



2024:DHC:9618



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

% Reserved on : 30.09.2024
Pronounced on : 13.12.2024

+ **CRL.A. 290/2009**

SATISH KUMAR

..... Appellant

Through: Mr. R.P. Luthra and Mr. Himanshu
Luthra, Advocates

Versus

STATE

..... Respondent

Through: Mr. Laksh Khanna, APP for State with
SI Arvind Verma, PS Gokulpuri

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 13.03.2009 and order on sentence dated 16.03.2009 passed by learned ASJ, Karkardooma Courts, New Delhi in Sessions Case No. 56/2008 arising out of FIR No.654/2007 registered under Sections 376/506 IPC at P.S. Gokalpuri, New Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 451/376/506 IPC and sentenced to undergo rigorous imprisonment for a period of 1 year for the offence punishable under Section 451 IPC with a fine of Rs 2000/- in default whereof, he was directed to undergo further rigorous imprisonment for 3 months. For the offence punishable under Section 506 IPC, the appellant was directed to undergo rigorous imprisonment for 3 years. Lastly, for the



offence under Section 376 IPC, the appellant was directed to undergo rigorous imprisonment for 7 years with a fine of Rs 4000/-, in default whereof, he was directed to undergo further rigorous imprisonment for 6 months. The said sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C was also extended to the applicant.

2. The facts, as noted by the Trial Court, are as under:-

“A middle aged lady was residing as tenant in a room in Street No.1, Balmiki Basti, Village Gokalpur, Delhi. Satish Kumar, the accused was residing in her neighbourhood. He was aware that the victim was residing alone in her tenanted accommodation. On 21.09.07 at, about 10pm, Lakkho Devi (name changed) was present in her tenanted room. Since there was no electricity in her room, she had kept the door ajar. Accused entered in her room and closed the door. When Lakkho Devi enquired as to why he had entered her room, he overpowered her. When she tried to raise an alarm for help, accused gave two or three slaps and gagged her mouth. He criminally intimidated her of instant death, in case she would raise alarm. He raped her. He pulled her hairs and criminally intimidated her not to divulge facts before anyone. As soon as the accused went out of her room, she raised an alarm for help. Sanjay Kumar, who was present in the street, tried to overpower the accused, but he managed his escape good. Sanjay Kumar gave a telephone call to PCR Van reached the spot and removed Lakkho Devi to GTB Hospital for medical examination in the case. He got medically examined. Investigation culminated into a chargesheet against the accused. She was examined there in the hospital. She made a statement before the police which became bedrock of the case Investigation was taken up by Nirmala ASI. On 06.10.07, investigation was made over to Vijay Kumar Gupta who arrested accused in the case. He got medically examined. Investigation culminated into a chargesheet against the accused.”

3. The appellant pleaded not guilty and claimed trial. The prosecution examined a total of 11 witnesses to prove its case. The victim was examined as PW7. Dr. R. A. Gautam was examined as PW6 to prove the MLC of the prosecutrix. The other witnesses were formal in nature relating to various aspects of investigation.



The appellant in his statement recorded under Section 313 Cr.P.C. claimed innocence and false implication.

4. Appellant contends that the testimony of witnesses does not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. The Trial Court has further failed to appreciate the variance in the statement of the prosecutrix which was made before the police leading to the FIR and her subsequent deposition. Elaborating further, it was contended that while in her earlier statement, the prosecutrix had stated that the appellant after committing the offence managed to escape, in her deposition it was claimed that at the time of the incident, she had slapped the appellant 3-4 times after which he became unconscious whereafter the brother and sister-in-law of the appellant came and took him out of the room. An independent witness, *Sanjay* (PW4), who as per the contents of the FIR had tried to catch hold of the appellant, did not support prosecution case in his deposition.

5. Learned APP for the State while opposing the present appeal defended the impugned judgment and emphasized that the appellant was rightly convicted in light of the material that came on record.

6. The prosecutrix deposed that on the night of 21.09.2007 at about 10 pm, she was at her home and the door of her room was ajar. The appellant was peeping from outside on which she scolded him. The appellant responded by threatening her. He came inside room, gagged her mouth and also gave 3-4 slaps on her face. He committed rape thrice. Thereafter, he also vomited on the bedsheet. She slapped the appellant. He became unconscious whereafter she ran out in street and called appellant's mother following which his brother and sister-in-law (Bhabhi) took him away.



7. Record reveals that the prosecution case hinges upon the sole testimony of the prosecutrix. As to whether sole testimony of the victim in a sexual offence can lead to conviction in the absence of any other corroboration, gainful reference can be made to the decision in Ganesan v. State, reported as **(2020) 10 SCC 573**, wherein the Supreme Court has held as:-

“ 10. In the present case, the appellant-accused has been convicted by the learned trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial Court as well as the relevant evidence on record, more particularly the deposition of PW1 father of the victim, PW2, mother of the victim and PW3, victim herself. It is true that PW2 mother of the victim has turned hostile. However, PW3 victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW3 – victim. PW3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.

10.1 Whether, in the case involving sexual harassment, molestation etc., can there be conviction on the sole evidence of the prosecutrix, in the case of Vijay alias Chineer (supra), it is observed in paragraphs 9 to 14 as under:

9. In State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16) "16. A prosecutrix 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 alive to and 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 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 prosecutrix 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 prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

8. Though it was contended that certain improvements were made by the prosecutrix during her deposition, it is pertinent to note that the same are not material to doubt the testimony insofar as commission of the offence of rape is concerned. It was argued that in her initial statement, the prosecutrix had stated that the appellant after committing the offence ran away but in her testimony claimed that the appellant became unconscious and was lifted away. Notably, the deposition was recorded after lapse of about one and half year of the incident. While other minor variance in the statements have been pointed out, this Court observed that the prosecutrix has clearly outlined a consistent narration of the offence. In cases of sexual exploitation, factors that do not significantly affect the credibility of the prosecution's case, or minor inconsistencies in the victim's statement, should not be used to dismiss an otherwise trustworthy prosecution case. The victim's testimony is crucial, and unless there are strong reasons necessitating corroboration, the Court should not hesitate to convict the accused based solely on the victim's



testimony if it is credible and inspires confidence. Reliance in this regard is placed on the case of State of Punjab v. Gurmit Singh reported as **(1996) 2 SCC 384**.

9. The MLC (Ex. PW6/B) of the victim conducted within 6 hours of the incident also notes that vulva was moist and stains on the petticoat of the victim were also recorded. Though the testimony of *Sanjay*, did not support the prosecution case on crucial aspects, he deposed that on 21.09.2007, while he was returning from work at about 10 pm, he heard the victim shouting the name of the appellant and that he had misbehaved with her, supporting the fact that the prosecutrix had raised an alarm.

10. Although it was contended that despite samples being collected, no FSL report was placed on record, the same would not take away the reliability and admissibility of the evidentiary value of the deposition of the prosecutrix. Reference in this regard is made to the case of Dhanraj Singh v. State of Punjab reported as **AIR 2004 SC 1920**, wherein the Court has observed as under:-

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

11. Considering the aforesaid and after going through the evidence on record as well as keeping in mind the afore-noted principles, this Court is of the considered view that there is no infirmity or perversity in the impugned judgment.



12. Learned Counsel for the appellant submits that the appellant was only 20 years old at the time of the incident and that he belongs to a poor strata of society. It is further submitted that about 17 years have lapsed since the date of the incident and that the appellant has no other involvements. He prays that the sentence of the appellant be reduced to the period already undergone.

13. At this juncture, this Court takes note of the fact that the present incident pertains to the year 2007. The appellant was charged with the unamended Section 376 IPC, as it stood then, which reads as under:-

*“376. Punishment for rape.— (1) Whoever, except in the cases provided for by sub- section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:
Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years....”*

14. A reading of the above proviso would show that though a minimum sentence of seven years was stipulated however, if adequate and special reasons exist, the court was empowered to impose a sentence which is less than seven years. The court also draws strength from the decision of the Supreme Court in Baldev Singh & Ors v. State of Punjab reported as **(2011) 13 SCC 705** where while upholding the conviction under Section 376(2)(g), noting that 14 years had passed since the date of the incident and keeping in mind the period of incarceration of three and a half years, the Court had modified the sentence of the convict to the period already undergone. On



similar lines, in Puran Singh v. State (NCT) of Delhi reported as **2010 VI AD(DELHI) 392**, a coordinate bench of this Court modified the sentence to the period undergone citing the young age of the appellant and the fact that he had no criminal antecedents.

15. Pertinently, in the present appeal, the prosecutrix had filed an affidavit dated 20.05.2011 stating that she has pardoned the accused for his unlawful act. As per the latest Nominal Roll on record, the appellant has already undergone a period of about three years and his jail conduct was also observed to be satisfactory.

16. Consequently, while maintaining appellant's conviction, in view of the mitigating facts and circumstances, this Court finds adequate and special reasons to modify the sentence of the appellant to the period already undergone.

17. The appeal is disposed of in above terms. Bail bonds are cancelled and surety stands discharged

18. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 13, 2024/js