then accused put quilt on my sister and worn his pant and underwear and went in his room after threatening me and due to this I was frightened very much, as at that time my parents were not there and I waited till morning, as I was under fear that Ichcha Ram could kill me and my brother and I saw that my sister has died. In the morning, at about 6 am, accused again came in our room and again threatened me. In the morning, I narrated the whole incident to my parents, who called the police.”

During his cross examination PW-5 (Diwakar Pandey) deposed that:

“It is correct that the room in which the wife and children of the accused were sleeping was adjacent to the room from where we were sleeping. After the accused left the room, I do not go to sleep but remained awake and kept waiting for the day to begin and as soon as the light was seen, I went to call my parents. The accused was arrested by the police in my presence from his house. The police did not seize the underwear of the accused in my presence but taken in the house of the accused.”

10. Further the Court, after going through the entire evidence must form an opinion about the credibility of the witnesses and otherwise also, in all criminal cases, normal discrepancies are bound to occur in the depositions of the witnesses due to normal errors of observation, namely, error of memory due to lapse of

time or due to mental disposition such as shock and horror at the time of the incident. In case of ***Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.***, reported at (2013) 12 SCC 796, the Apex Court held as under:

*“28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter ushers in incongruities, the defence can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See ***Leela Ram vs. State of Haryana and another, Rammi alias Rameshwar v. State of M.P. and Shyamal Ghosh v. State of West Bengal***).*

11. From the perusal of the testimonies of the PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey), brothers of the deceased, it is evident that despite minor contradiction their testimonies are consistent and corroborate the testimonies of each other and are trustworthy.

Medical and Scientific Evidence

12. Having discussed the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey), brothers of the deceased, we deem it appropriate to examine the medical and scientific evidence adduced by the prosecution. Dr. K.L. Sharma, SR. CMO, Subzi Mandi Mortuary, Delhi conducted the post-mortem on the body of the deceased (*EX. PW-7/A*) and during his examination-in-chief deposed as under:-

“Opinion

Cause of death was asphyxia as a result of manual throttling by other party. Vaginal findings were consistent of sexual intercourse. All injuries were ante mortem in nature and were inflicted just before death. Injury No. 1 was sufficient to cause death in ordinary course of nature, and time since death was about 38 hours i.e. between 11 and 12 O'clock of 26.12.1996 and 27.12.1996 night.”

13. Dr. K.L. Sharma, SR. CMO, Subzi Mandi Mortuary, Delhi during his examination-in-chief also revealed the External and Internal Injuries suffered by the deceased. The examining Doctor further conducted

the internal examination of the body of the deceased and revealed as under:-

“External Injuries

*The right thigh was laterally tilted and flexed over hip joint and right leg was flexed at knee joint. The rigor mortis sat in this position of the lower limbs. **The salwar thread was open and its limbs were struck at upper thighs.***

Injuries

1. **Multiple bruises were present over right side neck a bruise line one above the other was transversely place in an area of 10 X 7 cm, the upper line was placed below the angle of mandible right side and the lower line of the bruise was at the base of the neck.** Total bruise lines were four. Crecentic abrasions fused with each other over lying downwards over right side neck. The livid due was present over face and hands and their fingers.
2. Abrasion 1 X 1 cm over back of the right wrist.
3. Abrasion 1 X 1 cm over back of the right elbow.
4. Abrasion 1 X 1 cm over upper front of left leg.

Internal examination

*Head and brain were normal. **Neck showed the subcutaneous bruising with subluxation of right superior cornu of hyoid bone with seepage of blood around the tissues.** The frothy blood was present in wind pipe. There were blood spots seen over membranes of the lungs. The lungs were profusely oedematous and intensely congested, on cut oozed blood with froth. The abdomen and its viscras were congested. The stomach contained full of undigested food. The urinary bladder was empty and the rectum was also empty. **The vagina showed fresh tear of hymen irregularly with bruising of the posterior vestibule.** The uterus was empty and normal.”*

14. Blood samples as well as samples of semen were lifted from the spot and clothes of the accused, including his underwear were also sealed by the Investigation Officer, PW-14 (Investigation Officer) which

fact was confirmed from the testimonies of PW-6 (Murari Lal), PW-5 (Diwakar). Mr. D.S. Chakutra, Senior Scientific Officer, Gr. –II, Biology Division, CFSL, CGO Complex, Lodhi Road, New Delhi entered into the witness box as PW-15 and proved the FSL report as (EX.-PW-15/A) and (Ex.PW-14/F). As per scientific analysis report (EX.-PW-15/A) 'Human semen was detected on Exhibits 1,2,3,4a, 4c, 5 and 6'. Relevant portion of (Ex.PW-14/F) reads as under:-:-

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<i>Exhibits</i>	<i>Species of Origin</i>	<i>ABO Group Remarks</i>
<u>Semen Stains</u>		
1. Bed Sheet	Human	'AB' Group
2. Underwear	Human	'AB' Group
3. Piece of mattress	Human	'AB' Group
<u>4a Salwar</u>	<u>Human</u>	<u>'AB' Group</u>
<u>4c Underwear</u>	<u>Human</u>	<u>'AB' Group</u>
5 Vaginal Swab	Human	'AB' Group
6 Public Hairs	Human	No reaction

”

15. Perusal of the postmortem of the deceased (EX. PW-7/A) shows forcible sexual assault on the deceased. The postmortem report further suggests that the death has been caused due to injuries mentioned as 'Multiple bruises were present over right side neck a bruise line one above the other was transversely place in an area of 10 X 7 cm, the upper line was placed below the angle of mandible

right side and the lower line of the bruise was at the base of the neck'. The examining Doctor, PW-7, clearly opined that the deceased was subject to sexual assault and 'Cause of death was asphyxia as a result of manual throttling by other party'. The postmortem report (EX. PW-7/A) supports the case of the prosecution and is in consonance with the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey), brothers of the deceased whereby they revealed that they 'saw accused was lying on my sister after opening his pant and underwear and my sister was lying semi naked. Accused had pressed the mouth of my sister with one pillow, with one hand and with his second hand he pressed her throat'.

Moreover, as per FSL report (EX.-PW-15/A) and (Ex.PW-14/F) clearly depicts that the semen stains on the underwear of the accused matched with the stains found on the salwar and underwear of the deceased and points out towards the guilt of the accused person in the commission of the crime for the offence punishable under Sections 302/376/506-II of the Indian Penal Code.

16. In view of the postmortem report (EX. PW-7/A) and scientific report (EX.-PW-15/A) and (Ex.PW-14/F), it can be safely inferred that there is no inconsistency between ocular testimony and medical evidence/scientific evidence which point towards the guilt of the accused. It further stands proved that the deceased was subjected to sexual assault by the accused and during the scuffle he also committed the murder of deceased which was witnessed by PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey).

Delay in Registration of FIR

17. Learned counsel for the appellant contended that the time taken by the complainant for registration of the FIR is unexplained by the prosecution and the delay has been caused in order to falsely implicate the accused. From the perusal of the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey), brothers of the deceased, it is evident that the incident took place in the midnight of **26.12.1996**, whereas the information about the alleged incident was reported to the police in the morning of **27.12.1996**. As per the case of the prosecution PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey) due to fear and darkness informed their parents about the alleged incident in the morning of **27.12.1996** who were residing at House No. 41, Mange Ram Park which was opposite to House No. A-33, Mange Ram Park where the alleged incident took place.
18. The Apex Court in ***Palani vs. State of Tamil Nadu*** reported in **2018(15)SCALE178**, has held that delay on the part of an eye-witness, reeling under the shock of witnessing a crime, to register an FIR instantly cannot be fatal to the prosecution case. Relevant part has been reproduced hereunder:

“Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the

delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. In the present case, PW-1 had no motive to falsely implicate the accused. As pointed out earlier, PW-1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for PW-1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of two and half hours in lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case.”

19. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, dangers creep in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. But even a long delay can be condoned if the witnesses have no motive for implicating the accused and for when plausible explanation is offered for the same. It is pertinent to note that the brother of the deceased PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey) were aged 12 years and 16 years, respectively, when they witnessed the alleged incident. To see one's sister being raped and

then brutally murdered is a horrifying sight and child of such tender age cannot be expected to act normally.

20. In view of the settled provisions of the law as well as on the basis of facts of the present case, the delay of few hours in registration of the FIR is not an inordinate delay, which could be construed as a ground for acquittal of the accused, as the prosecution has been able to prove its case beyond reasonable doubt.

Defective Investigation

21. The counsel for the appellant has further argued that the investigation that was conducted by the police is a defective one, as the investigation of murder case is to be conducted by an officer not below the rank of Inspector whereas in the present case the officer of the rank of Sub-Inspector conducted the investigation. As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. If the prosecution case is established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful (*Amar Singh vs. Balwinder Singh, AIR 2003 SC 1164*). If direct evidence is credible, failure, defect or negligence in investigation cannot adversely affect the prosecution case, though the court should be circumspect in evaluating the evidence (*Ram Bali vs. State of U.P. AIR 2004 SC 2329*).
22. Moreover, PW-13 (Insp. Rai Singh) in his cross examination has provided explanation with respect to appointment of Investigating

Officer in the present case which put a quietus to the present controversy. The relevant portion of testimony of PW-13 (Insp. Rai Singh) reads as under:-

“It is correct that we have an instruction from PHQ that a case of murder cannot be investigated by an officer below the rank of Ins. (vol. since I was already busy in another murder case investigation, FIR No. 1481/96 u/s 302 IPC and therefore, I handover the investigation of this case SI Ram Pal Singh who was chowki Incharge and there was no other Insp. Posted in my P.S.). This decision I have taken after discussion with Sr. officer. All the Sr. officer i.e. ACP and DCP were at the spot and they reached at 8 am.”

23. The counsel for the accused further argued that no chance prints were found at the spot of the alleged crime. The report of the Finger Print Bureau is (Ex.PW12/A) which reflects that though proper procedure was followed by the investigating agency, still no chance prints were recovered from the spot. We have no manner of doubt that the Investigating Agency obtained the samples in a scientific manner which would have lent further support to the prosecution. There is some substance in the grievance of learned counsel for the appellant that the Investigating Agency did not obtain finger prints from the place of incident. But, it is well settled that remissness and inefficiency of the Investigating Agency should be no ground to acquit a person if there is enough evidence on record to establish his

guilt beyond reasonable doubt. It is said by this court in a number of cases that irregularities or deficiencies in conducting investigation by prosecution is not always fatal to the prosecution case. If there is sufficient evidence to establish the substratum of the prosecution case, then irregularities which occur due to remissness of the Investigating Agency, which do not affect the substratum of the prosecution case, should not weigh with the Court.

24. The case of the prosecution is crystal clear from the testimonies of the PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey) which has been corroborated with the medical evidence on record. Hence, such irregularities cannot be deemed to be the sole basis for the acquittal of the accused.

Conclusion

25. In the light of the above discussion, we find that the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey), brothers of the deceased, are consistent, corroborative and trustworthy. There is nothing on record to contradict the testimonies of PW-3 (Amit Pandey) and PW-5 (Diwakar Pandey). The testimonies of both these witnesses stood confirmed by the post-mortem report of the deceased (**EX. PW-7/A**). The scientific evidence (**EX.-PW-15/A**) and (**Ex.PW-14/F**) adduced by the prosecution in the form of the FSL report establishes that the semen stains on the underwear of the accused matched with the stains found on the salwar and underwear of the deceased.

26. For the reasons stated above, we find no infirmity in the judgment passed by the learned trial court and we see no reason to interfere with the same. Accordingly, the present appeal stands dismissed.
27. Copy of the order be sent to Superintendent Jail, Tihar Jail.
28. Appellant is directed to surrender before the Trial Court forthwith.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

MAY 20, 2019
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