

(2013) 02 DEL CK 0415
In the Delhi High Court
Case No : Criminal A. 464 of 2001

Ganga Sharan @ Chotu and Another	APPELLANT
Vs	
State of Delhi	RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 202, 376, 506

Citation : (2013) 02 DEL CK 0415

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : K.B. Andley, with Mr. M.L. Yadav, for the Appellant; Fizani Husain, APP, for the Respondent

Final Decision : Allowed

Judgement

S.P. Garg, J.—The appellants-Ganga Sharan @ Chotu (A-1) and Surender Kumar (A-2) impugn judgment dated 16.05.2001 and order on sentence dated 26.05.2001 in Sessions Case No. 152/2000 arising out of FIR No. 37/2000 PS Kapashera by which A-1 was held guilty u/s 506 IPC and sentenced to period already undergone by him and A-2 was held guilty for committing offences punishable under Sections 376/ 506 IPC and sentenced to undergo RI for seven years with fine Rs. 4,000/-. The present case was registered on 18.02.2000 on the statement (Ex. PW-1/A) of the prosecutrix "X" (assumed name). She disclosed that on 05.01.2000 when she was alone in the house, at about 01.00 P.M. A-2, her brother-in-law (jeth), committed rape and threatened to kill her. During investigation, both A-1 and A-2 were arrested. Statements of witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was submitted against them for committing offences punishable under Sections 376/ 506/ 202/ 201 IPC. The prosecution examined ten witnesses. In their 313 Cr. P.C. statements, the accused pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted A-2 under

Sections 376/ 506 IPC and acquitted A-1 of all the charges except Section 506 IPC. Being aggrieved, the appellants have preferred the appeal.

2. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of the prosecutrix without independent corroboration. The prosecutrix did not explain the inordinate delay in lodging First Information Report. The Forensic Science Laboratory report did not establish the appellants' involvement. No independent public witness was associated at any stage of the investigation. Learned APP urged that the conviction of the appellants is based upon the reliable and cogent statement of the prosecutrix which needs no corroboration.

3. I have considered the submissions of the parties and have examined the record. It is not in dispute that A-2 is the brother-in-law (jeth) of the prosecutrix. Undoubtedly, relations between the prosecutrix and her husband A-1 were strained. The prosecutrix was married to A-1 on 11.07.1993. She lodged complaint in Crime against Women Cell, East Delhi against her husband and in-laws for harassing her. The said complaint was settled/ compromised subsequently. In her statement in the Court, she further disclosed that her husband deserted her and rejoined her company after three years. Thereafter, he filed a case against her for misappropriating articles worth Rs. 50,000/-. The matter was settled due to the intervention of her mother-in-law in 1998. It is also not disputed that the A-2 never lived with the prosecutrix and had come to Delhi from village in search of a job on 03.01.2000. The alleged occurrence happened on 05.01.2000. However, the prosecutrix did not lodge First Information Report that day or soon thereafter. The present case was registered on her statement, after a delay of 42 days. The prosecutrix did not give plausible explanation for not lodging the report with the police promptly. She had attended the marriage of her sister with her husband at her parents' house on 08.01.2000. Even that time or soon thereafter, she did not lodge any complaint with her parents or the police. Complaint (Ex. PW-5/C) made to CAW Cell is dated 19.01.2000 where there is overwriting on date 05.01.2000. She suspected A-1's involvement and accused him that A-2 committed rape upon her with his consent. Consequently, A-1, prosecutrix's husband was also arrested in this case. However, in her deposition in the Court, she did not attribute any role to Ganga Sharan (A-1). In the cross-examination, she specifically admitted that she was unable to say whether consent of her husband was or was not there in the incident. In her statement (Ex. PW-1/A) also she did not suspect her husband's complicity in the incident. She did not depose if any threat was extended by A-1 and if so when and where. A-1, prosecutrix's husband is not imagined to allow her brother to rape his wife when they were living together with their child in the rented accommodation. A-2 had come from village in search of job on 03.01.2000. The complainant even alleged that on an earlier occasion, he had caught hold her hand. However, she did not elaborate when any such occurrence took place or whether she reported the incident to her husband or her family

members. In that eventuality, she must not have permitted him to visit the house in the absence of her husband.

4. During investigation, letter (Ex. PW-5/H) purportedly written by X's husband was produced in which it was mentioned that his brother (accused Surender) had done "wrong act". However, the handwriting expert was unable to give specific opinion in report (Ex. PW-5/A) if the questioned handwriting was similar to the specimen handwriting of X's husband. Letter (Ex. PW-5/H) is silent as to what "wrong act" was done by the accused or if he committed "rape". This letter rules out of her husband's connivance in the incident.

5. The appellants' conviction is based upon the sole testimony of the prosecutrix. She in her statement deposed that on 04.01.2000, her husband made a telephone call at her parents' house and asked her to come at Brijwasan as his elder brother Surender had come from village. On the evening of 04.01.2000, she came to Brijwasan. She prepared food and they took dinner. Her jeth Surender went to the room of landlord and slept there. On 05.01.2000, her husband told that during lunch hour, his brother would come and directed her to serve him lunch. When A-2 reached at noon time, she served him lunch. A-2 called her to talk about family matter. When she went to him, A-2 raped her against her will and threatened if she raised alarm, he would stab and kill her. A-2 was having a knife. He locked the room from outside and went. This statement of the prosecutrix has not been corroborated at all. She did not raise hue and cry at that time. She did not lodge any report to the police. Nothing is on record to show if she offered any resistance or caused any injuries to the accused. She herself did not go for her medical examination to ascertain if any injuries were sustained by her. In the evening, when her husband returned, she did not take him to the police station to register complaint. She kept mum and attended the marriage of her sister on 08.01.2000 at her parents' house. She did not inform the incident to her parents and they in turn also did not register any case or took up the matter with A-1 and his family members. PW-2 (Kamla), X's mother has given inconsistent version. She deposed that when she had gone to the house of her sister-in-law to deliver invitation card for the marriage of her daughter, "X" made a telephone call at her neighbour's house and informed that her jeth Surender had committed rape upon her. When she went to the house of her daughter, she informed her about the incident. She introduced a new version that A-2 had told her that he had done the "act" under the influence of liquor and had felt sorry. No such fact was revealed by the prosecutrix in her statement.

6. The prosecutrix was medically examined after 42 days of the incident on 18.02.2000 by PW-9 (Dr. Shalu Aggarwal) who proved the MLC (Ex. PW-9/A). No injury on the body or breast was noticed. There were no sign of any perineal injury. She admitted in the cross-examination that if a rape victim is produced for medical examination after 42 days, it cannot be ascertained whether she was raped or not. The prosecutrix did not hand-over her clothes soon after the incident to enable the Investigating Officer to detect semen or blood. In the

cross-examination, she admitted that she was having seven months' pregnancy. The delivery was, however, normal.

7. I am conscious that conviction can be based upon the sole testimony of the prosecutrix and it needs no corroboration. However, in *Sadashiv Ramrao Hadbe Vs. State of Maharashtra and Another*, , the Supreme Court observed:

It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen

8. Similarly, in *Narender Kumar Vs. State (NCT of Delhi)*, , the Supreme Court observed:

16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

17. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence.

9. In the present case, the story projected by the prosecutrix is so improbable that it cannot be believed. It is true that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. There is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

10. In the instant case, relations between the prosecutrix and her husband and in-laws were strained. A-2 had visited Delhi on 03.01.2000, when the prosecutrix was present at her parents' house. She suspected connivance of her husband A-1 with A-2 in committing rape upon her and it led to their arrest. The prosecutrix did not lodge report with the police for 42 days. Her statement was recorded after a gap of 42 days. She did not offer any plausible explanation for the inordinate delay in lodging the report with the police. She did not get herself medically examined. She did not handover her clothes which she was wearing at the time of alleged occurrence. She attended the marriage of her sister with her husband on 08.01.2000 and did not report the incident to her parents when there was no threat. Knife allegedly used by A-2 in the incident was not recovered. After the occurrence, the prosecutrix and her husband are living separate. PW-4 (Prem Singh) did not support the prosecution and categorically stated that he had not seen any incident. The prosecutrix never lodged any complaint against A-2 for outraging her modesty on an earlier occasion. Delay in lodging the report is fatal. There was no reason for filing a complaint after inordinate delay. She was under no threat not to report the incident to the police. She was aware of the legal proceedings and had earlier approached Crime against Women Cell for her harassment by her husband and in-laws. Conduct of the prosecutrix was unnatural and unreasonable.

11. Considering the facts and circumstances of the case, I am of the considered view that the prosecution was unable to prove the guilt of the appellants beyond reasonable doubt. The appellants deserve benefit of doubt. Conviction and sentence of the appellants are set aside. The appeal is allowed and the appellants are acquitted. Bail bond and surety bond of A-2 are discharged. Trial court record be sent back forthwith.