

(2020) 01 DEL CK 0416

In the Delhi High Court

Case No : Criminal Revision Petition No. 651 Of 2018

Gunjan Sehgal

APPELLANT

Vs

State (Nct Of Delhi) & Ors

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 227

Indian Penal Code, 1860 — Section 34, 406, 420, 468, 471

Citation : (2020) 01 DEL CK 0416

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Vikram Dua, Dr. M.P. Singh, Tushar A. John, Nikhil Sharma

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. By way of present revision petition, the petitioner/complainant has assailed the order of discharge dated 05.05.2018 passed by learned Addl. Sessions Judge in SC No. 111/2017 arising out of FIR No. 225/2013 registered under Sections 376(2)(g)/506 IPC.

2. The wheel of law was set into motion by a complaint dated 17.05.2013 filed by the petitioner/complainant addressed to the Commissioner of Police, Delhi resulting into registration of the present FIR on 22.06.2013. Briefly, the allegations made in the aforesaid complaint, as noted in the impugned order, are reproduced below :-

"3a. That she had been working as Manager at Affinity Salon at 24, Community Centre, Basant Lok, Vasant Vihar and that one Vishal Sharma was the proprietor thereof and Karan Chadha was the General Manager of the said establishment.

b. That on 28.01.2013, at about 11.30 p.m, in the basement of the aforementioned premises, the two aforementioned persons had committed gang

rape upon her. According to the complainant, on this date, the complainant had participated in the Managers' Meeting held at Wella Academy situated at Select City Mall, Saket, New Delhi and that after the said meeting was concluded, at about 11 p.m., both the accused persons took her alongwith them in their car on the pretext that they would drop her at the place of her residence, but instead, they took her in their car to the office of Affinity Salon and on the way, they served her a Campa Cola laced with some intoxicants and that she became semi unconscious after consuming the same.

c. That the accused persons thereafter forcibly had sexual intercourse with her and that while committing the said act, they prepared a video photography of the act and had shown it to her and had threatened her that in case she discloses to anybody the act committed by them, they will disclose the said video to her relatives.

d. That the accused persons had repeated this act of forcible sexual intercourse upon her again on 06.03.2013 at about 8.30 p.m, on 10.04.2013 at about 8.30 p.m and finally on 03.05.2013 at about 8.30 p.m. On this day, according to the complainant, after both the accused persons had forcibly committed rape upon her, she had threatened them that she would report the incidents to the Police which led to a heated altercation between her and the accused persons and then the accused persons threatened her that they would implicate her in a false case of criminal breach of trust and forgery of documents and that to put her under fear, they even brought certain documents already manufactured by them and also called a police officer and then all of them in pursuance of their common intention threatened her that if she wants to get rid of the aforementioned criminal case of criminal breach of trust, she should pay an amount of Rs.3 lacs to them or else they will get her arrested on the spot and will take her to the Police Station.

(e) That on account of extreme shock and fear of the said threat of the accused persons, she begged them for grant of some time for arrangement of said money and that she was allowed to go to her home only after she gave a written undertaking to them that she will return on 04.05.2013 with the aforesaid amount demanded by them.

(f) That on 04.05.2013, she was called by the accused persons to report to the office of Affinity Salon and may again informed her that in case she does not pay them the amount of Rs.3 lacs, they will get her arrested in a case of forgery and criminal breach of trust and will also get the news of her arrest published in a local newspaper and they further told her to come with an amount of Rs.3 lacs at P.S. Vasant Vihar. Accordingly, the complainant alongwith her parents reached at P.S. Vasant Vihar where in presence of SI Nand Kishore, she paid an amount of Rs.3 lacs and it is her grievance that despite payment of said amount, the accused persons still went ahead and got registered an FIR No. 152/13 at P.S. Vasant Vihar, New Delhi against her for having committed the offences punishable u/s 406/420/471/467/34 IPC. It was prayed by the complainant that

her allegations should be looked into and inquired by an officer not below the rank of ACP of a District other than the District of PS Vasant Vihar for according to her the ACP of P.S Vasant Vihar had colluded with the accused persons."

3. Learned counsel for the petitioner has contended that the trial court failed to appreciate that the complainant made categorical statement of rape committed by the respondents on four specific dates. He further submitted that despite complainant's mentioning in the complaint that the respondents prepared a video of the entire act of rape, the Investigating Officer has not seized the mobile and sent the same for FSL analysis. He also submitted that the Investigating Officer did not seize the CCTV footage. He thus urged that for default in investigation, the petitioner/complainant should not suffer. He has relied upon the decision rendered in State of UP vs Chhotey Lal reported as (2011) 2 SCC 550.

4. Per contra, learned counsel for the respondents has supported the impugned order by submitting that there was enormous delay in filing of the complaint dated 17.05.2013 filed by the petitioner. It was submitted that during investigation, the statements of about 8-9 employees of the company were recorded who did not support the petitioner's complaint. Further, the CDR location details of the petitioner/complainant on the relevant date did not show her presence at the spot. It was also urged that the petitioner filed the aforesaid complaint only as a counter blast to the respondents' complaint against her in respect of which FIR No. 152/2013 was registered on 05.05.2013 under Sections 406/420/468/471/34 IPC at P.S. Vasant Vihar. In support of his submission, he has placed reliance on the decision of a Coordinate Bench of this Court in Ramesh Thakur vs. State (NCT of Delhi) and Ors reported as (2013) 200 DLT 676.

5. I have heard the learned counsel for the parties and have gone through the case records as well as the written submissions filed on behalf of the parties .

6. It is trite law that statement of a prosecutrix is akin to the statement of an injured complainant or witness. Her testimony, if found to be reliable, alone is sufficient to convict the accused and no corroboration is required. The court may look for some corroboration only to satisfy its conscience and to rule out any false accusation. [Refer: Chhotey Lal (supra)].

7. As per the petitioner/complainant's case, she was working as a Manager in the establishment where respondent no.2 was the proprietor and respondent no. 3 was the General Manager. The petitioner/complainant, in her complaint, stated that both the respondents committed act of rape on her in the office premises on the following four dates and circumstances :

(i) 28.01.2013 at about 11:30 pm

A Manager meeting was held at Select City Mall, Saket, New Delhi.

The meeting concluded at about 11 pm whereafter on the pretext of dropping her at her residence, the respondents took her in their car to the office premises. A Campa Cola laced with some intoxicating substance was served to her after

which the petitioner became semi unconscious. The respondents committed forcible sexual intercourse with her in the basement and also prepared a video of the same. She was shown the video and threatened not to disclose about the sexual intercourse failing which the video would be shown to her relatives.

(ii) 06.03.2013 at about 08:30 pm

The respondents committed forcible sexual intercourse.

(iii) 10.04.2013 at about 08:30 pm.

The respondents committed forcible sexual intercourse.

(iv) 03.05.2013 at about 08:30 pm

The respondents committed forcible sexual intercourse in the basement of the office premises. At about 10 pm, the petitioner raised serious objections against respondents' forcible conduct and threatened them that she would report the incident to the police which resulted into heated altercation between them. The respondents threatened to implicate her in a false case of criminal breach of trust and forged documents. The respondents called a police officer and all of them threatened her to pay Rs.3 lacs else she would be arrested and taken to police station. The petitioner was shocked and under fear agreed to bring Rs.3 lacs on the next day. The respondents called her on 04.05.2013 and reminded her about the payment of Rs.3 lacs. The petitioner/complainant along with her parents reached P.S. Vasant Vihar and paid Rs.3 lacs to the respondents. The respondents however went ahead and got the aforementioned FIR No. 152/2013 registered against her.

8. From the above sequence of events as narrated in the complaint, the first incident of rape occurred on 28.01.2013. The incident was repeated on 06.03.2013, 10.04.2013 and 03.05.2013. The petitioner/complainant for the reasons stated in her complaint, did not report the incident to anyone including the co-workers, parents and the police till 17.05.2013.

9. As per the charge-sheet, on the relevant date, the petitioner/complainant was about 25 years of age and already married. Her husband was also an employee of the establishment and was working in the same office premises.

10. According to the complaint filed by the petitioner/complainant, she has gone to the police station Vasant Vihar on 04.05.2013 along with her parents and paid Rs.3 lacs to the respondents on account of alleged threat given by them to implicate her in a false case. The petitioner/complainant chose not to lodge a complaint/FIR on 04.05.2013.

11. On 04.05.2013 at respondents' complaint, FIR No. 152/2013 was registered against the petitioner/complainant in which she was arrested on 07.05.2013 and produced before the Metropolitan Magistrate. She was also produced before the concerned doctor for the medical examination where her MLC was prepared. The petitioner/complainant moved a bail application and was released by the

concerned Court vide order dated 10.05.2013. It is relevant that at none of the aforesaid occasions, the petitioner/complainant made any allegation of forcible sexual intercourse against the respondents before any of the authorities. It is also relevant to note that the aforesaid FIR was registered against the petitioner/complainant and her husband on the ground that they had got printed forged coupons of the respondents' establishment resulting in financial loss.

12. The aforesaid position continued till about 17.05.2013 when for the first time, the petitioner/complainant levelled allegation of forcible sexual intercourse against the respondents in her compliant addressed to the Commissioner of Police.

13. During investigation, the factum of marriage of the petitioner/complainant was verified to be correct. The Investigating Officer tried to obtain the CCTV footage, however, the same on account of delay was not available having been wiped out. The statements of the other employees of the establishment were recorded. It has come in the statements that on 28.01.2013 i.e., the date of the first incident, the petitioner/complainant had left the venue of the meeting with her husband whereas some of the employees had accompanied the respondents. The statement of Uma Shanker, the guard at the office premises, was recorded under Section 164 Cr.P.C., however, he did not support the petitioner/complainant's allegations. Although learned counsel for the petitioner submitted that at the time of recording his statement, it was put to him whether he was under any kind of influence to which he responded in affirmative. However, no question was put to him about the person under whose influence he was. Rather, learned Magistrate after recording his satisfaction proceeded to record the statement of the guard. The CDR details of the petitioner/complainant was collected for the aforesaid period. As per the location chart mentioned in the CDR details, the petitioner/complainant's location was not found at the alleged place of the incident i.e., office premises which are located in the Community Complex, Vasant Vihar. Instead, the petitioner/complainant's location at the relevant time on the aforesaid dates was shown at her residence.

14. The relevant observations of the Sessions Court with respect to the statement of the petitioner/complainant and the CDR details are reproduced herein :

"A. It is the own statement of the prosecutrix that on 03.05.2013 she had told the accused persons that she would be filing a complaint against them with the Police since she was fed up with their exploitation of her. According to the assertion made in the complaint, when she told the accused persons of her intentions, they threatened her that if she dares to file a complaint against them, they would falsely implicate her in a case of forgery/embezzlement. She further goes on to narrate that thereafter the accused persons called a police official to their office and made her sign on some fabricated documents and thereafter even demanded Rs.3 lacs from her for not pressing the charges against her. It absolutely belies logic and common sense that if the accused persons, according

to the complainant, were threatening her to falsely implicate her and then infact went ahead and got one FIR registered against her, what stopped the complainant then from making a complaint against the accused persons for having gang raped her. As narrated hereinabove, the prosecutrix herself in her complaint has stated that on 03.05.2013 she had made up her mind to make a complaint against the accused persons irrespective of the fact that they had an obscene video clip featuring her - in view of such assertions, it is beyond comprehension as to why the complainant did not then go ahead and inform the Police officials of PS Vasant Vihar that she was being falsely implicated by the accused persons in a case of forgery and embezzlement and in fact, it was the accused persons who had been gang raping her. Her statement that all the police officials of PS Vasant Vihar were acting in collusion with the accused persons, does not explain as to why did she not then bring these facts to the Ld. MM before whom she was produced and sent to judicial custody. Admittedly, even while seeking bail it was not at all averred before the concerned court that it is the prosecutrix who was the victim of gang rape and a false case has been registered against her by the accused persons and on the contrary, admittedly the prosecutrix paid an amount of Rs.3 lacs to the accused persons and took a plea before the Ld. Court that the mastermind of the fraud committed was infact Rakesh Thakur and that she had nothing to do with the fraud. Though it has been rightly contended by the Defence that even this plea of the prosecutrix was false because it stands verified that she had been married to this Rakesh Thakur, what is more relevant for the purposes of the present case is that it is only after the prosecutrix was release on bail in the said case that a week thereafter she chose to give a complaint to the Commissioner of Police alleging that the accused persons had committed gang rape upon her. The contention of the Ld. Counsel for the prosecutrix that all these questions being raised by the court are matter of trial and that the prosecutrix will furnish an explanation in this respect only during trial and not now is absolutely misplaced. There is no proposition of law which enjoins a court to accept the statement of the complainant bereft of common sense. In the considered opinion of this court, the statement of the complainant about what transpired on 03.05.2013 belies logic and it does not appeal to common sense at all as to why she did not lodge a complaint against the accused persons on 03.05.2013 itself (more so when it is her own assertion that the obscene video no longer remained a relevant consideration for her) and the court is within its right to ask the prosecutrix to explain the same, at this stage itself, in a case where the investigating agency after a complete and detailed investigation has found nothing incriminating against the accused persons and on the contrary has found sufficient evidence to negate the allegations of the complainant. As narrated hereinabove as many as 8-9 employees of Affinity Salon have informed the 10 that on 28.01.2013 all of them had witnessed the prosecutrix leaving the mall alongwith Rakesh Thakur in his vehicle. The guard of Affinity Salon who has also been examined by Ld. MM u/s 164 Cr.P.C. has given a categorical statement that on none of the nights alleged by the prosecutrix, had me accused persons come to Affinity Salon. His

categorical statement is that he was on duty all nights and that the keys of the branch office of Vasant Vihar, where the prosecutrix alleges that the rape had been committed upon her, used to remain only with the prosecutrix and Rakesh Thakur and himself i.e. the guard. Therefore, present is not a case where the statement of the prosecutrix could not be corroborated due to the nature of the offence committed upon her. Present is a case where there are at least 7-8 witnesses who have informed the 10 that the incidents alleged by the prosecutrix could not have taken place on the dates alleged by her and in the premises alleged by her.

B. Apart from these witnesses, the CDR of the mobile belonging to the prosecutrix also shows that she has made false allegations. As narrated hereinabove, according to the prosecutrix, on 03.05.2013 after the accused persons had committed rape upon her, at about 10 p.m in the basement of Affinity Salon, Community Centre, Vasant Lok, Vasant Vihar, she told them that she will be reporting about the incident to the Police and that thereafter both the accused persons threatened her that they would implicate her in a false case of criminal breach of trust and forgery of documents and further that to put her under fear they even brought certain documents for her to sign and thereafter called a police official at the said basement and that the accused persons and the police official then threatened her that they will get her arrested and will take her to the Police Station and that she was allowed to leave the basement only after she gave them written undertaking that she will return an amount of Rs.3 lacs to them on 04.05.2013. Now if these allegations of the prosecutrix were infact true then she should have been in the aforementioned basement right from 8:30 p.m (the time she alleges when the accused persons started to rape her) till 11-12 midnight. However, the CDRs of the mobile of the prosecutrix collected during investigation reveal that on this day w.e.f. 9:32 pm to 11:42 p.m, her location was at Keshav Puram, the place where she admittedly resides. As regards the contention of Ld. Counsel for the prosecutrix, on the basis of some literature downloaded from the internet, that since a cell phone has enough power to reach a cell tower upto 45 miles away depending upon the technology of the cell phone network, it is possible that while the prosecutrix was in Vasant Vihar on 03.05,2013 between 8:30 p.m. to 12 midnight, it is the cell power of Keshav Puram which connected to her mobile, suffice it to state that the same literature also mentions that in urban areas, cell power is reduced to eliminate interference with neighbouring towers owing to which a cell phone would have to be within a few hundred yards of a cell tower to pick up its signal. It is absolutely unacceptable that in a city like Delhi which has approximately 60,000 cell towers, though the prosecutrix was present in Affinity Salon, Vasant Vihar, her mobile phone will instead of connecting to a tower nearby Vasant Vihar, will connect to a tower in Keshav Puram, which is approx. 25 km away from Vasant Vihar. It cannot at all be ignored that on various other dates when the prosecutrix was, as per her contentions, present in Affinity Salon, Vasant Vihar or nearby areas, her location in the CDR is revealed at Vasant Lok, Vasant Vihar only - to cite an

example on the night of 28.01.2013,' at about 8:51 p.m., when the prosecutrix, as per her own assertion was in Vasant Vihar, her location in the CDR is shown to be at Vasant Vihar only. This court, therefore, does not find at all any ground to doubt the location of the mobile phone of the! Prosecutrix being reflected in the CDRs collected. The said CDRs also negate her allegations that on 06.03.2013, she was also raped by the accused persons at about 8:30 p.m at the same office of Affinity Salon, for the CDRs reflects that on 06.03.2013 at about 8:30 p.m., she was at Malviya Nagar, at about 8:40 p.m, she was at Aurobindo Marg, at about 9:16 she was at Brar Square and at about 9:45 p.m, she reached Keshav Puram, admittedly where her residence is. The said CDR thus reveals that from about 8:20 p.m to 9:45 p.m, the prosecutrix was travelling from Malviya Nagar to her house and therefore negates her allegation that she was being gang raped by the accused persons during this period. It is relevant to mention herein that though the Ld. Counsel for the accused persons had also sought to rely upon the CDRs of the mobiles of the accused persons to contend that their locations were nowhere near to the complainant on the dates and times she alleged that she had been gang raped by them, this court has not relied upon the same in view of the contention of Ld. Counsel for the prosecutrix that there may be a possibility that the accused persons may have been using some other mobile numbers. However, since the prosecutrix herself has not denied and has infact categorical accepted that she was only using one mobile number and that she had remained in possession of the same on various dates, on which the rape had allegedly taken, this court has, therefore, examined only her CDRs to verify her allegations and on the basis of the same, is of the considered opinion that the prosecutrix cannot at all be believed."

15. After investigation, a closure report was filed. The Matrimonial Magistrate ignored the closure report and took cognizance of the offence. The respondents were summoned. Although, petition bearing CrI. M.C. 571/2017 was filed by the respondents before this Court challenging the summoning order, however, on the next date, the same was withdrawn without any adjudication.

16. The scope of a revision under Section 227 Cr.P.C. and the guiding principles to exercise the powers are outlined in catena of decisions and it has been held that the material placed before the Court should give rise to a case of strong suspicion against the accused. The court has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused. [Refer: Sajjan Kumar vs Central Bureau of Investigation (2010) 9 SCC 368 and Union of India vs. Prafulla Kumar Samal and Anr (1979) 3 SCC 4.].

17. The conduct of the petitioner/complainant in not informing about the alleged offence from 28.01.2013 (first incident) and even from 03.05.2013 (fourth incident) till 17.05.2013, when the FIR came to be registered raises a considerable and strong doubt about the truthfulness of the allegations. The petitioner/complainant had ample opportunity during this time, having appeared

before police, the concerned doctor at the time of her MLC in the cross FIR, the concerned Magistrate or during her own bail proceedings, to complain against the respondents. The petitioner/complainant was working as a Manager and her husband was working in the same office where the alleged incidents stated to have happened. The statements of about 7-8 employees of the office of the petitioner/complainant were recorded with respect to the incident dated 28.01.2013 and none of them supported her allegations. In the MLC, she had refused taking of sample exhibits which otherwise would have helped the Investigating Agency in reaching conclusion. Even though the CDRs of the mobiles of the accused persons was also placed on record to show that their location was nowhere near to the petitioner/complainant, the Id. Session Court did not rely on the same as the petitioner/complainant contended that the accused persons may have been using some other mobile numbers at the time of the incidents. Despite, the said contention of the petitioner/complainant, the CDR charts of the petitioner/complainant also completely defy her allegations of her own presence at the spot on the alleged date and time. The Investigating Agency has verified the CDR location charts and filed the same along with the closure report. The Sessions Court in the impugned order has discussed the locations of the complainant at the relevant time and has been shown to be moving from one point to the other, away from the alleged spot i.e., the office premises of the complainant.

18. In view of the above discussion, I do not find any illegality, perversity or infirmity in the impugned order. Accordingly, the same is upheld and the revision petition is dismissed.