

(2015) 08 DEL CK 0169

In the Delhi High Court

Case No : Criminal Appeal 1224/2011 and Crl. A. 116 of 2012

Ruksana Begum and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 109, 366A, 376(2)(g)

Citation : (2015) 9 AD 532

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

Bench : Single Bench

Advocate : Joginder Tuli, Pooja Arora and Ashu K. Sharma, for the Appellant;
Amit Ahlawat, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.P. Garg, J—Aggrieved by a judgment dated 06.08.2011 of learned Additional Sessions Judge in Sessions Case No. 48/09 arising out of FIR No. 999/06 registered at Police Station Sultan Puri by which the appellants were convicted under Sections 366A IPC and Section 109 read with Section 376(2)(g) IPC, they have preferred the instant appeals. By an order dated 20.08.2011, the appellants were sentenced to undergo RI for five years with fine Rs. 5,000/- each under Section 366A IPC and RI for ten years with fine Rs. 5,000/- each under Section 109 read with Section 376(2)(g) IPC. Both the sentences were to operate concurrently.

2. Briefly stated the prosecution case as reflected in the charge- sheet was that on 09.06.2006 at 8.30 a.m. the appellants kidnapped the prosecutrix "X" (assumed name), aged around 14 years from the lawful guardianship of her parents with intent that she was likely to be seduced to illicit intercourse with another person. During the period from 10.06.2006 to 27.06.2006, "X" was subjected to gang-rape by three individuals during her stay at Ruksana Begum's house in the presence of the appellant- Urmila. Kamal Singh (PW-8), victim's

father, after lodging FIR on 27.06.2006 informed the police that her daughter "X" who was missing from the house since 09.06.2006 was kidnapped by a woman. Vide DD No. 85B (Ex.PW-6/A) recorded at on 09.05 p.m., information was recorded that a lady who had abducted "X" has been apprehended near B- Block, House No. 480, Jalebi Chowk. "X" was recovered from Ruksana's house. She got arrested Urmila. "X" was medically examined; she recorded her statement under Section 164 Cr.P.C. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellants in the court. To bring home the guilt, the prosecution examined twenty witnesses. In 313 statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeals have been filed.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Vital infirmities and discrepancies in "X"s statement were overlooked without any cogent reasons. Her statement cannot be taken on its face value as she has given divergent and conflicting versions. She was more than 16 years of age on the day of incident and was a consenting and willing party throughout. She had left her parents' home on her own and there are no allegations of kidnapping whatsoever. The actual rapists with whom physical relations were established, were not apprehended; their identity remained undisclosed. Inordinate delay in lodging the FIR has remained unexplained. No visible injuries were found on "X" body at the time of her medical examination. PW-10 (Sukhbir Singh Guliya) and PW-14 (Reshma) have turned hostile. Neither Sonia nor her mother who allegedly introduced "X" to the appellants were examined. Learned APP urged that no sound reasons exist to disbelieve the prosecutrix who was around 14 years on the day of occurrence.

4. At the outset it may be mentioned that the prosecutrix was aged below 16 years on the day of incident. In the FIR (Ex.PW-2/A); MLC (Ex.PW-1/A) and statement under Section 164 Cr.P.C. (Ex.PW-3/J) age of the prosecutrix has been described as 14 years. In her Court statement recorded on 28.04.2008, "X" disclosed her age 15 years. The appellants never challenged her age in the cross-examination. Nothing was suggested if she was more than 16 years on the date of incident. The prosecution relied on and produced on record certificate (Ex.PW-20/C) issued by the M.C. Pry.Model School (Co.Ed.), Rohini Extension, Sector- 20, Delhi where her date of birth recorded at the time of admission vide diary No. 3107/8.7.97 was 2nd May, 1991. The authenticity and genuineness of this document was never under challenge. There are no reasons to disbelieve the date of birth recorded in Ex.PW-20/C as at that time, the victim's parents had not predicted any such unfortunate incident to happen in future to manipulate her age. The appellants did not produce any document to show the prosecutrix to be "major" on the day of incident.

5. "X" was recovered from Ruksana's house on 27.06.2006. In her Court statement, she affirmatively deposed that she remained in Ruksana's house for about a month. One day when her father and many others including her cousin Mukesh (Bua's son) came at Ruksana's house, she locked and confined her in the toilet on the second floor. She was taken out of the toilet after an hour and then she came to know about visit of her father and many others there. In the evening, again her father and cousin accompanied by ten or twelve persons came and freed her. Police was called and Ruksana was taken to police station, Sultan Puri whereas Urmila succeeded to flee. DD No. 85/B (Ex.PW-6/A) recorded at 9.05 p.m. records that a "lady" who had kidnapped a girl has been caught. The investigation was assigned to HC Bajrang Lal who along with Ct.Bhim Sain reached the spot and apprehended Ruksana. He informed the duty officer. On that SI Sanjeeta (PW-20) reached there and interrogated her. In Court statement, she deposed that thereafter she along with Ruksana and Ct.Biri Singh went to Ruksana's house at T 783, Mangol Puri. From there, she recovered "X" aged around 14 years. "X" was sent for medical examination to Sanjay Gandhi Memorial hospital. Bag containing "X"s clothes was also recovered from Ruksana's house. PW-20 had no ulterior motive to allege false recovery of the prosecutrix from Ruksana's house.

In her 164 statement recorded on 10.07.2006 (Ex.PW-3/J), "X" implicated both the appellants for forcing her to have physical relations with various persons for consideration. She informed that on 08.06.2006, she had gone to her friend Sonia's house where Urmila met her. She took her along with her to marriage venues. After two days, Urmila sent her at Ruksana's house. Next day, Ruksana called three men in her house and at about 1.00 p.m. they committed rape upon her turn by turn. Urmila, Ruksana and three other girls were present that time in the house. After about an hour, the said individuals left after taking tea. In her Court statement as PW-3, she deposed that one day she accompanied Sonia to her house in Mangol Puri where both Ruksana and Urmila met her. Sonia told that both of them were her mother's friends and were employed in a factory. She also worked in a factory along with Sonia for two days. Thereafter, both the appellants met her in the area of Mangol Puri and promised that they would get her employed somewhere else. She was promised the job of "welcoming the marriage parties". She did that job for two days and stayed at Ruksana's house. Urmila visited Ruksana during those days. One day, she was sent by Ruksana with an old man for welcoming of a marriage party in a hotel. The old man committed "wrong act" with her. When she objected to that, he told that he had paid Rs. 3,000/- to Ruksana. She further deposed that thereafter she was subjected to "wrong act" at Ruksana's house thrice. On her objecting to it, she was given beatings. The "wrong act" was committed at Ruksana's house thrice by four persons one of whom was old and other three were young. They paid money to Urmila. The "wrong act" was done on different dates and by different persons. In the cross-examination by learned Additional Public Prosecutor, she informed that on 08.06.2006, she had gone to Sonia's house where Urmila met

her. At the instance of the appellants, she was subjected to "wrong act" by three/ four persons in Ruksana's house for money consideration. In the cross-examination on behalf of the appellants, she revealed that her father was "Beldar" and her mother was a house wife. Sonia had introduced her to accused Urmila. On first occasion, Urmila had deputed her to welcome a marriage party in Kiradi. She admitted that wherever she had gone for a job, it was with her own will without any pressure. She further admitted that she used to return to her house in the night. She further admitted that she voluntarily went to Ruksana's house without any pressure. She denied the suggestion that she remained in Ruksana's house voluntarily without any pressure or threat. She denied that she had full opportunity to go back to her house or raise alarm for help but she did not do so voluntarily. She further denied that since she was in urgent need of money and could not get regular job, she had gone to Ruksana and for that reason did not continue her job of welcoming marriage parties or in the factory. She denied that she was never pressurized to do any "wrong act" by accused Ruksana.

On scanning the statement of the prosecutrix in its entirety, it emerges that "X" was initially studying in a school. One day she went at her friend Sonia's residence. She was inclined to have some job to earn money. For two days, she worked in a factory where Sonia also used to go. Thereafter, she came into contact with the appellant Urmila who took her along to provide job to welcome the marriage parties and she did it for two days. During this period, she used to return to her parents' house in the night. Subsequently, the appellants allured her to earn income by having physical relations with various individuals/ customers. Urmila sent her to Ruksana's house. "X" remained in Ruksana's house thereafter where she was sexually exploited and pushed into prostitution with the active connivance of Urmila who was a regular visitor there. "X" has categorically and specifically deposed that during her stay in Ruksana's house physical relations were established with her by various persons on different occasions for consideration. No sound reasons exist to disbelieve "X"s statement in this regard. "X" was an innocent immature girl aged about 14 years. She did not know the consequences of the act for which she was allured to get money. During her stay at Ruksana's house, she was repeatedly sexually abused by outsiders/strangers for consideration. Even her consent to have sexual intercourse with "strangers" was of no relevance she being below 16 years of age. She has given specific instances of her sexual abuse by old and young men. Both the appellants were not acquainted with the victim before 09.06.2006. "X" or her family members did not nurture any ill-will or enmity against any of them to falsely implicate them in this horrendous act. Both of them were identified without any hesitation by the prosecutrix in the court. She attributed and assigned specific and definite role to each of them in her 164 Cr.P.C. statement as well as Court Statement. It is true that certain discrepancies have emerged in her two versions one given under Section 164 Cr.P.C. and the other before the Court. Nevertheless, the crux remains unchanged that during "X"s stay at

Ruksana's house, she was physically abused by men for consideration in connivance with Urmila. By putting various suggestions in the cross-examination, appellants attempted to claim that "X" was a willing party. There is no denial about "X"'s stay for about one month in Ruksana's house where Urmila was a frequent visitor. Appellants' only plea is that whatever was done, it was with the free consent of the prosecutrix and she was a willing and consenting party. The appellants who were quite old and mature ladies had no plausible reasons to allow a girl aged around 14 years to stay at their house for long one month without even informing her parents. The appellants did not offer any explanation or reason as to why the child was kept, may be with her consent, in their house. Nothing has come on record to infer as to where else "X" used to go to earn her livelihood. The appellants did not disclose if during this period "X" used to go to attend marriage parties for welcoming guests. They did not produce on record any document, whatsoever, to show that it was their profession/business to provide girls at the marriage venues to welcome the marriage parties. They did not give any instance where on any particular date during the relevant period, they got any such contract or assignment and deputed "X" there. It is unclear as to how many other girls were victims in similar circumstances.

6. The appellants did not produce any document to show that they were gainfully employed in some legal business. In Ruksana Begum's personal search vide memo Ex.PW-3/G, one mobile phone make nokia with sim No. 9810794270 was recovered. Another mobile make Tata with sim 9213683243 was recovered from Urmila in her personal search. Call Details Records of both these mobile phones have not been proved. Photocopy of the call detail records of mobile No. 9213683243 belonging to Urmila for the period from 09.06.2006 to 23.07.2006 on record demonstrates that she used to be in regular touch with number of individuals who generally made calls to her. Urmila herself rarely made calls to outsiders from her mobile. Nothing was explained by appellant Urmila as to who were those persons from whom she used to get regular calls at frequent interval. The call detail chart runs into 39 pages for this period. It shows how busy the appellant-Urmila used to remain. It was within the special knowledge of the appellants to divulge as to what legal business or profession was being carried out by them. However, they did not furnish any details of their activities. It has come on record that appellant Ruksana shifted her rented accommodation frequently at short intervals. In a short span of time, she stayed at different locations i.e. T- 170 Mangol Puri; T-783 Mangol Puri and T-163 Mangol Puri. No reasons have been offered as to what had forced Ruksana to shift her accommodation so frequently.

7. Delay in lodging the FIR is not fatal in such cases. PW-8 (Kamal Singh), "X"'s father, did not lodge "missing person report" for considerable time. However, he has explained that he tried his best to locate "X" for fifteen days at various places. Many times, parents are reluctant to rush to police to report the incident to protect their reputation and honour in the society. In the instant case, "X" had earnest desire to earn livelihood on her own and worked in a factory for two days

with her friend Sonia and she returned to her home on both days. Subsequently she was trapped by the appellants and they seduced her to indulge in sexual intercourse for money. In any case, cogent testimony of the prosecutrix cannot be discredited simply because her parents did not lodge FIR promptly.

8. The investigation conducted in this case is not upto the mark. As discussed above, no call detail records of the mobile phones recovered from the appellants was proved to unearth prostitution racket. The investigating agency was unable to find out the individuals who had established physical relations with the prosecutrix. The investigating officer did not collect any materials to ascertain if in similar circumstances other girls were misused. Sonia and her mother were also not examined. No evidence was collected as to at whose factory "X" had worked for two days initially. All these lapses, however, are not relevant to disbelieve the prosecutrix.

9. Medical evidence corroborates "X"'s version as hymen was found torn in MLC (Ex.PW-1/A). In 313 statements, the appellants did not offer any plausible explanation to the incriminating circumstances proved against them. They did not examine any witness in defence to prove that they were engaged in some legal business or profession. The Trial Court has discussed elaborately all the relevant aspects. A reasoned judgment based upon fair appreciation of the evidence on conviction deserves not intervention; the conviction is upheld.

10. The appellants have been sentenced to undergo RI for ten years each with fine Rs. 5,000/- each under Section 109 read with Section 376(2)(g) IPC. Appellant Ruksana's nominal roll dated 14.10.2014 reveals that she has already undergone three years, six months and one day incarceration besides remission for ten months and twenty three days as on 14.10.2014. She is aged around 43 years and is not a previous convict; her overall conduct in jail is satisfactory. She is not involved in any other criminal activity. Sentence order reveals that she was living separate from her husband for the last about ten years in a rented accommodation and has the responsibility to look after three children, one of whom is handicap. Urmila's nominal roll dated 06.11.2013 reveals that she has suffered incarceration for two years, six months and ten days besides remission for eight months and two days as on 6.11.2013. She is also a first time offender and is not involved in any other criminal case; her conduct in jail is satisfactory. The individuals who established physical relations with the prosecutrix could not be booked. The appellants have suffered ordeal of trial/appeal for about ten years. Considering the facts and circumstances of the case, the sentence order is modified to the extent that the sentence under Section 109 read with Section 376(2)(g) IPC shall be RI for eight years each instead of ten years with fine Rs. 5,000/- each and default sentence for non-payment of fine shall be SI for one month in all. Other terms and conditions of the sentence order shall remain the same.

11. The appeals stand disposed of in the above terms. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be

sent to Jail Superintendent, Tihar Jail for intimation.