
(2015) 11 DEL CK 0020
In the Delhi High Court
Case No : Criminal Appeal914/2006

Sanjay Kumar

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302, 323, 34, 376, 377

Citation : (2015) 11 DEL CK 0020

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

Bench : Single Bench

Advocate : Krishan Kumar and Sunita Arora, Advocates, for the Appellant; Amit Ahlawat, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Challenge in this appeal is to a judgment dated 12.09.2006 of learned Addl. Sessions Judge in Sessions Case No. 181/2006 arising out of FIR No. 191/03 by which the appellant - Sanjay Kumar was convicted for committing offences punishable under Sections 376/448 IPC. By an order dated 21.09.2006, he was sentenced to undergo RI for seven years with fine Rs. 1,000/- under Section 376 IPC and RI for six months with fine Rs. 500 under Section 448 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 25.02.2003 at 02.00 pm after committing house trespass at D4/363, Sultanpuri, the appellant committed rape upon the prosecutrix "X" (assumed name) aged around 27 years. She was criminally intimidated and robbed of her jewellery articles and cash Rs. 9,000/-. Police machinery came into motion on receiving information about the incident at 02.55 pm on 25.02.2003 and DD No. 58B (Ex. PW-7/A) came into existence at PS Sultanpuri. The investigation was assigned to ASI Kaptan Singh who with Const. Parminder went to the spot. After recording victim's statement (PW-8/A), he lodged First Information Report. The

prosecutrix was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested and taken for medical examination. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent for examination to Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed against the appellant for offences under Sections 323/376/380/506/397/452 IPC. By an order dated 07.02.2004, the appellant was charged for committing offences under Sections 448/377/376/323/380/506 part-II IPC to which he pleaded not guilty and claimed trial. To establish its case, prosecution examined fifteen witnesses. In 313 Cr.P.C. statement, the appellant pleaded false implication and denied complicity in the crime. He did not produce any evidence in defence. On appreciation of the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment held the appellant guilty for committing offence under Sections 376/448 IPC. It is apt to note that the appellant was acquitted of the charges under Sections 380/506 part-II/377 IPC. State did not challenge the said acquittal.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix and the appellant were acquainted with each other prior to the incident. The rented premises where the prosecutrix lived were arranged by him and he had stood guarantor. The appellant had visiting terms at X's residence. Throughout, the appellant's defence was that physical relations with the prosecutrix that day were consensual. He contended that his false implication at Jai Singh's behest to extract money from him. Specific suggestions were put to the prosecutrix in the cross-examination that physical relations with the appellant were with her consent. It was further suggested that the said relationship was established to implicate him at the instance of Jai Singh. It was heavily for the appellant to establish that physical relations with the prosecutrix on that day were with her free consent. He, however, did not examine any witness in defence to prove his assertion. Nothing has come on record to show if Jai Singh nurtured any grievance or enmity against the appellant to falsely implicate him. As observed above, relationship between the appellant and the prosecutrix was cordial prior to the incident and as per the appellant's own assertion, he had established physical relations with her many times before that also. Under these circumstances, the prosecutrix having no animosity was not expected to level false allegations of rape against the appellant at Jai Singh's behest. Nothing has come on record to show if the alleged rape incident was ever en-cashed by the prosecutrix or she demanded any money consideration to favour the appellant. She categorically stated that the appellant and her brother had threatened her of dire consequences and asked her to turn hostile.

4. The occurrence took place at around 02.00 pm on 25.02.2003. The prosecutrix herself made telephone call at 100 without any delay at 02.55 pm and DD No. 58B (Ex. PW-7/A) came into existence. In the information conveyed to the police, it was specifically mentioned that she was sexually abused. Soon

after arrival of the police, her statement (Ex. PW-8/A) was recorded and the Investigating Officer sent Rukka (Ex. PW-14/A) at 08.45 pm to lodge the FIR. In the complaint, the prosecutrix named the appellant for committing rape upon her. She gave detailed account as to how and under what circumstances, after gaining entry inside her room, the appellant not only ravished her but also criminally intimidated her and deprived her of gold ornaments and cash. The prosecutrix was taken for medical examination at around 05.50 pm at Sanjay Gandhi Memorial Hospital, Mangolpuri. Multiple scratch marks over chest and abrasions over left forearm were found on her body. PW-1 (Dr. Sweety Bansal) proved the MLC (Ex. PW-1/A) and testified that the patient had complained of bleeding and pain in lower abdomen. Slight bleeding could be seen per vagina. The appellant failed to explain as to how the prosecutrix who had allegedly made physical relations with consent, suffer multiple scratch marks over her chest. It shows that some resistance was offered by the prosecutrix at the time of commission of the crime.

5. The prosecutrix is consistent throughout. In her 164 Cr.P.C. statement (Ex. PW-12/B) recorded on 21.04.2003 she was categorical and definite to inform about commission of rape upon her by the appellant. In her Court statement, she proved the version given before the police and the Court without major variations. She testified that at around 02.00 p.m. that day, when she was sleeping in her house and her daughter had gone outside to purchase eatables, the accused who was known to her before the incident entered inside the house. The accused bolted the door from inside and when she enquired about it, he asked her to keep quiet and pressed her mouth with his hand. Thereafter, he directed her to take off her clothes. When she resisted unsuccessfully, he tore her clothes and put his male organ in her mouth and committed carnal intercourse. Thereafter, she was raped by the appellant. She identified clothes Ex. P-1 (salwar), Ex. P-2 (kameej) and Ex. P-3 (underwear) which she was wearing at the time of occurrence. Clothes Ex. P-4 (T-shirt), Ex. P-5 (trouser) and Ex. P-6 (underwear) were also identified by her which the appellant was wearing at the time of incident. She was cross-examined at great length on various dates. All sorts of questions, relevant or irrelevant, were asked from her. She specifically denied if physical relations with the appellant were with her free consent. She answered all the queries of the appellant intelligently and no material discrepancies or infirmities could be extracted in her lengthy cross-examination. No ulterior motive was assigned to the prosecutrix to level serious allegations of rape against the appellant with whom she had familiarity long before. No sound reasons exist to disbelieve or discredit the testimony of the prosecutrix.

6. It is true that certain discrepancies and improvements have emerged in the statement of the prosecutrix before the Court. The Trial Court has noted this aspect and has given benefit of doubt to the accused on that account. For certain exaggerations made by the prosecutrix in her Court deposition, her entire testimony cannot be thrown overboard. The crux remains that physical relations

were established on the date and time stated by the prosecutrix in her house. It is so admitted by the appellant. The burden to prove that the physical relationship was with the prosecutrix's free consent was upon the appellant which he has failed to discharge. There were no compelling reasons for the prosecutrix to put the police machinery into motion soon after the occurrence, had she been a consenting and willing party. Medical evidence corroborates her version about forcible rape. The maxim falsus in uno falsus in omnibus has no application in India and the witnesses cannot be branded as liar on that account. The exaggerations in the prosecutrix's statement are not fatal to exonerate the appellant of his crime. The impugned judgment based upon fair appraisal of the evidence needs no intervention. Minimum sentence prescribed under Section 376 IPC has been awarded to the appellant, which can't be modified or reduced.

7. It is relevant to note that substantive sentence of the appellant was suspended by this Court by an order dated 18.12.2006. On 30.06.2015 when the case was taken up for hearing, none appeared on behalf of the appellant. Bailable warrants in the sum of Rs. 10,000/- and notice to his surety were ordered to be issued. On 14.08.2015, the appellant appeared in judicial custody from Tihar Jail. Bailable warrants were served upon him in jail as he was involved in case FIR No. 259/2009 under Section 302/34 IPC PS Sultanpuri. He stood convicted in the said case. It shows the appellant's antecedents.

8. In the light of above discussion, the appeal lacks merit and is dismissed. 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.