

(2016) 04 DEL CK 0039
In the Delhi High Court
Case No : CRL.A. 491 of 2004

Manjeet Kaur

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 211, 342, 366, 376

Citation : (2016) 231 DLT 30

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

Bench : Single Bench

Advocate : Mr. Sanjay Agnihotri, Advocate, Mr. Jatin Rajput with Mr. Anupam Dubey, Advocates, for the Appellant; Ms. Meenakshi Dahiya, APP, for the Respondent

Final Decision : Allowed

Judgement

S.P. Garg, J. - Both the above appeals are disposed of together as they arise out of a common judgment.

2. The appellants ? Manjeet Kaur and Veermati impugn a judgment dated 24.04.2004 of learned Addl. Sessions Judge in Sessions Case No. 94/97 arising out of FIR No. 202/94 PS Janakpuri by which the appellant ? Manjeet Kaur was held guilty for committing offences punishable under Sections 366, 109 IPC read with Section 376 IPC, 342 and 120B IPC read with Section 211 IPC and the appellant ? Veermati was held guilty for committing offence punishable under Section 120B IPC read with Section 211 IPC. By an order dated 15.05.2004, they were awarded various prison terms with fine.

3. Briefly stated, the prosecution case as reflected in the charge-sheet was that on the night intervening 19/20.04.1994 one Dinesh Dubey arrested in case FIR No. 201/94 of Police Station Janakpuri made a disclosure statement informing that he and his friends had a land dispute with Chander Pradhan and wanted him to be implicated in a false case. Accordingly, they all hatched a conspiracy to

involve Chander Pradhan in a rape case. On 10.04.1994, the victim "P" (changed name) was abducted by the appellants and was raped by Dinesh Dubey. She was compelled to lodge false complaint under Section 376 IPC against Chander Pradhan. Subsequently, the victim was recovered from Bindapur Extension where she was in the captivity of the appellant ? Manjeet Kaur. She recorded her statement ; she was medically examined. Statements of the witnesses conversant with the facts were recorded. The prosecution arrested Dinesh Dubey (since expired), Abdul Aziz Mirza, Shanta Bhandari, Surjeet Singh, Vijender Singh and Bharat Bhushan besides the appellants. Statements of the witnesses conversant with the facts were recorded. Upon completion of the investigation, a charge-sheet was filed against all of them in the Court. In order to establish its case, the prosecution examined seventeen witnesses. In 313 Cr.P.C. statements, the accuse persons denied their involvement in the crime and pleaded false implication. Since Dinesh Dubey had expired during trial, the proceedings against him stood "abated". After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court, by the impugned judgment, acquitted Abdul Aziz Mirza, Surjeet Singh, Vijender Singh and Bharat Bhushan of all the charges. It is relevant to note that State did not challenge their acquittal. Shanta Bhandari and Veermati (the appellant) were convicted under Section 120B IPC read with Section 211 IPC only. It is unclear if the said conviction has been challenged by Shanta Bhandari. Being aggrieved and dissatisfied, the appellants have filed the instant appeals.

4. I have heard the learned counsel for the parties and have examined the file. At the outset, it may be mentioned that the original Trial Court record was not available. Vide letter No. 27267-Crl. dated 09.09.2011, the Trial Court was directed to reconstruct the record. Vide letter dated 17.01.2012, the learned Addl. Sessions Judge sent the reconstructed file to the extent it was possible. On perusal of the reconstructed Trial Court record, it reveals that photocopies of statements of PW-1 (Jayanti Thakur), PW-2 (Chandrika Thakur), PW-5 (Const.Hari Ram), PW-8 (Dr.Shami Bhasin), PW-9 (Insp.Nand Kumar), PW-10 (Ram Sagar Yadav), PW-12 (O.P.Yadav) and PW-15 Inspector Rajinder Singh Adhikari are on record. Some pages of the charge-sheet have in been reconstructed. Apparently, in the absence of complete Trial Court record, this court is handicap to scrutinise the impugned judgment. The incident pertains to the year 1994. No useful purpose will be served to seek de-novo trial.

5. Certified copy of the impugned judgment is on record. Main allegations were against accuse Dinesh Dubey who as observed above has since expired and the proceedings against him have been dropped as "abated". The victim "P" had appeared as PW-4 before the Trial Court. In her examination-in-chief, she deposed that earlier she was married to one Trilok Nath and at the time of incident, she was living separately in Janakpuri. In April, 1994, she was having full time pregnancy. Dinesh Dubey came to her house ; took her somewhere and told that an old man namely Chander Pradhan was to be implicated in a false rape case. She declined to implicate him. Dinesh Dubey told her that he would

have sex with her and the complaint would be lodged against Chander Pradhan. She was threatened that in case of denial, he would kill her and the child in her womb. She was shown a revolver by him. On that, she went to Police Post Matiala and lodged the report as tutored by Dinesh Dubey. Dinesh Dubey committed rape upon her and she was kept confined by him for fifteen days at different places. One day, finding an opportunity, she escaped from a hotel in Paharganj and came back to her house. Next day, she was taken to the police station by the police where she narrated the entire incident vide statement (Ex.PW-4/A). She in recorded her 164 Cr.P.C. statement. Since the victim had deviated from her statements recorded before the police and the Magistrate, the learned Addl. Public Prosecutor, after seeking Court's permission, cross-examined her. In the cross-examination, she accepted the suggestions put to her by the learned Addl. Public Prosecutor and reiterated the version given by her before the police/Court.

6. In the cross-examination, she did not identify accuse Bharat Bhushan and Surjeet Singh. About Shanta Bhandari, Manjeet Kaur and Veermati (the appellants), she deposed that none of them was known to her before the incident. She further disclosed that a divorce petition was pending and she was residing with her Bhabhi Satnam about 2 or 3 months before the incident. She in did not identify accuse Vijender Singh.

7. Victim's statement does not inspire confidence as at the first instance, she did not implicate all the accuse persons charge-sheeted for their role in the episode. She only levelled allegations against Dinesh Dubey who has since expired. Subsequently, when she was cross-examined by learned Addl. Public Prosecutor, she merely accepted the suggestions put to her by him. Even in the cross-examination, she did not identify some of the accuse persons. The Trial Court did not consider her version sufficient to base conviction upon accuse Abdul Aziz Mirza, Surjeet Singh, Vijender Singh and Bharat Bhushan and it resulted in their acquittal.

8. PW-1 (Jayanti Thakur) and PW-2 (Chandrika Thakur) are social workers and are husband and wife. PW-1 (Jayanti Thakur) informed that in 1994 accuse Shanta Bhandari and Manjeet Kaur (the appellant) came to her along with a lady namely Veermati (the appellant). Shanta and Manjeet told her that another lady accompanying them was pregnant due to rape committed on her and requested her to take her to a senior leader. She took them to Mr. Om Prakash Kohli, State President BJP Delhi and introduced them to him. She did not know what further conversation took place between them. She did not recollect the name of the "girl" who was pregnant. In the cross-examination, she disclosed that Shanta Bhandari was in a social worker. PW-1's statement does not implicate the appellants. The victim did not disclose to her if she was in appellants' captivity or was forced to implicate any individual in a false rape case. Similarly, statement of PW-2 (Chandrika Thakur) PW-1's husband is of no consequence. PW-10 (Ram Sagar Yadav) in his Court statement disclosed that in the year 1994

one Jagdish was his tenant in B-72, Bindapur Extension. 3/4 persons used to reside in that room but he did not know them. He expressed ignorance about anything else about this case. Learned Addl. Public Prosecutor cross-examined him as he did not support the prosecution case. In the cross-examination, he denied if any "girl" was recovered by the police in his presence. PW-3 (Satnam) deposed that on 09.04.1994, "P" had come to her as she was not feeling well. She stayed in the house at night. On 10.04.1994, Manjeet Kaur (the appellant) took her to the doctor as she herself was busy. When "P" did not return till evening she went to Manjeet Kaur's house to enquire about her and she told that "P" had gone to her house. After 4 or 5 days, she came to know that Manjeet Kaur had got a false case registered against a Pradhan through her. Apparently, statement of this witness is inconsistent to the P's version. PW-3 (Satnam) did not claim that the victim was living with her in the said house for any specific period and was related to her. PW-4 "P" - the victim claimed that she was her "Bhabhi" and she was staying with her for about two or three months prior to the occurrence. PW-3 did not lodge any "missing" complaint when "P" did not reach her house. She did not take any steps to find her whereabouts though she was having full time pregnancy. The appellant ? Manjeet Kaur was apparently known and acquainted with PW-3 (Satnam). However, she did not inform the police about her disappearance. The victim claimed that she had remained in captivity for fifteen days and accuse Dinesh Dubey even sexually assaulted her. "P" did not lodge any such report for rape committed upon her by Dinesh Dubey.

9. Other witnesses examined by the prosecution are formal witness. It has not been explained as to why the appellants would conspire with Dinesh Dubey to falsely implicate Chander Pradhan in a rape case. Nothing has surfaced on record if the appellants had any nexus with Dinesh Dubey or had obtained any monetary benefit to conspire. On the same set of evidence, other accuse persons were acquitted by the Trial Court. It is unclear as to when the victim's delivery took place. Chander Pradhan did not lodge any complaint against any individual for his false implication. It is not clear as to what type of land dispute was with Chander Pradhan. No particulars of any such dispute have come on record.

10. In view of above evidence whatever is on record and whatever could be called out from the impugned judgment I am of the considered view that the prosecution has failed to establish its case against both the appellants beyond reasonable doubt. They deserve benefit of doubt. Consequently, their appeals are allowed. Conviction and sentence recorded by the Trial Court are set aside. Bail bonds and surety bonds of the appellants stand discharged. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.