

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

CRL.A. 615/2020

Reserved on : 16.07.2021

Date of Decision : 12.08.2021

IN THE MATTER OF:

RANJEET NAIK

.....Appellant

Through: Ms. Manika Tripathy Pandey &
Ms. Bitisha Singh, Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ashok Kumar Garg, APP for
State with SI S.P Samaria, PS
Sagarpur.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been instituted under Section 374 Cr.P.C. read with Section 482 Cr.P.C. against the impugned judgment and order on sentence both dated 15.10.2020 passed by the learned ASJ, Special Fast Track Court, Patiala House Courts, New Delhi in case SC No. 9470/2016 arising out of FIR No. 312/2016 registered under Section 376 IPC at P.S. Sagarpur, whereby the appellant was convicted vide aforesaid judgment for the offence punishable under Sections 354D/376 IPC. Further, vide the aforesaid order on sentence the appellant was sentenced to undergo RI for a period of 10 years along with fine of Rs.13,000/- in
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default whereof to undergo SI for a period of 6 months for the offence punishable under Section 376 IPC. He was further sentenced to undergo RI for a period of 1 year along with fine of Rs.2,000/- in default whereof to undergo SI for a period of 2 months for the offence punishable under Section 354D IPC.

2. For the sake of felicity, the brief facts as noted by the Trial Court are:-

“2. The brief facts of the present case are that prosecutrix namely ‘RS’ has alleged commission of rape and stated that she was the mother of three children, residing with her family in a tenanted premises and was doing the work of house maid. She further alleged that on 15.06.2016 she along with her niece (Bhanji) at around 9:00 pm went to Nasirpur Subzi Mandi to purchase vegetables. After purchasing the vegetables when they were returning to their house, she observed that one person was chasing them through out from the mandi itself. As soon as she reached the Budha Jayanti Park, the accused obstructed her way and stopped her. It was around 9:30-10:00 pm, by intimidating her, he forcibly took her behind the wall of the park. He gagged her mouth, forcibly committed rape upon her against her wishes. She somehow got herself released from the clutches of the accused, she reunited to her niece and informed her about the incident. They started moving towards their house. When they were going to their houses, complainant again noticed that accused was still chasing her. When they reached at Shani Mandir near Dasrath Pur, there she met Rajesh husband of her Bhanji and informed him about the entire incident who made a call at 100 number and accused was also apprehended from the spot and handed over to the police.

3. On the basis of the allegations made by the prosecutrix in her complaint, she also got her statement recorded by the Ld. MM u/s 164 Cr.PC where she alleged

commission of rape. After completion of investigation, charge-sheet was filed against accused against commission of offences.”

3. The Trial Court framed charges against the appellant for commission of offence under Sections 354D/376 IPC. In the trial, the prosecution examined 14 witnesses. The prosecutrix was examined as PW1; ‘KM’ (husband of the prosecutrix) was examined as PW2; ‘G’ (niece of the prosecutrix) was examined as PW3; ‘R’, (husband of the niece of the prosecutrix) was examined as PW4; *Dr. Madhu* and *Dr. Dhananjay Kumar*, who proved the MLC of the prosecutrix, were examined as PW9 and PW12 respectively; and *W/SI Kamlesh* was examined as PW13. The appellant examined himself as DW1.

4. I have heard learned counsel for the appellant as well as the learned APP for the State and gone through the Trial Court Record. During the course of hearing, the MLC of the prosecutrix has been separately produced by the learned APP for the State.

MLC

5. The MLC (Ex. PW1/B) of the prosecutrix was recorded on 16.06.2016 at about 4 a.m. *Dr. Madhu*, who conducted the initial examination, recorded the alleged history and referred the prosecutrix to the Department of Gynecology.

6. *Dr. Dhananjay Kumar*, Sr. Medical Officer, DDU Hospital identified his signatures on the MLC of the prosecutrix. He deposed that during the medical examination, no fresh injury on the body of the prosecutrix was noticed. After initial examination, he referred the prosecutrix to DOD, Gynae. He also proved the MLC (Ex. PW5/C) of

the appellant by identifying signatures of *Dr. Deepak* on the same. In the appellant's MLC, fresh scratch marks on his left forearm were mentioned.

FSL

7. The exhibits seized during investigation were sent to FSL and the same were subjected to biological and DNA examination. As per the DNA Examination Report (Ex. PW8/A), it was concluded that DNA profile generated from the source of blood sample of the appellant matched with the DNA profile generated from the source of exhibits *Pyjama, Rt. Vulval swab, Lt. Vulval swab, Vulval smear, Low vaginal swab, Low vagina smear and Cervical smear*.

ANALYSIS

8. In the trial, at the time of recording of his statement under Section 313 Cr.P.C. as well as during his deposition as DW-1, the appellant admitted the factum of having established sexual relation with the prosecutrix on 15.06.2016. Even, in the present appeal, the aforesaid admission is reiterated. The only defence taken by the appellant is that the prosecutrix had also consented for establishing sexual relation on 15.06.2016.

9. In view of the aforesaid consistent stand, I proceed to analyze the evidence which has come on record.

10. The prosecutrix deposed that on 15.06.2016 when she was returning from *Nasirpur Subzi Mandi* market along with her niece 'G'. she noticed that the appellant was chasing them from the market. When they reached near *Budhia Park*, it was about 10 p.m. The appellant

forcibly brought her near the park and made physical relations with her against her will. During this time, the niece of the prosecutrix was standing near the gate of the park. When she came out of the park, the appellant continued to chase her till *Shani Mandir* where 'R' (husband of 'G') was sleeping. The prosecutrix woke him up and told him about the appellant. 'R' made a call to the police at 100 number.

In her cross-examination, she denied the suggestion that she along with the appellant sat for half an hour in the park whereafter, they left the park to have ice-cream and after consuming the same, returned back to the park. She also denied the suggestion that she had established the physical relations with the appellant out of her own will. She also stated that she had resisted and on account of which, the injuries were caused on the person of the appellant. She also denied the suggestion that she had told the Doctor that the appellant had threatened her with knife at the time of incident.

11. 'KM' (husband of the prosecutrix) deposed that on the date of the incident, he was present at his house and through his children he came to know that the prosecutrix had gone to market to buy vegetables. He stated that when the prosecutrix did not return, he called 'R' and thereafter, went to Police Station Sagarpur where prosecutrix was present with 'R'. In the Police Station, the prosecutrix told him about the incident.

12. 'G' (niece of the prosecutrix) deposed that she along with the prosecutrix was coming from the market and her children were also with her. She was walking ahead along with her children while the prosecutrix was following her. It was about 10 p.m. When she reached at the gate of *Sitapuri Park*, she found that the prosecutrix was missing.

After 10/20 minutes, the prosecutrix came. She was alone. When she enquired from the prosecutrix, she was told that a boy had committed rape upon her. When they reached *Shani Mandir*, she told her husband about the incident, who called the police. The appellant who had also reached *Shani Mandir* was apprehended by the police. She identified the appellant.

The witness was cross-examined by the learned APP for the State. She stated that she had not seen the appellant following them till they reached *Budha Jayanti Park, Nasirpur, Delhi*. She denied the suggestion that on the date of the incident, the appellant had followed them till *Budha Jayanti Park*. She also denied the suggestion that the appellant had taken the prosecutrix towards the park or that she saw him taking away the prosecutrix. She was confronted with her statement (Ex. PW3/P1), where it was so recorded.

In her cross-examination by learned defence counsel, she stated that they had reached the *Subzi Mandi* at about 11 p.m. She saw the appellant for the first time when a phone call was made to the Police at *Shani Mandir*. She stated that she did not see the appellant either in the *Subzi mandi* or while they were returning from the market. She also denied the suggestion that the appellant had bought ice-cream for her children in *Subzi mandi*. She stated that the appellant had followed them after the incident till *Shani Mandir*. She stated that her statement recorded under Section 161 Cr.P.C. (Ex. PW3/P1) was not read over to her.

13. 'R' (husband of 'G') deposed that on the date of the incident, he was sitting in *Shani Mandir*, when the prosecutrix came and told him that "*jabardasti mere sath chedkhani kari*". He clarified that by

“*jabardasti*”, the prosecutrix meant that the appellant committed rape upon her. He further stated that the prosecutrix told him that she along with ‘G’ and children had gone to *Subzi Mandi* and when they were returning, the appellant had committed rape upon her. He further stated that he made a phone call on 100 number from his mobile phone.

In cross-examination, he stated that his wife, children, the appellant and the prosecutrix reached *Shani Mandir* at about 10 p.m. He stated that the walking distance between the park and the *Shani Mandir* was about 5 minutes. He denied the suggestion that the appellant was known to the prosecutrix.

14. HC *Anil Rana* (PW6) was the Duty Officer who had received the wireless message from the PCR to the following effect:

“*Dakshinpur Shani Mandir Ke Pas Ek Ladki Ke Sath Ched Chad Hui Hai Jis Ladke Ne Ki Hai Use Pakad Rakha Hai*”.

15. CT. *Deepak* (PW5) deposed that on the intervening night of 15th /16th June, 2016, DD No. 53-A regarding ‘*Ched Chad*’ was received by SI *Mukesh Meena* (PW11). Thereafter, both of them went to *Shani Mandir*. W/SI *Kamlesh* (PW13) deposed that the appellant was arrested on 16.06.2016 at the identification of the prosecutrix.

16. In his statement recorded under Section 313 Cr.P.C., the appellant while answering Question No.1, denied having forcibly established physical relations with the prosecutrix. He stated that on that day he had gone to visit his younger brother in *Dashratpuri* where, after consuming liquor with his brother, he was roaming near the *Subzi Mandi* and had met the prosecutrix on the road. The prosecutrix was accompanied by another lady and two children. The other lady had asked for his mobile phone to make a call and thereafter, all of them roamed around in the

market. Later, when they reached the *Budha Park*, the other lady asked the appellant to go with the prosecutrix and get ice-cream for everyone. While he was walking with the prosecutrix, he asked the prosecutrix to have sex with him in lieu of money. She did not say anything. He held her hand and took her to a secluded place in the park and again asked her if he could have sex with her. Again, she did not reply. He told her that he would give her the money after sex, to which she consented. After they had sex, the prosecutrix asked for Rs.300/-. When the appellant told her that he did not have any amount of money, she asked him for his mobile phone in lieu of money. She borrowed his mobile and made a call to someone. Thereafter, both of them reached where the other lady and children were sitting. All of them left *Budha Park*; and on the way, he bought ice-cream for everyone. The prosecutrix was talking nicely to him and on the pretext of giving her contact number and also to show her place of residence, she lured the appellant to walk with her. On reaching *Shani Mandir*, she called a man who was her relative and told him, "*This is the man*". The said man gave beatings to him and the Police was called.

17. The appellant examined himself as DW1 under Section 315 Cr.P.C. He reiterated what he had stated at the time of recording of his statement under 313 Cr.P.C. He deposed that the prosecutrix consented to have sex with him on the promise of payment of Rs.300/-. In his cross-examination, he denied the suggestions that he had committed rape upon the prosecutrix forcibly or that she has not consented for the sexual relationship in lieu of Rs.300/-.

18. The questions as to whether the appellant was stalking the prosecutrix and whether the prosecutrix had consented for sex with the

appellant have to be seen in light of the testimonies of the prosecutrix and 'G' as well as the defence put up by the appellant.

19. Learned counsel for the appellant contended that the consent of the prosecutrix is apparent from the fact that neither in the *Subzi Mandi* nor on the way, she raised any alarm even after noticing that the appellant was following them. In this regard, it is noted that the prosecutrix deposed that on the day of incident, she had noticed the appellant following her when they were going to *Subzi Mandi*. He continued to follow them even when they were returning back. She deposed that she didn't raise a hue and cry as she believed that the appellant also had gone to the market and was returning from there. In view of the explanation given by the prosecutrix, I do not find any merit in the contention.

20. It was next contended that even at the time of incident, the prosecutrix did not raise any alarm, which is indicative of consensual sex. It has come in the testimony of the prosecutrix that being night time, there were hardly any people on the way to the park. She further stated that there were no houses towards the market side near the gate of the park. The rough site plan (Ex. PW-1/E) would show that while on the north side of the park there was a sewer drain, on the south side was a road going towards *Nasirpur* and *Dabri*. Only on the west side of the park, there were apartments. The incident is stated to have taken place at point 'A' on the north side. Further, it has come in the cross-examination of the prosecutrix that when she resisted in her defence, injury was caused to the appellant. The appellant was caught at the spot. The appellant's MLC records that there were fresh scratch marks on his left forearm. The contention raised, is meritless and stands rejected.

21. The appellant had taken the defence that 'G' had asked him to go with the prosecutrix and get ice cream for everyone. The defence taken is that on the way, the prosecutrix asked for Rs. 300/-. At that time, he asked the prosecutrix, if he gave her the money, would she have sex with him. The prosecutrix did not answer. After which, he took the prosecutrix to a secluded place in the park where again, he asked her if he could have sex with her. The prosecutrix did not reply. Strangely, when he proposed to the prosecutrix that he would pay her after the sex, she consented. This line of defence is not only unbelievable but an afterthought when seen in light of the cross-examination of the prosecutrix, where no such suggestion of payment of Rs. 300/- being asked or promised to be paid, was given. From a perusal of the cross-examination of the prosecutrix, it is apparent that the suggestion given was of having voluntary sex at the time of the incident and not of sex in lieu of payment of Rs. 300/-.

22. It is equally incomprehensible that while on one hand the appellant had promise to pay Rs. 300/- to the prosecutrix but after having sex with her, he told her that he did not have any money. In the same breath, the appellant deposed that after they came out of the park and were going towards bus stand, he bought ice cream for everybody. Again, the said defence is nothing but an afterthought, as no such suggestion was given to the prosecutrix during her cross-examination.

23. The appellant during his examination as DW-1, deposed that on the day of the incident, he had gone to the *Subzi Mandi* and was roaming around. 'G' had asked for his phone and used it to make a call. Even, the prosecutrix, after having sex with him, asked for his mobile phone and

made a call. However, the appellant, in support of his defence, did not bring the details of such calls on the record.

24. Learned counsel for the appellant also contended that no external injuries were noted in the MLC of the prosecutrix. *Dr. Dhananjay Kumar* in his cross-examination and on a query put by the Trial Court had clarified that it was not necessary that in a case of forcible sexual act, there would always be an external injury on the body of the victim. Recently, this Court had the occasion to deal with a similar contention in Ishwer Soni v. State (Govt. of NCT of Delhi) reported as **2020 SCC OnLine Del 1378** and Sunil Kumar v. State of NCT of Delhi reported as **2021 SCC OnLine Del 2391** wherein, the contention was rejected while relying on the following observations of the Division Bench of this Court (of which I was a member) in case of Jitender Sharma v. State (NCT of Delhi) reported as **2019 SCC OnLine Del 8266**:

"25. The position of law on the question, whether absence of injuries found on the person of the prosecutrix, in a case of rape, would result in a finding of acquittal, is well settled. Dealing with this issue in a case of a child rape, a Coordinate Bench of this Court in Lokesh Mishra v. State of NCT of Delhi, in Criminal Appeal No. 768 of 2010, decided on 12.03.2014, relying on earlier decisions of the Apex Court, while upholding the conviction under section 376 IPC, made the following observations:

38....In the case of Ranjit Hazarika v. State of Assam, reported in (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view that the medical opinion cannot throw overboard an otherwise cogent and trustworthy evidence of the prosecutrix.

39. The apex court in B.C. Deva v. State of Karnataka, reported at (2007) 12 SCC 122, inspite of the fact that no injuries were found on the person of the prosecutrix, yet finding her version to be reliable and trustworthy, the Apex

Court upheld the conviction of the accused. The Court observed that:

18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted."

25. The issue, whether the sole testimony of a prosecutrix can be relied upon for the conviction of an accused, is no longer *res integra*. Time and again, the test for relying upon the sole testimony have been reiterated by the Supreme Court. In the case of State of Himachal Pradesh v. Manga Singh reported as **(2019) 16 SCC 759** it was held that the sole testimony of the prosecutrix, if it inspires confidence, can be the basis for conviction of the accused. The Supreme Court observed:

"10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contradictions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy

of credence. As a general rule, there is no reasons to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court."

26. In the present case, the prosecutrix had consistently stated that the appellant had committed rape upon her against her wish. The appellant has failed to cause a dent on her testimony which has remained unimpeachable. On a conspectus of the entire evidence that has come on record, this Court is of the opinion that the testimony of the prosecutrix about the stalking and offence of rape committed by the appellant upon her not only inspires confidence, but is also held to be consistent, reliable and admissible.

27. Further, Section 114-A of the Indian Evidence Act provides for presumption to be drawn as to absence of consent in certain prosecution for rape. The appellant has failed to dislodge the presumption.

28. In view of the foregoing settled position of law and the above analysis, the issue raised in the present appeal is decided against the appellant. Consequently, the impugned judgment of conviction and order on sentence are upheld and the present appeal is dismissed.

29. A perusal of the order on sentence reveals that no compensation was awarded to the prosecutrix under the Victim Compensation Scheme. The Supreme Court in Ankush Shivaji Gaikwad v. State of Maharashtra reported as **(2013) 6 SCC 770** observed as under:

"51. There is no gainsaying that Section 357 confers a power on the Court in so far as it makes it "legal and possible which there would otherwise be no right or authority to do" viz. to award compensation to victims in criminal cases. The question is whether despite the use of discretionary language such as

the word "may", there is "something" in the nature of the power to award compensation in criminal cases, in the object for which the power is conferred or in the title of the persons for whose benefit it is to be exercised which, coupled with the power conferred under the provision, casts a duty on the Court to apply its mind to the question of exercise of this power in every criminal case.

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66. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family."

30. This Court is constrained to note that the Trial Court has failed in its duty to refer the prosecutrix to the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018" under the Delhi Victims Compensation Scheme, 2018, where the minimum compensation for a rape victim is specified at Rs. 4 lakhs and the maximum compensation at Rs.7 lakhs. This Court, therefore, directs the

Delhi State Legal Services Authority to consider and award appropriate compensation to the prosecutrix in accordance with the Victim Compensation Scheme within a period of four weeks from passing of this judgment.

31. A certified copy of this judgment be immediately supplied to the appellant free of cost through the concerned Jail Superintendent.

32. A copy of the same shall also be communicated to the concerned Trial Court as well as to the Member Secretary, Delhi State Legal Services Authority.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 12, 2021
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