

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.07.2020

+ **CRL. A. 809/2017**

RAJENDER

..... Appellant

Versus

THE STATE OF NCT DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr Azhar Qayum, Advocate.

For the Respondent :Ms Kusum Dhalla, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 14.02.2017, whereby he was convicted for committing offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (IPC). The appellant also impugns an order dated 18.02.2017, whereby he was sentenced to undergo rigorous imprisonment for a period of seven years with a fine of ₹40,000/- for committing the offence punishable under Section 376 of the IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of one year. The Court also directed that the fine, if realized, be paid to the prosecutrix. In addition, by the said order, the appellant was sentenced to undergo rigorous imprisonment for a period of one year for committing an offence punishable under Section

506 of the IPC. However, the court also directed that both the sentences would run concurrently.

2. The appellant was prosecuted pursuant to registration of FIR No. 0016/2016 under Sections 323/376/506 of the IPC registered with Police Station Jafarpur Kalan. The said FIR was registered on 18.01.2016 at the instance of a woman aged twenty-one years (hereafter referred to as 'the prosecutrix'). She had alleged that on the said date, that is, 18.01.2016, at about 09:30 a.m., she had left her home for proceeding to her workplace. Her house was near Kair Village. She stated that on the way, she had to use a lonely path through the fields. While she was walking on the said path, one boy (later identified as the appellant) whom she did not know but had seen him following her on two-three previous occasions, pushed her from behind. He gagged her mouth with his hand and dragged her into the fields and forcibly raped her. She stated that she wept and pleaded with him but he did not show any mercy and forcibly established physical relationships with her. She also alleged that thereafter he threatened her that if she narrated the incident to anyone, he would kill her. She stated that she could recognize him if he was produced. Her statement was recorded on 18.01.2016.

3. Thereafter, the prosecutrix was taken to RTRM hospital for her medical examination. She was medically examined and the concerned doctor took possession of her undergarments and other samples.

4. The statement of the prosecutrix under Section 164 of the Cr.PC was recorded on 20.01.2016. She reiterated the incident. Her narration of the incident is consistent with her statement recorded on 18.01.2016. However, she also added that she had attempted to flee from the spot but while doing so had fallen down, which resulted in injury on her hands and scratches on her face. She also added that the accused had dragged her in the fields by her feet.

5. The prosecutrix testified as PW1. A plain reading of the testimony indicates is that it consistent with her statement made on 18.01.2016 and her statement under Section 164 of the Cr.PC recorded on 20.01.2016.

6. The forensic and the medical evidence in this case are important. Dr. A.S. Yadav, Casualty Medical Officer, RTRM Hospital, Jafarpur Kalan New Delhi deposed as PW4. He testified that on 18.01.2016, he was posted as Casualty Medical Officer at RTRM Hospital, Jafarpur Kalan, New Delhi and the prosecutrix was brought to the hospital by W/Ct. Sushma for her medical examination. The prosecutrix had alleged history of sexual assault. He had examined her and noted down her injuries, which were an abrasion over her left palm and a tiny abrasion around her upper lip. He had prepared the MLC (Ex.PW4/A) and he identified his signatures on it. He stated that thereafter, he referred her for gynecological examination.

7. Dr. Moni Kanchan deposed as PW7. She testified that she was posted as a Medical Officer, Labour Room, RTRM Hospital on

18.01.2016 and had examined the prosecutrix on the said date on the reference of Dr. A.S. Yadav. She testified that the patient (prosecutrix) had narrated a history of sexual assault by a person whom she knew by appearance. She examined her and found a small abrasion over her upper lip (scratch mark) and an abrasion over her left palm (due to her fall). Her hymen was torn but she did not find any other injury. She also testified that she took her anal/rectal swab, vulva swab, breast swab, nail clippings, vaginal, oral, pubic hair sample, blood, urine and her undergarments (bra and panty). These exhibits were sealed with the seal of hospital and were handed over by her to the police official along with the sample seal of the hospital. She also affirmed that she prepared the MLC (Ex.PW7/A) and identified her signature on it. It is relevant to note that neither Dr. A.S. Yadav (PW4) nor Dr. Kanchan (PW7) were cross examined by the learned counsel for the appellant despite opportunity being granted.

8. The appellant was also medically examined on 31.01.2016. Dr. Chhitiz Mohan, Senior Resident, General Surgeon, RTRM Hospital was examined as PW6. He testified that on 31.01.2016, he was posted as Senior Resident (General Surgery) at RTRM Hospital, Jafarpur Kalan, New Delhi. On the said date at about 12:15 p.m., the patient (the appellant herein) was referred to him by Dr. Vivek from casualty. He examined the appellant and found that there was nothing to suggest that he was incapable of performing sexual intercourse. He also identified his signatures on the appellant's MLC (Ex.PW6/A). Further, he testified that after examining the patient (the appellant), his pubic

hairs, blood sample and semen sample were taken by him and sealed with the seal of the hospital. The same were handed over to Ct. Ravinder, who had brought the appellant for his medical examination.

9. W/Ct. Sushma testified as PW9. She stated that on 18.01.2016, on receipt of a call, she along with ASI Prabhu Dayal and Ct. Sudhir had reached the spot in the field at Village Kair. The prosecutrix and her mother met them there and the prosecutrix stated that she would give her statement before a lady officer. ASI Prabhu Dayal then sent a message to the Police Station requesting that a lady officer be sent. Thereafter, W/SI Manju came to the spot. She testified that she along with SI Manju and the prosecutrix went to RTRM Hospital, where the medical examination of the prosecutrix was conducted. Thereafter, SI Manju handed over a *rukka* to her which she took to the Police Station and presented to the Duty Officer for registration of the FIR. She testified that after the FIR was registered, the Duty Officer handed over a copy of the same and the *rukka* to her, which she took to RTRM Hospital and handed over the same to SI Manju. She also testified that after the prosecutrix was examined, *pullandas* in sealed condition were handed over by the concerned doctor to SI Manju along with sample seal in her presence. The same were seized by SI Manju and a seizure memo (Ex.PW9/A) was prepared. She identified her signatures on the said seizure memo.

10. SI Manju deposed as PW15. She testified that ASI Prabhu Dayal along with Ct. Sudhir and W/Ct. Sushma had proceeded to the spot on receipt of DD No. 10A (Ex.PW15/A). Her testimony is

consistent with the testimony of W/Ct. Sushma in material aspects. She testified that she was directed by the SHO to attend to the case. Pursuant thereto, she reached the house of the prosecutrix. She interrogated the prosecutrix and her mother and recorded the statement of the prosecutrix (PW1/A). She stated that she went to the spot along with the prosecutrix and prepared a site plan (Ex.PW15/A). She also testified that she took photographs of the site from her mobile phone which were developed later. She further testified that she along with the prosecutrix and her mother reached RTRM Hospital where the medical examination of the prosecutrix was conducted. She confirmed that after the prosecutrix was medically examined, the doctor had handed over nine sealed *pullandas* along with the sample seal containing the exhibits and undergarments of the prosecutrix. The same was seized by a seizure memo (Ex.PW9/A), which bears her signatures.

11. She stated that she made inquiries from local persons regarding the owner of the field where the incident had occurred and also tried to search for the accused but the same was in vain. She stated that the prosecutrix had informed her that she could get the portrait of the accused prepared and on 19.01.2016, she got a portrait of the accused prepared (Ex.PW15/C) on the basis of the description as provided by the prosecutrix. She testified that the sketch was prepared by Ct. Sanjay Kumar. She testified that on 31.01.2016, secret information was received by HC Rajesh at about 08:00 – 08:30 a.m. about the presence of the accused at village Kair. She stated that she along with

Ct. Deepak reached near the bus stand of Village Kair where the accused was found and apprehended on being pointed out by the secret informer. She stated that she interrogated the accused (the appellant herein). He was brought to the Police Station and thereafter arrested. He testified that she sent the accused to RTRM Hospital under custody of Ct. Ravinder for his medical examination. Subsequently, Ct. Ravinder returned to the Police Station along with sealed exhibits taken by the concerned doctor.

12. PW15 also testified that she had filed an application for judicial TIP of the accused and had produced the accused in Court on 31.01.2016. However, the accused declined to participate in the judicial TIP. Sh. Abhishek Kumar, Metropolitan Magistrate, Dwarka Court deposed as PW3. He testified that on 01.02.2016, he was posted as Reliever Metropolitan Magistrate at Dwarka Courts and on the said date, an application for conducting the judicial TIP of the accused was marked to him. He testified that the accused was produced before him in his chamber and his face was muffled. He stated that the accused was identified by SI Arvind Kumar and thereafter, he had asked SI Arvind Kumar to leave his chamber. After SI Arvind Kumar left his chamber, there was no one in the chamber except him and the accused. He testified that he had explained the purpose of judicial TIP to the accused but he refused to participate in the same. PW3 also testified that he had warned the accused that if he does not participate in the TIP, an adverse inference may be drawn against him during the trial.

Notwithstanding the aforesaid warning, the accused refused to participate in the TIP.

13. W/SI Manju, who deposed as PW15, testified that she had deposited the case property with the *malkhana*. W/ASI Sudesh was examined as PW13. She testified that on 12.02.2016, she had taken six sealed exhibits along with two sample seals of RTRM Hospital to FSL Rohini vide RC No. 19/21/16; the photocopy of which was marked as Ex.PW13/A. She identified her signatures on the same. She stated that she had deposited the said samples with FSL Rohini in an intact condition. She obtained an acknowledgement for the same, which was subsequently handed over to HC Pawan. She testified that the exhibits remained intact till they remained in her possession and were not tampered with in any manner.

14. The FSL report (Ex.PA) indicates that human semen was found on four samples – cotton wool swab of cervical mucus collection, cotton wool swab of vaginal secretion, microslides of vaginal secretion, prosecutrix's underwear and lower. The DNA analysis indicated that the DNA profile generated from the abovementioned samples was similar to the DNA profile generated from the blood sample of the appellant.

15. The forensic evidence, thus, clearly established that the appellant had committed the offence for which he was charged.

16. This Court has carefully examined the evidence and finds no flaw in the decision of the Trial Court in convicting the appellant of the offences punishable under Sections 376/506 of the IPC.

17. In view of the above, the present appeal is dismissed.

VIBHU BAKHRU, J

JULY 16, 2020
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