
(2011) 03 DEL CK 0163
In the Delhi High Court
Case No : Criminal A. 11 of 1999

Daulat Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 376, 376(G)

Citation : (2011) 03 DEL CK 0163

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Avni Singh, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Pradeep Nandrajog, J.—The process of law commenced when on 01.03.1985 at about 12:30 midnight the prosecutrix "P" came to PS Trilok Puri accompanied by her husband and made the statement Ex.PW-1/A on which FIR Ex.PW-7/B was registered at the police station.

2. In her statement Ex.PW-1/A, "P" stated that at 9:00 PM on 28.2.1985 she left her house for Jhandewalan where she worked and on the way she was forcibly pulled inside a TSR by Ram Singh S/o Bihari, R/o Block-33, Trilok Puri who was accompanied by 3 persons aged 20-22 years of slim built and wrapped in a shawl. That after she was pulled inside the TSR the said 3 persons muffled her with a shawl and pressed her neck and gagged her mouth. She was threatened with dire consequence if she raised a hue and cry. Ram Singh drove the TSR on to the National Highway and stopped near a ditch. She was dragged down a slope and raped first by Ram Singh followed by the 3 persons, who raped her in turn. After about 15 minutes 2 other persons aged about 30-35 years and of slim built arrived, who also raped her. That when she was being raped she heard Ram Singh referring to two names "Pappu" and "Gupta". That she could recognize the accused if brought before her. After raping her for an hour, Ram Singh and his associates dropped her at a bus stop wherefrom she took a bus to reach her

house and narrated the entire incident to her husband who accompanied her to report the incident.

3. MLC Ex.PW-3/A pertaining to "P" records that she was medically examined at Jai Prakash Narain Hospital at 10:00 AM on 1.3.1985 by Dr. Priyavrata. It stands noted thereon that there was a bite mark on the right cheek of "P". No other injury mark, external or internal was noted.

4. Relevant would it be to note that the prosecutrix "P" was a married lady and thus one would not expect any evidence pertaining to a sexual assault with reference to her vaginal examination and unfortunately, we may note that in the MLC nothing has been recorded with reference to the internal body examination of the prosecutrix "P". The clothes i.e. the petticoat and the saree worn by the prosecutrix was seized by SI Manphool Singh PW-7 as per seizure memo Ex.PW-1/B and as per FSL Report Ex.PW-7/W semen as also human blood of group "O" was detected on the petticoat which was also found to be contaminated with urine and faecal matter.

5. The bite mark on the cheek of the prosecutrix coupled with the condition of the petticoat she was wearing, which was stained not only with human semen but even urine and faecal matter and human blood of group "O", certainly suggests to a non-consensual sex to which the prosecutrix was subjected to.

6. Relevant would it be to note that SI Manphool Singh was entrusted with the investigation and the only lead which he had was that one Ram Singh S/o Bihari, R/o Block-33, Trilok Puri was the principal offender and that 5 other persons had acted in concert with him, 3 of whom were aged between 20-22 years and were slim built. 2 were aged between 30-35 years and were slim built and that the said 2 were called "Pappu" and "Gupta"; fairly common pet name and surname in Delhi.

7. It assumes importance that the prosecutrix neither named nor disclosed the address of the 3 accused who were statly with Ram Singh when she was abducted nor gave the address of "Pappu" and "Gupta" who joined later, but for circumstances which are fairly mysterious, SI Manphool Singh claims to have apprehended Phool Chand, Subhash, Mahesh @ Guddu, Laxmi Narain @ Pappu and Acchey Lal on 3.3.1985 at the instance of the prosecutrix. As per him, he could not locate them earlier at their residence.

8. It assumes importance and thus we highlight that none of the 5 were subjected to any Test Identification Parade. Ram Singh was apprehended on 29.3.1985 and pursuant to his disclosure statement Ex.PW-7/S got recovered a TSR No. DIR 1951. Notwithstanding the prosecutrix stating that 6 persons were the offender, a 7th person, Daulat Ram, was apprehended on 16.9.1985 and relevant would it be to note that he was subjected to a Test Identification Parade where, as recorded in the proceedings Ex.PW-4/C he refused to participate stating the reason that he was shown to the witness at the police station.

9. But, before 16.9.1985, after 5 accused were apprehended on 3.3.1985 and the 6th i.e. Ram Singh was apprehended on 29.3.1985, the prosecutrix was produced before the learned Metropolitan Magistrate on 8.4.1985 where her statement Ex.PW-4/E u/s 164 Code of Criminal Procedure was recorded in which she stated that Ram Singh, Phool Chand, Pappu and Mahesh pulled her inside the TSR and drove her to a secluded place near Mayur Vihar and under some bridge raped her in turns and when she was raped her face was covered and mostly Ram Singh caught her to prevent her from running away. Soon thereafter Subhash, Gupta and Daulat arrived in another TSR and even they raped her and that she recognized the accused persons since they resided in the same neighbourhood.

10. Relevant would it be to note that vis-?-vis her statement Ex.PW-1/A the prosecutrix gave a slightly different version of the number of persons who joined later on; as against 2 stated in her statement Ex.PW-1/A she stated in her statement Ex.PW-4/E that 3 joined later. But relevant would it be to note that whereas in her statement Ex.PW-1/A she categorically stated that the associates of Ram Singh, if brought before her could be recognized by her, in her statement Ex.PW-4/E she categorically named them and sought to give credence to her statement by stating that she recognized the accused as they were all residing in the same neighbourhood.

11. It may be noted that the prosecutrix and her husband are residents of House No. 29/367, Trilok Puri i.e. Block No. 29 and House No. 367 and all accused persons are residents of either Block No. 28, 29 or 33 Trilok Puri.

12. In her deposition in Court the prosecutrix deposed in complete harmony with her statement recorded by the learned Metropolitan Magistrate u/s 164 Code of Criminal Procedure with the difference that while deposing in Court she categorically stated that when she was abducted, all the accused had their faces muffled, a fact not disclosed in her statement recorded by the learned Metropolitan Magistrate.

13. Relevant would it be to note that the time when prosecutrix claimed to have been abducted was 9:00 PM and in her statement Ex.PW-1/A, except for naming Ram Singh, she had named no other accused and did not even state of their residence and had claimed that if brought before her she could recognize them and in her statement made before the learned Metropolitan Magistrate she had named all the accused and had also stated that she knew them as they were all residents of the same neighbourhood, it is but obvious that a good lawyer would have questioned the prosecutrix on this vital improvement in her statement recorded before the learned Metropolitan Magistrate. It is apparent that the prosecutrix was under an obligation to explain an important omission in her statement Ex.PW-1/A and unless satisfactorily explained, it would be an obvious case of a material improvement. This assumes importance in light of the fact that save and except Daulat Ram who was arrested on 16.9.1985, no other accused was put up for TIP and Phool Chand, Subhash, Mahesh, Laxmi Narain and Acchey

Lal were arrested on 3.3.1985 and Ram Singh was arrested on 29.3.1985, statement of the prosecutrix before the learned Magistrate was got recorded belatedly on 8.4.1985.

14. The prosecutrix gave the reason that she did not name other accused since it was dark. No supplementary question was put to the witness as to what did she mean by the response, but it is apparent that what the prosecutrix was conveying was that since it was dark, she could not see the face of her tormentors.

15. This response of the prosecutrix does not rule out the possibility of the prosecutrix being made to improve upon her statement when she appeared before the Magistrate and when she deposed in Court and factoring in the fact that while deposing in Court she said that the face of the accused was muffled when she was abducted and that when she was being raped her face was covered with a shawl, the inescapable conclusion would be that the prosecutrix has indeed improved upon her version on a material aspect of the matter; the accused would be entitled to the benefit thereof.

16. We would highlight the fact that the prosecutrix resides in House No. 367, Block 29, Trilok Puri. Mahesh resides in Block No. 29, House No. 433, Trilok Puri, Subhash resides in Block No. 28, House No. 382, Trilok Puri, Laxmi Narain, Daulat Ram, Ram Singh, Phool Chand and Acchey Lal resides in Block No. 33 in House No. 292, 26, 358-59, 24 and 205 respectively. The prosecutrix and the accused are residents of the same neighbourhood and this has also to be factored in while considering that in her statement Ex.PW-1/A, she could name none other than Ram Singh.

17. We highlight that SI Manphool Singh, when questioned as to why did he not put up for TIP the accused who were arrested by him on 3.3.1985 and 29.3.1985, he replied that since the prosecutrix knew the said accused and it was at her instance and he apprehend them, there was no necessity or requirement to subject the accused to a TIP. If this was so, it remains unexplained that the prosecutrix did not give the name of any accused save and except Ram Singh.

18. The probability of a true version has also to be considered in light of the fact that the prosecutrix claims her face being covered with a shawl after she was abducted and taken to a lonely spot where she was gang raped and claims that while she was being raped her face was covered with a shawl, but she is able to tell the road through which the TSR was driven past and the spot where she was raped. This tends to lean in favor of the fact that since she knew Ram Singh, she voluntarily sat in the TSR of Ram Singh, who developed bad thoughts and subjected her to a rape and probably a few friends of his joined in the rave. For the probably reason the other accused were known friends of Ram Singh, the investigating officer has acted overzealous. But we need not theorize or enter into surmises and conjectures as to what could have happened as we need not

do so. Law does not require a Judge to pen as to what actually happened. At a criminal trial, it is the prosecution which is under an obligation to prove what actually happened.

19. Before bringing the curtains down we may note that Phool Chand died during trial and hence qua him proceedings abated. Ram Singh and Acchey Lal absconded when on interim bail and qua them the trial was segregated and they have been declared PO. During the pendency of the appeal, Appellant Daulat Ram expired on 5.5.2004.

20. There is a technical error of a material nature in the charge and the order of conviction. The Appellants have been charged for the offence punishable u/s 376 IPC but the conviction has been sustained for the offence punishable u/s 376(g) IPC, it is apparent that neither Appellant was charged for the offence of gang rape. But since we are acquitting the Appellants on merits by giving them the benefit of doubt, we leave it at that.

21. The 4 captioned appeals accordingly stand disposed of acquitting Appellants Subhash, Laxmi Narain and Mahesh of the charge framed against them and set aside the impugned judgment and order dated 20.4.1998 convicting them for the offence punishable u/s 376 IPC. The order dated 25.4.1998 sentencing them to undergo RI for life is quashed. Qua Appellant Daulat Ram, declaring his innocence by giving him the benefit of doubt, but noting that he died during the pendency of the appeal, we declare the proceedings having abated qua him.

22. The bail bond and surety bond furnished by the Appellants are discharged.

23. We must pen a word of appreciation for Ms. Avni Singh, learned Counsel for the Appellants who is a young lawyer with only 7 months" standing at the bar. A brief handed over to the young counsel in Court today in the forenoon was argued very ably in the afternoon by the young counsel, who has earned an acquittal for her clients. We complement the young lady for the precision of her submissions and must acknowledge that the core of the issue was not only grasped by the young counsel but additionally was argued in its pith and substance to demolish the credibility of the prosecutrix. We wish her a successful career.