

(2013) 02 DEL CK 0124
In the Delhi High Court
Case No : Criminal A. No. 323 of 1999

Subhash and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 2 AD 416 : (2013) 1 JCC 594

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

Bench : Single Bench

Advocate : K.B. Andley, with Mr. M.L. Yadav and Mr. Prayanki Kr. Sharma, for the Appellant; M.N. Dudeja, APP for the State, for the Respondent

Judgement

S.P. Garg, J.—The appellants-Subhash and Shri Chand @ Siriya impugn their conviction and sentence in Sessions Case No. 1/1997 arising out of FIR No. 404/1996 by which they were convicted for committing offence punishable u/s 376(2)(g) IPC and sentenced to undergo RI for ten years with fine Rs. 5,000/- each. Allegations against the appellants were that they along with Surjeet committed rape upon "X" (assumed name) on 15.09.1996 at 07:30 P.M. in a vacant DDA flat near Sabzi Mandi. "X" with her parents went to the police station around 11:30 P.M. and lodged complaint (Ex. PW-1/A) alleging that when she was returning after purchasing vegetables from the vegetable market, Surjeet, Siriya and Subhash raped her against her wishes. She was medically examined. The Investigating Officer prepared rukka and lodged First Information Report. During the course of investigation, all the culprits were arrested. Statement of the prosecutrix was recorded u/s 164 Cr. P.C. Exhibits were sent for examination to Forensic Science Laboratory and reports were collected. On completion of the investigation, charge sheet was submitted. The appellants were duly charged and brought to trial. Prosecution examined 11 witnesses to prove the charge. In the 313 Cr. P.C. statement, the appellant-Subhash pleaded false implication and stated that about 15 days prior to the alleged occurrence, his two pigs were caught by the prosecutrix's father. A quarrel took place between them. On

15.09.1996 when he was sleeping in his house, the police took him to the police station and falsely implicated in this case. He examined three witnesses in defence. Appellant Shri Chand @ Siriya stated that about 10/15 days back a quarrel took place between his son and father of the prosecutrix but the matter was pacified with the intervention of the mohalla people. On appreciating the evidence and considering the rival contentions of the parties, by the impugned judgment, the appellants were held responsible for committing offence u/s 376(g) IPC and sentenced as mentioned previously.

2. Learned counsel for the appellants while challenging the impugned judgment urged that the Trial Court did not appreciate the evidence in its true and proper perspective and relied upon the testimony of the prosecutrix and her parents without ensuring their credibility. The place of incident was situated in a busy commercial area and it is unbelievable that the three accused would commit rape upon the prosecutrix there. Had the prosecutrix been raped by three assailants as alleged, she must have suffered vital injuries on her person. However, in the MLC ((Ex. PW-5/A)) no injuries were found on her vital organs. The complaint lodged by the prosecutrix's parents was motivated due to quarrel which took place about 15 days prior to the incident over lifting of pigs. The prosecutrix has made substantial improvements in the court. She is a tutored witness. There is variation in the version given in the statement u/s 164 Cr. P.C. No independent public witness was associated at any stage of inquiry. The FSL report does not establish appellant's involvement. PW-5 (Dr. Usha) specifically recorded that the prosecutrix was conscious and had no fresh injury. "X" did not disclose names of the culprits to the doctor.

3. Learned Additional Public Prosecutor supported the judgment and urged that it did not call for interference. The judgment is based upon the cogent testimony of the prosecutrix and it has been corroborated by medical evidence. The FIR was lodged promptly. At the time of medical examination of the prosecutrix, the hymen was found ruptured.

4. I have considered the submissions of the parties and have examined the Trial Court record. The incident took place on 15.09.1996 at about 08:00 P.M. The prosecutrix aged 15 years lodged report with the police at about 11:30 P.M. and was medically examined. Thereafter, rukka was prepared at 04:30 A.M. on the night intervening 15/16.09.1996 and the FIR was lodged. There was no undue delay in reporting the incident to the police. Prompt lodging of the report with the police rules out fabrication. In her statement (Ex. PW1/A) given to the police soon after the occurrence, "X" gave detailed account of the incident and named the perpetrators of the crime. She gave vivid description as to how and under what circumstances all the three culprits ravished her one after the other in a vacant DDA flat. While appearing as PW-1 in the court, the prosecutrix "X" proved her version given to the police without any variation. She deposed that on the day of incident at about 07:45 P.M. when she was returning to her house after purchasing vegetables and reached near the gate of DDA flats, the accused

Subhash along with Siriya and Surjeet met her. They all were known to her and resided in the locality. Subhash called her and she went to them. Thereafter, they all forcibly took her in a room of a vacant DDA flat on the ground floor. Surjeet broke the string of her salwar and committed rape on her. She cried but nobody heard her voice. Thereafter, the accused Subhash committed rape on her without her consent. The accused Siriya committed rape in the last upon her without her consent. Thereafter, all the three assailants left her on the road. She went to her house alone and disclosed the incident to her parents who took her to police station, Kalayan, where her statement (Ex. PW1/A) was recorded. In the cross-examination, she stated that her parents took her to police station at about 10:45 or 11:00 P.M. and her statement (Ex. PW-1/A) was recorded immediately. She was medically examined on the same night at about 01:45 A.M. She had shown the place of occurrence to the police at 12:30 A.M. She further elaborated that when she was sexually assaulted, she had started bleeding. Her salwar and kameez were stained with blood and she handed over her blood stained clothes in the hospital. She fairly admitted that when she was left on the road, she did not raise any alarm. She explained that it would not have served any purpose. The room was at a distance of 30-40 paces from the main gate of the flats. It took only 5-10 minutes for the accused persons to rape her. She further asserted that when she was sexually assaulted, she had raised alarm but nobody heard it. She folded her hands before the accused to spare her. She denied the suggestion that her parents had demanded money from Siriya's father to compromise the case. She denied that any quarrel took place between her brother/father with the accused persons. It appears that despite lengthy cross-examination, the appellant could not elicit any material or vital discrepancies to disbelieve her version. Her conduct is natural and reasonable. Soon after reaching the house, she narrated the incident to her mother and disclosed the names of the culprits. No ulterior motive was assigned to the minor child to make false statement.

5. "X" was examined by the doctors on 16.09.1996 at 03:30 A.M. at SDN hospital, Shahdara. In the MLC (Ex. PW-5/A) it is mentioned that the prosecutrix was sexually assaulted by three persons by taking her to DDA flat around 07:30 P.M. in the evening of 15.09.1996. Number of injuries were noticed on her body. Her hymen was found ruptured. Pw-5 (Dr. Usha) deposed that on local examination following injuries were found on the "X" body:-

(i) Abrasion at medial and upper most part of both thighs, size 3.5X 2 CM each (two in number)

(ii) Two abrasions over labia majora (one over each labia majora) size 3 X 1.5 CM each.

XXX XXX XXX

(iii) Blood stained salwar and shirt sealed.

XXX XXX XXX

(iv) Fresh hymen tear present. Fresh bleeding from hymen present. Blood in trace amount locally hymen tear at 6 O'clock position.

6. There is no conflict between the ocular and medical evidence. Injuries found on the body of the prosecutrix, corroborate her version that sexual intercourse was done by the appellant and his associates against her wish. There was fresh bleeding from hymen. Fresh hymen tear was present. It confirmed that the victim was sexually assaulted forcibly. Statement of the prosecutrix was recorded u/s 164 Cr. P.C. on 17th September, 1996 (Ex. PW-1/A). There is no deviation in the version given to the Metropolitan Magistrate soon after the occurrence.

7. PW-2 (Raj Kumari) "X" mother deposed that when she did not return after purchasing vegetable, she went thrice in the market to search her. At about 08:00 P.M. she saw her returning. She was not in a position to walk. "X" embraced her and started weeping. When she inquired as to why she was weeping, she told that Subhash, Siriya and Surjeet had committed rape on her. She brought "X" to her house and narrated the incident to her husband when he returned at about 08:30 P.M. to the house. PW-3 (Mangal Singh), prosecutrix's father also deposed on similar lines. The prosecutrix's conduct whereby she immediately narrated the incident to her mother is relevant u/s 6 of the Evidence Act and lends credence to her testimony.

8. Minor discrepancies and improvements highlighted by the counsel do not go to the root of the case. The testimony of the prosecutrix on core issue that the appellants and his associate committed rape on her person has remained unchallenged and unsheltered. There are no good reasons to discard the cogent and trustworthy testimony of the prosecutrix.

9. In *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*, the Supreme Court observed:-

In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinioned, eye in the light of probabilities with our feet firmly, planted on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to translate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of

the Indian Society, and its profile.

10. In *State of Punjab Vs. Gurmit Singh and Others*, , the Supreme Court observed:-

The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating" statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satiny its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.

11. FSL report (Ex. PW11/J) also points out an accusing finger against the culprits. Blood was detected on Ex. 4a (Salwar), Ex. 4b (one lady's shirt).

Human semen was detected on Ex. 4a (Salwar), Ex. 5a and Ex. 5b (two micro slides). As per the FSL report (Ex. PW-11/K) blood was of human origin and of "B" group. Semen was also of "B" group.

12. It is unbelievable that parents of the prosecutrix would level false allegations of rape to bring her own daughter in disrepute merely because an alleged quarrel took place with the appellant about 15 days prior to the incident over a trivial issue. One of the arguments advanced on behalf of the appellants was that no injuries were found on her person and hence, the case of rape was not believable. I am not convinced. The medical examination of the prosecutrix reveals number of injuries on her person including female organ. In Santosh Kumar Vs. State of M.P., where the gang rape was committed on a village girl aged 18 years, by all the three accused one after another in the secluded place, she was also threatened by the accused persons by beating her on the thigh and while one was committing rape, the other persons were catching hold of her hands and legs, the court held that it cannot be said that there must be injury on the private parts also. It is not the appellants' case that the sexual intercourse was done with the consent of the prosecutrix. "X" received multiple injuries/abrasions on various parts of the body and it indicated that she offered resistance when she was subjected to sexual intercourse.

13. In the light of the above discussion I find no illegality or irregularity in the impugned judgment. The conviction is based upon fair appraisal of evidence produced by the prosecution. u/s 376(2)(g), minimum sentence to be awarded is 10 years. No adequate and sufficient reasons have been given by the appellant to award lesser sentence. On that account, no modification of the order on substantive sentence is called for. However, fine Rs. 5,000/- is reduced to Rs. 1,000/- and in default of payment of fine the appellant shall undergo SI for one month.

14. The appeal is disposed of in the above terms. The appellant-Subhash and Shri Chand @ Siriya are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial court on 11th February, 2013. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.