
(2009) 03 DEL CK 0262
In the Delhi High Court
Case No : Criminal A. No. 452 of 2006

Sri. Kishan Poddar

APPELLANT

Vs

The State (Govt. of NCT Delhi)

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2009) 03 DEL CK 0262

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Arun Shrivastava, for the Appellant; Amit Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—In this appeal, Appellant has been convicted and sentenced by the trial court for having forcible sexual intercourse with the prosecutrix (PW-1) in the computer room of factory at B-22/3, Okhla Phase II, New Delhi, on 5th August 2004, at 11.30 AM.

2. In nutshell the prosecution case, as unfolded by the Respondent - State, is that the prosecutrix (PW-1) was working as a "checker" in the above said factory for the last three years and in the morning of 5th August 2004, at about 11.30 AM, prosecutrix had gone to the computer room of the said factory, which was on the second floor to take her water bottle and Appellant/accused who was on helper duty in the said factory, caught hold of her inside the computer room and had forcible sexual intercourse with her and thereafter, he fled away from there. Prosecutrix had candidly stated in her initial statement Ex. PW-1/A, which is the basis of the FIR, that she had not told about this incident to her husband on the day of the incident and had not gone for a medical examination and she had disclosed about this incident to her husband after few days of this incident and this matter was reported to the police, and she was got medically examined.

Action on her complaint was taken and the FIR of this case was registered and Appellant/accused was arrested in this case and he was also got medically examined and after completion of investigation, charge sheet u/s 376 of the Indian Penal Code was filed against the Appellant/accused.

3. Trial began as Appellant/accused did not plead guilty to the charge u/s 376 of Indian Penal Code framed against him in this case.

4. Out of the eight witnesses, examined at trial, the crucial evidence is of prosecutrix (PW-1), and of Investigating Officers (PW-6 and PW-8). The medical evidence is of Dr. Charu (PW-7) and Dr. M.G. Jayan (PW-4). The stand of the Appellant/accused before the trial court, in his statement u/s 313 Cr. P.C., was of false implication and of denial of any such incident taking place as alleged by the prosecution and of prosecutrix (PW-1) wanting to extort money from the owner of the factory, where Appellant/accused as well as the prosecutrix were working. The solitary evidence led in defence by the Appellant/accused is of a co-worker Kamal Singh (DW-1), who has for the first time, come out with the story of the Appellant/accused rebuking the prosecutrix (PW-1), about five or six days prior to the lodging of the FIR in question, on the pretext of prosecutrix (PW-1), spoiling a piece of garment. Although, the Appellant/accused has not denied that he was not a helper in the factory, as stated by the prosecutrix, (PW-1), but the defence witness claims for the first time that the Appellant/accused was supervisor in the said factory.

5. Upon conclusion of the trial, vide impugned judgment of 9th May 2006, trial court has held the Appellant/accused guilty for the commission of offence punishable u/s 376 Indian Penal Code and vide its order on sentenced of 15th May 2006, has sentence the Appellant to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 500/- for the offence committed by him, which is punishable u/s 376 of Indian Penal Code. Hence this appeal.

6. Learned Counsel for both the sides have made their submissions and have assisted this Court in perusing the evidence on record.

7. Learned Counsel for the Appellant contends that the alleged incident is of 5th August 2004, whereas the FIR in this case has been registered on 12th August 2004 and thus, there is a delay of one week, which goes against the prosecution. It is submitted that the initial case of the prosecutrix was that she was raped by the Appellant/accused but in her evidence, she had improved upon her version by stating that there were two co-accused of the Appellant/accused, who had assisted him in committing the offence in question. It is pointed out that in the First Information Report, it is stated that she had gone to the computer room of the factory to take her water bottle, whereas in her evidence, she has stated she was called by the Appellant/accused for the ESI card. It is also pointed out that the prosecutrix in her evidence, at one place claims that she had informed her husband on the day of occurrence itself but at another place, she had stated that she had told her husband about her being raped by the Appellant/accused after

two days of this incident, when her husband had come back from Faridabad, where he used to work. It has been submitted on behalf of the Appellant/accused that the husband of the prosecutrix has not been got examined in this case and the MLC of the prosecutrix does not corroborate her version of being subjected to rape. According to the Appellant/accused, prosecutrix has falsely implicated him as she wanted to extort money from the owner of the factory. Lastly, it is submitted on behalf of the Appellant that the prosecution case is contradictory and unreliable and the conviction of the Appellant/accused is illegal and it deserves to be set aside and Appellant/accused ought to be acquitted. Nothing else has been urged on behalf of the Appellant/accused.

8. Learned Additional Public Prosecutor for the State supports the impugned judgment and sentence, imposed upon the Appellant/accused and submits that the delay in lodging of the FIR stands explained from the fact that the prosecutrix was misled by ASI Pritam from PCR, who had come at the spot after prosecutrix had made a phone call at Phone No. 100 and ASI Pritam threatened the prosecutrix not to tell about this incident to anyone, otherwise, her husband would turn her out of his house. It is pointed out that it has come in the evidence of prosecutrix that after this incident, she had fallen ill and when her husband had come from outstation, she had informed him and thereafter, this matter was reported to the local police and thus the delay stands explained. It is submitted that the prosecutrix had no reason to falsely implicate the Appellant/accused and the plea of consent now taken by him cannot be made out from the evidence of the prosecutrix, nor it has been suggested to her by the defence in her cross-examination. Thus, it is submitted that the conviction and the sentence imposed upon the Appellant/accused is just and proper and this appeal lacks merit and deserves dismissal.

9. Prosecutrix (PW-1) is a married woman and her evidence has to be appreciated in the light of the pertinent observations made by the Apex Court in the case of Om Prakash Vs. State of U.P., , which are as follows:

The Indian women has tendency to conceal such offence (of rape) because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after staking her own prestige and honour.

10. The delay aspect has to be considered in the light of the aforesaid observations made by the Apex Court. When the prosecutrix (PW-1) asserts that she was misled by ASI Pritam PCR, and that after this incident, she had remained ill for six-seven days, there has to be some plausible reason to disbelieve her as she would not readily come forward to stake her honour to falsely implicate the Appellant/accused who was working as a helper in the factory where the prosecutrix was working as a checker. Prosecutrix is an illiterate lady. She has

stated in her evidence that she had disclosed about this incident to her husband in the evening but she does not state that the said evening was of the day of incident. In the next line, she had stated that for medical examination, she was taken by her husband but she had clarified that she was taken to hospital on Monday and she had disclosed about this incident to her husband on Saturday. It has not been brought out from the cross-examination of prosecutrix clearly, as to the day of the incident was Saturday or some other day. In any case, the delay in lodging of the FIR stands explained by the fact that the prosecutrix was not well for about five or six days after this incident. Apart from this, she was under threat from one ASI Pritam from PCR. Whether she had disclosed about this incident to her husband on the day of incident itself or after two days of this incident would not matter much because the plea of the Appellant/accused before the trial court as well as before this Court is of prosecutrix being a consenting party to the sexual intercourse with her by the Appellant/accused. In this background, non-examination of the husband of the prosecutrix also loses its significance. Likewise, the purpose for which the prosecutrix came to the computer room of the factory in question is also not of much importance.

11. Since this Court has found that the delay in lodging in FIR is not fatal to the prosecution case, therefore, now the plea of consent put forward by the Appellant/accused has to be tested. The medical evidence in this case would not be of much avail as the medical examination of the prosecutrix was conducted after a week of this incident. However, the MLC, Ex. PW-7/A, of the prosecutrix corroborates the version of the prosecutrix as the alleged history contained therein reveals that the prosecutrix had disclosed to the doctor that she was raped by the Appellant/accused, whose name has been specifically given and is noted in the alleged history in MLC, Ex. PW-7/A.

12. Although the plea of consent has not been specifically taken by the Appellant/accused in his statement u/s 313 Cr. P.C. nor it has been so suggested to the prosecutrix in cross-examination by the defence, still the evidence of the prosecutrix (PW-1) has been carefully scanned, to find out if from her narration, it could be made out that she was a consenting party to the sexual intercourse with the Appellant/accused.

13. I am of the considered view that the testimony of the prosecutrix (PW-1) does not in any way reflect that she had consented to the sexual intercourse with the Appellant/accused. She has categorically stated in her evidence that she was forcibly raped by Appellant/accused and this had been her initial version as contained in her statement Ex. PW-1/A which is the basis of the FIR in question.

14. The plea of consent is not borne out from the evidence of the prosecutrix (PW-1). Rather, the plea of Appellant/accused in his statement u/s 313 Cr. P.C. was of prosecutrix wanting to extort money from the owner of the factory. This is hardly the reason for prosecutrix (PW-1) to falsely implicate the Appellant/accused. Rather, the defence led is that a week prior to the lodging of the FIR,

Appellant/accused had rebuked the prosecutrix as she had spoiled some piece of garment. However, there is nothing on record to support the aforesaid plea and to show that the Appellant/accused was a supervisor in the factory and was in a position to rebuke the prosecutrix. In fact, the case of the prosecutrix is that the Appellant/accused was a helper in the said factory. The defence evidence does not advance the case of the Appellant/accused in any manner whatsoever.

15. In the face of the evidence on record, I find that the conviction of the Appellant/accused in this case is well merited and the sentence of rigorous imprisonment for a period of seven years imposed upon him is the minimum sentence, as provided, and there are no special or adequate reasons to award lesser than the minimum sentence, as provided under the law.

This appeal is bereft of merit and is dismissed as such.