

(2019) 05 DEL CK 0348

In the Delhi High Court

Case No : Criminal Appeal No. 230 Of 2016

Amar Kumar Pandey

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 376

Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2019) 05 DEL CK 0348

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Gautam Khazanchi, Udit Arora, Rajni Gupta

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. Amar Kumar Pandey challenges the impugned judgment dated 27th August, 2015 convicting him for the offences punishable under Section 376/307

IPC and the order on sentence dated 11th September, 2015 directing him to undergo rigorous imprisonment for a period of seven years and to pay a

fine of Rs.15,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year for the offence punishable under Section

376 IPC and rigorous imprisonment for a period of eight years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo simple

imprisonment for a period of one year for the offence punishable under Section 307 IPC.

2. Learned counsel for the appellant submits that the testimony of the prosecutrix (PW-13) by itself shows that the offence under Section 376 IPC is

not made out as she herself stated that the appellant never refused to marry her.

Promise to marry was only incidental. With respect to recovery of phone, the location of the phone has not been mentioned. Phone was not identified by the prosecutrix and CDRs of the phone were also not exhibited.

The CDRs available on record are for the period from 17th August, 2013 to 20th August, 2013 which belie the version of the prosecutrix. No

independent witness was associated with the recovery of knife and the knife in question has not been put to the prosecutrix, thus, it cannot be said that

it relates to the offence. Knife was not recovered from/near the spot. No fingerprints were taken. When Ct. Monu (PW-9) and SI Satish Kumar

(PW-11) went to the spot, nothing was found. Neither the crime team visited the spot nor were the photographs taken. As per the MLC, only injury

no. 4 was caused by a sharp weapon, rest all were caused by a blunt weapon.

3. Learned APP for the State on the other hand contends that the prosecution case stands proved not only on the basis of testimony of the prosecutrix

but also by the statement of the appellant recorded under Section 313 Cr.P.C. Since nothing was visible on the spot, the crime team could not recover

anything from the spot. Appellant has been rightly convicted by the Learned Trial Court on the basis of the evidence on record and the appeal be

dismissed.

4. Process of law was set into motion on 15th September, 2013 around 8:23 P.M. when information was received regarding one handicapped lady

lying in a pool of blood near the T point, main road, Nav Jeevan Camp, Govindpuri. Aforesaid information was recorded vide DD No. 43A and was

assigned to SI Satish (PW-11). He went to the spot along with Ct. Monu (PW-9). He made enquiries at the spot and came to know that the injured

had been taken to AIIMS Trauma Centre by the PCR van. No witness could be found at spot. He then went to the Trauma Centre and collected

MLC (Ex.PW-13/A). The victim was declared not fit for statement by the doctor. FIR No. 649/2013 (Ex.PW-5/A) was registered at PS Govindpuri

for the offence punishable under Section 307 IPC. Exhibits were seized vide seizure memo Ex.PW-4/A. He then returned to the place of incident,

however, no further information could be gathered from the spot.

5. On 17th September, 2013 SI Satish (PW-11) again went to the hospital when the victim was fit for statement. On enquiries from the victim, it was

revealed to be a case of sexual harassment. Consequently, W/SI Seema (PW-17)

came to the hospital who recorded the statement of the injured/prosecutrix. On the basis of her statement, Section 376 IPC was also added.

6. Pursuant to the statement of the victim search for the appellant was conducted however, he was not traceable. On an information received, the appellant was apprehended near petrol pump and was arrested vide memo Ex.PW-1/A Disclosure statement of appellant vide Ex.PW-1/C was also recorded, whereafter he was medically examined and brought to the police station.

7. On 18th September, 2013, the appellant led the police to the place of incident. A pointing out memo Ex. PW-11/B was prepared. Appellant also got the knife recovered. Sketch of the knife Ex.PW-11/C was prepared and the knife was seized vide memo Ex.PW-11/D. At the appellant's instance, the mobile phone of prosecutrix was also recovered which was seized vide seizure memo Ex.PW-2/C.

8. On 24th September, 2013, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. vide Ex.PW-7/A and after completion of investigation, charge sheet was filed.

9. Prosecutrix (PW-13) deposed that she hailed from District Aurangabad, Bihar. Two years ago while she was at her native place, she received a call from an unknown number. The caller introduced himself as Amar. He asked if she was married. She replied that she was unmarried and would marry only with the consent of his parents, he told her that he would marry her. She informed him that she was handicapped to which he replied that he had no problem with that. He asked for her address and told her to meet her at her house. After about two months, he came to her house and stayed overnight. Thereafter, he remained in contact with her over phone. Since she was not able to pick up the phone as she was handicapped, he asked her to accompany him to Delhi. On 25th May, 2013, he brought her to Delhi where they stayed in a rented jhuggi at Govindpuri for about 15 days. They had physical relations during the aforesaid period and those physical relations were with her consent. She gave her consent as the appellant used to promise her that he would marry her. After 15 days, the appellant left her at her native place. She had not sought the permission of her parents when she left her native village for the first time with the appellant

on his promise of marrying her. While returning to her native place, she had left her jewelry articles, that is, earrings, rings, gold chain, gold locket and silver pajeb etc. with the appellant at his instance. After leaving her at her house, appellant left for his parental house at Bihar with a promise that he would come and bring her back to Delhi. Subsequently, she returned to Delhi with the appellant on 8th July, 2013. Physical relation between the two continued.

She stated that as there was no toilet in the accommodation where she was staying with the appellant, so the appellant used to take her to public toilet.

On 15th September, 2013, during afternoon she told the appellant to take her to toilet. The appellant told that he will take her to toilet in the evening.

Thereafter, he left for the market and returned after almost half an hour. On the pretext of taking her to the toilet, the appellant took her to the jungle

behind the public toilet. There he took out a knife and started stabbing her on her face, neck, waist and arms. She cried, raised alarm and requested

the appellant not to kill her and send her back to her native village if he did not want to marry her. Nobody heard her loud cries for help and therefore

nobody came to her rescue. The appellant then ran away, leaving her at the spot to die. She then managed to push herself near the road where she

was noticed by the public. Somebody called the police and she was taken to the hospital by the police officials. The knife with which she was stabbed

was a kitchen knife having green colour plastic handle. In her cross examination she stated that her parents opposed the marriage. She also stated that

the appellant had never explicitly refused to marry her. She voluntarily stated that if he had refused, she would not have accompanied him to Delhi.

10. Rajesh (PW-6) stated that on 15th September, 2013 at about 8:00 P.M., while he was in his shop near Nehru Camp, Govindpuri, he saw 5-6 boys

standing near the nala in the forest behind his shop. He went there to find out what had happened. He saw a girl whose face was drenched in blood

and mud lying near the wall. The girl was brought near the main road. Thereafter, he called on 100 number and informed the police from his mobile

No. 9718994642.

11. Uvesh Khan (PW-8) stated that he is the owner of jhuggi No. C-226, Nehru Camp, Govindpuri. He had given his jhuggi on rent to the appellant in

the first week of September 2013. He was staying with a girl whom he claimed to

be his wife. They stayed there for a week and then left the jhuggi.

He stated that the girl was having some problem in her leg.

12. Dr. Kusum (PW-12), SR, Gyane-1, AIIMS stated that on 15th September 2013, at about 11:15 P.M. a young girl of around 20 years of age was

brought with multiple stab wounds on her arm, face and back. She had stitches on her injuries. Her hymen was not intact and she was suffering from

polio. The notes prepared by her were proved vide Ex.PW-12/A.

13. Dr. Rupesh Kumar Kejriwal (PW-14), Sr. JPN Apex Trauma Centre, AIIMS stated that on 15th September 2013 he examined the prosecutrix

vide MLC Ex.PW-13/A. He opined all the injuries to be grievous in nature. All the injuries mentioned below were caused by blunt object except the

injuries described in the second part of the injuries no. 4 which was likely to be caused by sharp object. Following visible injuries were found:

Wound 1: Laceration 7 cm X 3 cm X 3 cm on posterolateral aspect of left arm

Wound 2: Laceration 5 cm X 1 cm X 1 cm over right cheek, 7 cm X 0.5 cm X 0.5 cm on left side of face

Wound 3: Laceration multiple superficial lacerations on left side of neck and occipital region

Wound 4: Laceration 8 cm X 3 cm muscle deep over right arm, multiple skin superficial cut wound in lower back

Wound 5: Laceration small superficial laceration over right hand (palmar aspect)

Wound 6: Laceration 5 cm X 1 cm lacerated wound over right side of back in lumbar region

14. Dr. Mahesh Kumar (PW-15), SR, FMT, AIIMS stated that he had examined the external injuries on the person of prosecutrix and prepared a note

of examination which was proved vide Ex.PW-15/A. He also examined the weapon of offence and opined that the all injuries could be possible from

the weapon shown to him. His opinion was proved vide Ex.PW-15/B.

15. Appellant in his statement recorded under Section 313 Cr.P.C. admitted that he had contacted the prosecutrix while she was in her native village

and had subsequently brought her to Delhi on the promise of marriage. He denied that she had not sought the permission of her parents for the

marriage and that she had returned to her native village to get permission from her parents. He denied that he used to take her to the public toilet to

answer the call of nature. He also stated that he has been falsely implicated in the present case. Uncle of the prosecutrix had come to the jhuggi and

beaten him severely on account of which he received injuries.

16. Contention of learned counsel for the appellant that offence under Section 376 IPC is not made out as the appellant never refused to marry the

prosecutrix and promise to marry was only incidental is liable to be rejected. Prosecutrix in her statement clearly stated that the appellant represented

that he would marry her despite her being handicapped and on that pretext, he got her to Delhi where he established physical relations and after

having established physical relations with her, the appellant injured her and left her in that condition and ran away. Further, as noted above the

appellant admitted that he used to promise to marry the prosecutrix.

17. Even though Dr.Rupesh Kumar Kejriwal stated that out of the six injuries, only second part of injury No.4 was caused by a sharp object,

Dr.Mahesh Kumar who examined the external injuries on the person of prosecutrix and prepared his note of examination clearly opined that all the

injuries were possible from the weapon shown to him. Weapon of offence was recovered from the jungle at the instance of the appellant. The

appellant having thrown the weapon of offence in jungle thus non-recovery from near the spot does not belie the version of the prosecutrix who was

found in a badly injured condition and bleeding by independent persons. The recovery of weapon of offence has been duly testified by SI Satish.

Further, the fact that the appellant was residing with the prosecutrix as his wife is also deposed by Uvesh Khan, the owner of the Jhuggi. Though it is

contended that the CDRs available from the period 17th August, 2013 to 20th August, 2013 belie the version of the prosecutrix, however, nothing has

been shown as to how the version of the prosecutrix has been belied from the said CDRs.

18. Contention of learned counsel for the appellant that the knife in question has not been put to the prosecutrix and thus cannot be said to be related

to the offence deserves to be rejected for the reason the prosecutrix has testified that she was stabbed by a green colour kitchen knife which matches

the description of the knife recovered at the instance of the appellant and PW-15 has duly opined that the injuries were possible with the knife

recovered and thus the same is duly corroborated by the medical examination

and the testimony of the independent witnesses.

19. Hence, this Court finds no merit in the appeal. The impugned judgment of conviction and order on sentence are upheld. Appeal is dismissed.

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

21. TCR be returned.