

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

% *Reserved on: 16th July, 2018*
Decided on : 15th May, 2019

+ **CRL.A. 677/2017 & CrI.M.B. 1229/2017**

RAJU @ RAJ KUMAR

....Appellant

Represented by: Ms. Inderjeet Sidhu,
Advocate with appellant in
person

versus

STATE

.....Respondent

Represented by: Mr. Rajni Gupta, APP for the
State with ASI Tulli Ram, PS
Badarpur

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Raju @ Raj Kumar challenges the impugned judgment dated 27th May, 2017 convicting him for the offences punishable under Section 354/509/325/174A IPC in FIR No. 219/2013 registered at PS Badarpur and the order on sentence dated 7th June, 2017 directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default thereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 354 IPC, rigorous imprisonment for a period of four years and to pay a fine of Rs.10,000/- and in default thereof to undergo simple imprisonment for a period of four months for the offence punishable under Section 325 IPC, simple imprisonment for a period of six months and to pay a fine of Rs.2,000/- and in default thereof to undergo simple imprisonment for a period of one month for the offence punishable under Section 509 IPC and

rigorous imprisonment for a period of two years and to pay a fine of Rs.3,000/- and in default thereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 174A IPC.

2. Learned counsel for the appellant contends that the appellant has been falsely implicated in the present case because the prosecutrix was having illicit relations with his tauji to which the appellant used to object and also because prosecutrix wanted to grab the share of the appellant in the property.

3. Per contra, Learned APP for the State submits that the appellant has been rightly convicted by the Learned Trial Court on the basis of the testimony of the prosecutrix which is duly corroborated by her MLC.

4. Prosecution case emanates from an information received on 23rd September, 2012 at 9:05 P.M. regarding a quarrel at Badarpur, Jaitpur Road, NTPC Gate-II, Tajpur, Pahari. Aforesaid information was recorded vide DD No. 56B (Ex.PW-14/A) and was assigned to SI Vinod Kumar (PW-10). He along with a police official went to the spot where he came to know that prosecutrix was taken to the hospital by PCR van. He was informed at the spot that there was a family dispute between prosecutrix and her son Raj Kumar @ Raju (appellant herein). On the same day at about 10:10 P.M., he received another DD no. 32A (Ex.PW-14/B) regarding a quarrel at the aforesaid address. He again went to A-121, Tajpur Pahari but no one was found quarrelling. On receipt of DD No. 3A, he went to AIIMS trauma center where he obtained the MLC of prosecutrix and found her admitted in ICU. SI Vinod Kumar (PW-10) met Sunil Kumar (PW-4) who told him that a quarrel had taken place between Raj Kumar and his mother, the prosecutrix.

5. On 24th September, 2012 at about 2:05 P.M. SI Vinod Kumar (PW-

10) came to the police station along with DD Nos. 32A, 56B and 3A. Statement of the prosecutrix could not be recorded and Raj Kumar could not be found owing to which the reason of the quarrel could not be ascertained. Thus, the DD entries were kept pending.

6. On 5th July, 2013, the prosecutrix came to the police station with her son and gave her statement wherein she stated that she was aged 65 years and resided at House No. A-121 Tajpur Pahadi, Jaitpur, Delhi with her children. Her husband passed away around two years ago and she has six children, that is, three girls and three boys. All the three girls were married and all of them have kids. Two of her sons were married and the third son that is Raju (appellant), who was aged 42, was an alcoholic and often used to harass and beat her but she didn't tell anyone about it. When her son Raju used to come home in an intoxicated state, her daughter-in-law used to lock the door and she used to hide in the neighbourhood. On 23rd September, 2012, there was a wedding in their neighborhood. At about 8:00 P.M. she went upstairs to prepare food and 10-15 minutes after preparing the food, her son Raju came upstairs in a drunken state and started abusing her. She quietly went and stood on the staircase. Raju came and stood behind her and dragged her to the room upstairs, lifted her saree and forcefully inserted his hand thrice in her vagina due to which she suffered pain. She then somehow managed to go downstairs and within some time, her son Sunil aged 30 also reached home. Sunil looking at her ordeal called the police at 100 number. PCR van then took her to the hospital. She and her son Sunil did not want anyone to know about this incident and therefore they did not tell anyone except the doctor. Her son was absconding from home since 23rd September, 2012. But she was in constant fear that her son Raju may return to home

anytime. She feared that what Raju did to her, he may also do the same to her daughter-in-laws and her daughters. On the basis of the aforesaid statement (Ex.PW-1/A), FIR No. 219/2013 (Ex.PW-3/A) was registered at PS Badarpur for the offence punishable under Section 376 IPC.

7. Thereafter, W/SI Anju Tyagi (PW-7) along with the prosecutrix and her son went to the spot at A-121, Tajpur Pahari where she inquired from local residents. She prepared the site plan (Ex.PW-7/B) and recorded the statement of the prosecutrix under Section 161 Cr.P.C. Prosecutrix refused for her medical examination. Statement of prosecutrix was also recorded under Section 164 Cr.P.C on 6th July, 2013. Further investigation was handed over to SI Meghraj (PW-12). He tried to search the appellant but he could not be found.

8. On 28th September, 2013, the case was assigned to SI Ichha Ram (PW-2) for further investigation. Since the appellant was evading arrest, he initiated the proclamation proceedings against him and got the appellant declared as a Proclaimed Offender on 4th March, 2014. After investigation, he prepared the charge sheet.

9. On 19th September, 2015, ASI Parvir Singh (PW-19) along with HC Rajesh (PW-22), HC Neeraj and Ct. Raghuvendra Singh left office of AATS for Chitrakut in search of Raju @ Raj Kumar. On 20th September, 2015 when they reached Chitrakut, they were informed by a secret informer that Raju @ Raj Kumar was staying at Rigvedi Ashram, Ramghat, Chitrakut, Uttar Pradesh. At around 2:30 P.M., Raju @ Raj Kumar was apprehended. He was arrested vide arrest memo Ex.PW-19/B and his personal search was conducted vide memo Ex.PW-19/C.

10. On 21st September, 2015, SI Sanjay Singh (PW-18) interrogated Raju

@ Raj Kumar vide his disclosure statement (Ex.PW-18/B) and formally arrested him vide arrest memo (Ex.PW18/C). He completed the investigation and filed supplementary charge sheet.

11. Vide order dated 4th February, 2016, charge was framed for the offences punishable under Sections 376(2)(f)/509/325/174A IPC against the appellant.

12. Prosecutrix (PW-1) deposed in sync with her statement made before the police. On 23rd September 2012, there was a wedding in the neighborhood. She deposed that the appellant was living alone on the second floor of the house A-121, Tajpur Pahari, Badarpur. At around 8:00 P.M., the appellant started abusing her. He was under the influence of liquor. Due to the marriage, there was a crowd outside the house. As she was feeling ashamed, she sat in the staircase. The appellant dragged her into the room and bolted the door from inside. She tried to resist but the appellant badly assaulted her and inserted his hand into her vagina, she cried in pain and her vagina started bleeding profusely. When the blood was oozing out, the appellant continued to beat her and said “*saali kuch hae tere ko, nakhre kar rahi hae*”. She begged the appellant to open the door and got the door opened from him. She also stated that her statement was recorded by the police after nine months. Although she repeatedly told her son, Sunil PW-4 that they should go to the police station and report the matter but he discouraged her by saying that they were poor and no one would listen to them. Before the registration of FIR, she stated that she met a lady from Jagori Sanstha who had come for general enquiry about her well being. She told that lady about the facts of the incident and asked for her help to initiate action against the appellant. That lady from Jagori Sanstha took her to the

office of Jagori Sanstha at Malviya Nagar where she called the police and her son, Sunil (PW-4). Thereafter, her son took her to the police station where her statement was recorded.

13. Sunil Kumar, brother of appellant, stated that the appellant was quarrelsome and was unmarried. The appellant used to beat his parents and sisters. On the day of the incident, he had gone to his place of work and had returned at about 9:00 P.M. When he was having his food on the ground floor, he heard the shouts of his mother and he came out. The appellant was obstructing his way by holding a pipe in his hand. His mother came down and she was in a pool of blood and she asked him to call the police at 100. He then along with his elder brother, Pammi @ Prem Chand and his bhabhi Sunita went to the police station. He stated that by the time the police arrived, the appellant had escaped. He stated that he came to know from his bhabhi that the appellant had inserted his hand in the vagina of the mother. In his cross examination, he stated that the appellant was mentally fit and he was never taken to any de-addiction centre. The appellant used to consume liquor from his own earnings. The appellant was engaged to a girl named Suman at Faridabad and on the day of marriage, he ran away. He denied the suggestion that his mother had extra marital relations with his uncle (tauji) and the appellant used to object her relations with his tauji and due to this, there was a quarrel.

14. Jyoti (PW-17) stated that she was married to Sunil in the year 2008. Her husband has two brothers, one was Pammi @ Prem Chand and other was Raju @ Raj Kumar. On 23rd September, 2012, she along with her jethani Sunita and mother-in-law (prosecutrix) were present in the house. Her husband and jeth (brother-in-law) were on duty. She corroborated the

testimony of the prosecutrix. She further stated that she along with her sister-in-law heard the noise of the prosecutrix and they went upstairs and asked the appellant to open the door. After sometime, the appellant opened the door and she along with her sister-in-law brought the prosecutrix downstairs in an injured condition. In the meantime, her husband came. In her cross-examination, she stated that the police did not seize the clothes of the prosecutrix which had blood stains.

15. Trilok Singh (PW-5), Record Clerk, AIIMS Trauma Centre, Delhi stated that the MLC Ex.PW-5/A was prepared by Dr. Varun Raghvan who had left the hospital and his whereabouts were not known. He identified his signature and writing.

16. Dr. Prakash Ranjan Mishra (PW-6), SR, Medicine, AIIMS Trauma Centre, New Delhi stated that he had seen the MLC Ex.PW-5/A of the prosecutrix. The MLC showed injuries of perineal tear (vaginal injuries) of second degree with active bleeding at the time of medical examination. On account of the said injuries, prosecutrix was operated upon and on her operation, it was found that there was tear of posterior fornix, tear of serosa in sigmoid colon and vaginal laceration. Said injuries may be caused by penetration. As per the discharge summary Ex.PW-6/A, prosecutrix remained admitted from 23rd September 2012 to 1st October, 2012.

17. Dr. Adarsh Kumar (PW-8), Additional Professor, Forensic Medicine and Toxicology, AIIMS, New Delhi stated that on 23rd December, 2013, an application was submitted by SI Ichha Ram (PW-2) seeking expert opinion on the MLC of the prosecutrix. Prosecutrix was brought with alleged history of vaginal penetration injury by finger. Prosecutrix was diagnosed to have suffered from posterior fornicial tear and multiple vaginal lacerations along

with 0.5 cms serosal tear in sigmoid colon. She was operated for “Exploratory laparotomy, total abdominal hysterectomy, posterior fornicial tear repair, vaginal laceration repair and repair of serosal tear in sigmoid colon” under general anesthesia on 24th September, 2012. Nature of injury was opined to be grievous. In his cross-examination, he stated that injuries were such that if immediate surgical intervention would not have been done, she would have died. Uterus of the prosecutrix was also removed. Prosecutrix was given eight units of blood as per the discharge summary.

18. Statement of appellant was recorded under Section 313 Cr.P.C. wherein he stated that he had been falsely implicated by her mother/prosecutrix and other family members in order to grab his share in ancestral property. On the day of the incident, only scuffle had taken place over property issue and he did not cause any injury to the prosecutrix nor caused the incident as alleged by her. He further stated that prosecutrix was having illicit relations with his Tauji since his childhood and his father also knew about it. He objected to their illicit relationship but everyone ignored him. Since then, the prosecutrix used to hate him. Prosecutrix used to threaten him that if he disclosed her relations to other family members, she would implicate him in a false case and will also throw him out of the house and the property. He also stated that he never absconded from the date of the incident.

19. No doubt there is delay in the registration of FIR however, the same does not impact the case of the prosecution as the statement of the prosecutrix who was the mother of the appellant is duly corroborated by her medical evidence which shows vaginal penetration injuries by finger and that immediately after the incident she was operated for “Exploratory

laparotomy, total abdominal hysterectomy, posterior fornicial tear repair, vaginal laceration repair and repair of serosal tear in sigmoid colon”. As per the doctor, if immediate surgical intervention would not have been done, prosecutrix would have died. The fact that her own son had committed the heinous act would have been one of the reasons for the prosecutrix to not come forward to make the statement as has been stated by her in the deposition. Version of the prosecutrix is further corroborated by her family members i.e. her son and daughter-in-law.

20. From the evidence noted above the prosecution has proved beyond reasonable doubt the offences punishable under Sections 354/509/325/174-A IPC and hence this Court finds no merit in the appeal.

21. Appeal is dismissed.

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

23. TCR be returned.

MAY 15, 2019
anu/rk

(MUKTA GUPTA)
JUDGE