
(2007) 08 DEL CK 0182
In the Delhi High Court
Case No : Criminal A. No. 24 of 2000

Pramod

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)

Citation : (2007) 08 DEL CK 0182

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sudhir Kumar, in Criminal A. No. 24/200, for the Appellant; Sunil K. Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this common order, I shall dispose of the above two appeals.

2. These appeals have been preferred against the Judgment of learned Additional Sessions Judge dated 12th October, 1999 and the order of sentence dated 23rd October, 1999 whereby she convicted the accused/appellants u/s 376(2)(g) IPC and sentenced the appellants to 10 years of RI and a fine of Rs. 2,000/- for the offense.

3. The victim, a married lady, about 17 to 18 years of age was from Punjab. She was deserted by her husband and also turned out by her parents. She started living in Delhi along with one person named Raju. On 24th September, 1997, she along with Raju went to Kalkaji Temple near Kalkaji for offering prayers when they got free from Pooja it was night time she and Raju decided to sleep in nearby Dharmshala. Raju enquired from one of the vendors about the place for sleeping and the vendor, Pramod, suggested to him that they should sleep in the nearby DDA shed. So she and Raju went to DDA shed and slept there. Between 12 midnight and 1.00 AM Pramod came to DDA shed along with his four more

accomplices and they gave beatings to Raju and made him run away from the place and thereafter prosecutrix was physically picked up and taken to nearby deserted DDA park where she was gang raped by these five persons one after another. Each one of them had taken turn to rape her once and they wanted to have second turn of raping her one by one. On the question as to who would rape her first second time, they quarreled among themselves and one of them took out a razor and injured the other. Finding a chance to cry, the girl cried for help. On hearing her cries, two persons Raghbir, s/o Bhagirath and Raju, s/o Tej Pal, sleeping in nearby shops rushed there and rescued her from the clutches of those boys. Accused Pramod and accused Kalia, who was injured by Pramod, were apprehended on spot by them. The injured Kalia was bleeding profusely and was taken to hospital by Raju, s/o Tej Pal and Pramod/appellant and the girl were being taken to police post when police met on the way near the Temple and Pramod was handed over to the police. On the disclosure of Pramod, third accused, Kamal Kishore, was also arrested.

4. The prosecutrix and the accused persons were got medically examined. torn and smeared clothes of prosecutrix could not be sealed since she had no alternative pair to change. However, underwear of the accused persons were taken.

5. During the trial, prosecutrix in her testimony narrated the events in the same manner as were narrated by her to the police, except that she did not remember the date etc. She supported the prosecution case fully. However, instead of saying that two persons were apprehended on the spot, she stated that three persons were apprehended on the spot. She identified the appellant Pramod and Kamal Kishore as rapists in the Court. She was cross-examined at length by the Counsel for the accused persons. During cross-examination, she reiterated the incident and stated that it was the accused Kalia who had suffered injuries at the hands of Pramod and it accused Kamal Kishore who raped her along with others. No suggestion had been given to her that no scuffle took place after first turn of her gang rape or that Pramod had not caused injuries to Kalia on the spot or that Kamal Kishore was not on the spot. She testified that she resisted the sexual assault. Her clothes were torn. Although she received no injuries on private parts but she had marks of resistance on her entire body.

6. The other two witnesses who supported the prosecution case are the two persons who had come to the rescue of this girl. PW-5, Raghbir, testified that on hearing the cries of "bachao bachao", he woke up and also awoke other boy Raju who was sleeping near him and both of them rushed to the source of noise and reached DDA park. There they found five persons ravishing the prosecutrix and on their reaching there, three of them fled away and two were apprehended by them. Out of those two persons, one was Kalia and other was Pramod. Accused/ Kalia had received razor injuries on his face and was bleeding. He was taken to AIIMS hospital by Raju. He took Pramod to police and handed over him to the police. He stated that one of the five persons was holding the girl by hair and

rest were near her. In all there were five persons. Accused Kalia was just sitting near the girl and was bleeding on account of injury on his face. Police met on the way when he was taking accused/Pramod to the police post. On the spot, the girl was found undressed and he (Raju), gave her clothes lying nearby so that she could cover herself and she wore them. No suggestion was given to this witnesses that they had not come to rescue of the girl or accused persons were not at the spot. The suggestion given was that Raju had not taken Kalia to the hospital and that PW-5, Raghbir had not gone to the place of crime and had not apprehended Kalia or Pramod.

7. A perusal of DD No. 31, Ex. PW-6/A recorded at Police Post Nehru Place would show that an information was given at the Police Post about admission of Kalia in injured condition in AIIMS hospital and he was got admitted there by Raju s/o Tej Pal. It was recorded in the DD that he received injuries in the jungle near Kalkaji Temple with a razor. No doubt has been raised by any of the appellants about the correctness of this DD. No question was asked to PW-6 who proved the DD. PW-7, Raju also testified that when he and PW-5, Raghbir on hearing cries reached near the place of crime they found that Pramod and Kamal Kishore were holding Kalia who had injuries on his face and he was bleeding from his wounds. There were two more boys, one of them was Desraj. He found Kalia in injured condition and took him to hospital and Raghbir took Pramod and prosecutrix to the Police Post, Nehru Place. He left Kalia in the hospital and came back to his shop. No suggestion has been given to this witness that he had not heard cries and had not rushed to the spot or that appellants were not on the spot or the prosecutrix in naked condition was not in the clutches of accused persons/appellants and others.

8. The learned Trial Court considering the testimony of prosecutrix and other witnesses convicted the appellants.

9. The appellants have argued that there were contradictions in the testimony of the prosecutrix and she during her cross-examination deposed that it was police who told her that there were three boys who had sexual intercourse with her forcibly and she had not seen the boys when they committed forcible sexual intercourse with her. It was argued that in view of this statement of prosecutrix, the testimony of prosecutrix could not have been believed by Trial Court and accused persons/appellants could not have been convicted. It is a settled law that testimony of a witness is not to be read in pieces and the entire testimony of the witness is to be considered to see the credibility and reliability of testimony of witness. Even the testimony of a hostile witness can be taken into consideration for convicting an accused, if hostile witness has supported the prosecution case in examination-in-chief, but during cross-examination, he turns hostile on some point. One erratic answer of a witness does not wash out the entire testimony of the witness. In the present case, the prosecutrix categorically testified that she was raped by five persons and the rapist quarreled among themselves at the question of second round of raping her and one of them

injured the other and she at that time got chance to raise voice and was rescued. Before that she was in the clutches of the rapists who had caught hold of her and forcibly laid her in the jungle. Her this testimony is corroborated by the testimony of other two witnesses who had rushed to her for rescue on hearing cries and caught two of the accused persons on the spot and identified two more. It is to be noted that the appellants used to live and work in the area of Kalkaji Temple and the rescuers knew them from before. That was the reason that Raju on finding Kalia in badly injured condition took him to hospital. Raju has named both the appellants as those who were on spot. The testimony of prosecutrix is also corroborated from her medical examination where injuries on her body have been recorded. These injuries show that she had resisted the effort of rape on her. There were multiple scratch marks on her body. There were multiple marks below her breast. There were multiple scratches on the right side of the abdomen. She told the doctor categorically that she was gang raped by five men. Thus, there could be no doubt about the credibility of the prosecutrix's testimony nor there can be any doubt about the involvement of the appellants since the appellant Pramod was caught on the spot and appellant Kamal Kishore was identified by one of the rescuers on the spot. Both the appellants had refused to undergo TIP and no suggestion was given to any of the witnesses that they were not involved in the rape or they had not committed the rape.

10. I consider that the Trial Court rightly came to the conclusion that the appellants were the persons who had gang raped the prosecutrix along with others. I find no infirmity in the judgment. The appeals are hereby dismissed.

11. Appellant Kamal Kishore is absconding after suspension of sentence. SHO concerned is directed to arrest him and lodge him in jail to undergo rest of sentence. Copy of the judgment be sent to Jail Superintendent.