
(2014) 05 DEL CK 0207
In the Delhi High Court
Case No : Crl. A. 86 and 287/2000

Krishan Kumar

APPELLANT

Vs

State
 Vinay Kumar Tyagi Vs State of Delhi

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2014) 05 DEL CK 0207

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : K.K. Manan, Mr. Nipun Bhardwaj, Mr. Ankush Narang, Ms. Anjali Rajput, in Crl. A. 86/2000, Mr. Ranbir Singh Kundu, Advocate in Crl. A. 287/2000 and Crl. A. 498/2000 and Crl. M.A. Nos. 2349-2350/2000, Advocate for the Appellant; Neeraj K. Singh, APP, Advocate for the Respondent

Judgement

Mukta Gupta, J.—By these appeals the Appellants challenge the common judgment dated 29th January, 2000 convicting the Appellants for offence u/s 376(2)(g) IPC and the order on sentence dated 31st January, 2000 directing them to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 5000/- each and in default of payment of fine to further undergo simple imprisonment for a period of six months.

2. Learned counsel for the Appellant Vijay Tyagi contends that the Appellants have been falsely implicated. All the three Appellants were not known to each other and had been living separately, thus the offence as alleged could not have been committed by them. The prosecutrix and her husband were recalled when they clarified the position and stated that the Appellants were not the persons who were involved in the offence. The main witness Jeevan Lal in the presence of whom the prosecutrix was taken away and who was threatened has not been examined. Though it is alleged that the offence took place in the bushes, however no bushes have been shown in the site plan. Despite the allegation that the clothes of the prosecutrix were torn and thrown near the jhuggi, it is alleged

that semen stains were found on the clothes. It is the consistent case of the prosecution that when PW4 and the Police reached the spot, the prosecutrix was crying and had no clothes on her body. The rope with which the prosecutrix was allegedly tied was not seized. Though it is alleged that razor was shown to threaten Jeevan Lal and two of the accused"s have been arrested on the spot, there is no recovery of the razor. As per the allegations in the FIR the prosecutrix was dragged to the place of incident, however there are no injuries on her body showing dragging. PW 6 HC Jagdish Chand had a quarrel with Appellant Vinay Kumar Tyagi and thus he was also implicated. As per the case of the prosecution when PW4 reached the jhuggi, he was informed that his wife had been kidnapped, however he did not go to see his wife but went to the Police. The version of the prosecutrix is not corroborated by the FSL report.

3. Learned counsel for Raj Roop and Krishna Kumar while adopting the arguments made on behalf of learned counsel for the Appellant Vinay Kumar further states that though the prosecutrix stated that Jeevan Lal ran away from the spot, however PW4 stated that Jeevan Lal told him that three persons had taken away his wife. Despite Jeevan Lal being shown a razor, he raised no hue and cry on a road which is a busy road. The case of the prosecutrix is that her clothes were torn and not that they were removed. However, no clothes were seized from the spot. PW 15 stated that PW 3 the prosecutrix carried her clothes with herself to the Police Station. As per the witnesses, Raj Roop was arrested at the pointing out of PW 3, however this is only a ploy to deny the Test Identification report. There is no material on record to show that the Appellants" blood groups are "AB", so that it can be held that the semen stains found were that of the Appellants.

4. Learned APP for the State on the other hand contends that the prosecutrix has fully supported her version in the Court. Her statement is corroborated by the FSL report and the testimony of her husband PW4. Two of the accused"s were apprehended at the spot. The conviction can be based on the sole testimony of the prosecutrix and the same needs no corroboration from an independent witness or MLC or FSL report.

5. I have heard learned counsel for the parties. The case of the prosecution is based on the testimony of PW 3 the prosecutrix who has stated that she was living on the pavement outside Daulat Ram College in a jhuggi. There were two other jhuggis near her jhuggi i.e. of Jeevan Lal. Rest of the jhuggis were at a distance from their jhuggis. On 25th January, 1993 at about 8.00 PM she was making chapattis outside her jhuggi and her neighbour Jeevan Lal was sitting with her. Wife of Jeevan Lal had gone to her job and their three or four children were also with them at that time. The husband of the prosecutrix has gone to buy vegetables from the market. Appellant Prem Singh came there, when she had finished making chapattis for herself and was making the chapattis for Jeevan Lal. Appellant Prem slapped Jeevan Lal and asked him as to why he had made his jhuggi there, showed a razor to him and asked him to run away from

there. Thereafter, Appellant Prem pressed her mouth with his hand. In the meantime two other boys i.e. Appellant Vinay and Raj Roop came there and dragged her behind her jhuggi in the bushes. All the three persons tore her clothes and separated them from her person. They tied her hands and legs with a rope made of grass. Her weeping had no effect on them and all three of them committed rape on her one by one. On hearing the noise of her husband, the accused ran away leaving her there. Her husband came at the spot, untied her and brought her other clothes from the jhuggi. She wore the same and narrated the occurrence to her husband. When She and her husband were coming from the spot she saw that Police had apprehended Appellants Vinay and Prem. The third accused Raj Roop had run away from the spot. She further stated that she had gone with the Appellants towards Rohtak when accused Raj Roop was arrested by the Police from a bus stand on her pointing out. This witness has stated that the bushes were of thorns of a little height and the accused persons made her lie on the bushes. Again she stated that she was made to lie on the grass by the accused persons and thus she did not get any scratches on her back from the bushes. She states that the entire incident must have taken around 15 minutes to half an hour and when her husband came with the Police after the occurrence, Appellants Vinay hit PW 6 HC Jagdish Chand with a stone.

6. It may be noted that this witness was suggested that Prem Singh has been falsely implicated and his actual name was Krishan Kumar. Further, Appellant Vinay came when Prem Singh has already been arrested. This witness was recalled for cross-examination after an application was purportedly moved by this witness. However, she denied having sent any affidavit to the Court though admitted her thumb-impression on the affidavit. She also admitted her thumb-impression on the vakalatnama dated 10th October, 1990. She also admitted her thumb-impression on the application u/s 311 Cr. P.C. dated 10th October, 1994. She stated that her thumb-impressions were taken forcibly from her, though she had not lodged any FIR in this regard.

7. PW4 the husband of the prosecutrix has stated that on 25th January, 1993 at about 8.00 or 8.30 PM he left his wife at the jhuggi to buy goods from Vijay Nagar market in his rickshaw. When he returned after about half an hour, he found that his wife was not present in jhuggi and he was told by Jeevan that two-three persons caught hold of his wife and took her in an open compound where the bushes were there. PW4 ran towards Maurice Nagar Chowk for bringing the Police. There he met a Head Constable and a Constable to whom he narrated the version and they came with him. They searched the prosecutrix and found her inside the compound, where they found her weeping. It is the case of PW4 that when he reached there his wife had no clothes on her body. Thus he brought clothes from the jhuggi and gave it to prosecutrix who wore the clothes and came out.

8. The clothes of the prosecutrix i.e. her shirt and chunni were sent to FSL. As per the FSL report human semen was detected on the shirt and chunni of the

prosecutrix at three places and at two places they were of "A" group and at one place of "AB" group. Further the semen stains on the chunni were of AB group and on the underwear of the Appellant Prem Singh AB group. The prosecutrix in her cross-examination has clarified that she wiped her private parts with her chunni which explains the presence of semen stains. Further blood stains of AB group were found on the underwear of the prosecutrix. Presence of semen stains of more than one group on the torn shirt of the prosecutrix demonstrates that sexual intercourse was committed with her by more than one person having different blood groups.

9. The version of the prosecutrix is further corroborated by her medical examination. As per Ex. PW5/A though there were no marks of fresh injury in and around the vagina, however there were superficial scratches below the left knee, abrasion on the medial aspect of right thigh near Perineum (fresh abrasion), secretion from posterior fornix, were also blood stained. Thus, from the evidence on record it is apparent that Appellant Prem Singh was the first aggressor who has been duly identified and whose semen stains have been found on the shirt and dupatta of the prosecutrix as well as blood stains of the same group on the underwear of the prosecutrix.

10. As regards Appellant Raj Roop, the Appellant has himself given a suggestion that the prosecutrix voluntarily accompanied him. Further in regard to Appellant Vinay Tyagi though an affidavit was filed on the basis of which the prosecutrix was recalled for examination, however even in her further cross-examination on recall she stood by the prosecution case and reiterated her statement in examination-in-chief and that she was forcibly made to thumb-mark the documents.

11. The Appellants have also led defence evidence. DW 1 Jeet Singh has stated that Appellant Raj Roop was a gentle fellow and that on 25th January, 1993 he had gone with him to Rohtak, however no material has been produced to show the presence of Appellant at Rohtak with DW 1. Shri R.P. Tyagi, Advocate has appeared in support of Vinay Tyagi who stated that he had been engaged as a counsel by the prosecutrix and her husband and he had moved an application u/s 311 Cr. P.C., which bear his signature on the instructions of the prosecutrix and her husband. He also exhibited the application and the vakalatnama.

12. As discussed above, even on recall the prosecutrix stood by her case in the examination-in-chief for the material on record. The statement of the prosecutrix had due support from the statement of her husband, FSL report and MLC. In view thereof, I find no infirmity in the impugned judgment convicting the Appellants for the offence aforementioned or the order on sentence.

13. Appeals and application are accordingly dismissed. Bail bonds and surety bonds are cancelled. The Appellants will surrender to custody.