

(2017) 01 DEL CK 0141
In the Delhi High Court
Case No : CRL.A. 689 of 2014

Suraj Kumar @ Suraj

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, Section 376

Citation : (2017) 1 ADDelhi 757

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

Bench : Single Bench

Advocate : Mr. Rajinder Singh, Advocate, for the Petitioner/Appellant; Mr. Amit Gupta, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Sri. S.P. Garg, J. - Challenge in this appeal is a judgment dated 24.04.2014 of learned Addl. Sessions Judge in Sessions Case No.163/2013 arising out of FIR No.100/2013 PS Chhawla whereby the appellant ? Suraj Kumar @ Suraj was held guilty for committing offences punishable under Sections 307/376 IPC. By an order dated 26.04.2014, he was sentenced to undergo RI for ten years with fine Rs.25,000/- each under Sections 307/376 IPC. The sentences were to run one after the other. The appellant was, however, awarded benefit under Section 428 Cr.P.C.

2. Briefly stated, the prosecution case as reflected in the charge sheet was that on 09.04.2013 at around 05.00 p.m. on the side of road alongside the drain at BSF Camp, Nirmal Dham, Chhawla, the appellant inflicted injuries to ?X? (Assumed name) by a knife with an intention to commit her murder and deprived her of her purse containing Rs.2,000/- and a stroll. It was further alleged that the appellant also committed rape upon the prosecutrix ?X?.

3. On 09.04.2013 at around 05.11 p.m. an information was received at Police Control Room from telephone No.8586973281 to the effect that a girl bleeding

from her throat was going on foot from village Chhawla towards BSF Camp. Pursuant to it, DD No.20A (Ex.PW-2/A) came to be recorded. The investigation was assigned to SI Hari Singh who along with Const.Rajender reached the spot. He came to know that the injured has already been taken to RTRM Hospital by PCR officials. On reaching the hospital, they found ?X? getting treatment at the hospital; she was unfit to make statement. On perusal of the contents of the MLC and nature of injuries sustained by the victim, the Investigating Officer prepared rukka (Ex.PW-2/C) and lodged First Information Report (Ex.PW-2/B). Crime Team was called at the spot. ASI Khazan Singh, In-charge Crime Team conducted the necessary proceedings at the spot; photographs were taken; various articles lying at the spot were seized vide seizure memos (Ex.PW-21/A, Ex.PW-21/B & Ex.PW-21/C). During investigation, ?X? recorded her statement under Section 164 Cr.P.C. The accused was arrested and medically examined. Various exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the accused for commission of the aforesaid offences. Vide order dated 24.07.2013, charge under Sections 307/376 IPC was framed against the accused to which he pleaded not guilty and claimed trial. In order to bring home the appellant?s guilt, the prosecution in all examined twenty-six witnesses and relied upon various documents. The incriminating evidence was put to the accused in 313 Cr.P.C. statement; no defence evidence was led. After considering the rival contentions of the parties and the evidence adduced by the prosecution, the Trial Court came to the conclusion that the appellant had committed the offences punishable under Sections 307/376 IPC and sentenced him accordingly. Being aggrieved and dissatisfied, the instant appeal has been preferred.

4. 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 for about two years prior to the incident. Both had worked together at Dwarka and Rohini. The prosecutrix and the appellant had visiting terms at each other?s residence. Intimacy had developed between the two. The prosecutrix had even made available her SIM to the appellant for use in his mobile. It has further come on record that the prosecutrix had assisted the appellant to be a member of a chit fund committee and he had availed Rs.1 lac. This amount was used by him to purchase a motorcycle No.DL-9SAK-8314. X?s grievance was that the appellant was defaulter in making the payment in instalments and it had strained their relations. It is also not in dispute that on 04.03.2014, a scuffle had taken place between the prosecutrix and the accused and a complaint at 100 was made. The police had arrived at the spot. Accused?s parents had apologized and the matter was not pursued further. At that time, the accused had misbehaved with the prosecutrix and her sister at her residence.

5. Appellant?s conviction is primarily based upon the testimony of the prosecutrix ?X?. She is not only a victim of sexual assault but is also an injured one. The testimony of the injured witness is accorded a special status in law. This

is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his or her presence at the scene of the crime and because the witness will not want to let his or her actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong ground for rejection of his or her evidence on the basis of major contradictions and discrepancies therein.

6. On perusal of the testimonies of various witnesses on record, it stands established that the prosecutrix was taken to a secluded place and was brutally injured by a knife. Not only that, she was also sexually assaulted.

7. PW-14 (Sharif Mohammad) who happened to cross the place of occurrence on the day of incident, informed that at about 05.00 p.m. when he was going towards his place of work at Gurgaon from his house and reached near BSF Camp, he saw a girl climbing up the slope of the drain. He noticed that her throat had been cut and she was bleeding. He made a telephone call at 100 from his mobile No.8586973281 and waited at the spot for arrival of the police which reached within ten minutes. This independent witness had put the police machinery in motion. He had seen the victim ?X? in injured condition at a deserted place seeking some assistance. This witness had no ulterior motive to falsely make a telephone call at 100. PW- 17 (ASI Vikram Singh), In-charge PCR Van Zebra 23, on receipt of information at around 05.15 p.m. from Control Room to the effect that a girl going from Chhawla village towards BSF Camp was drenched with blood reached the spot. He took the said girl to RTR Hospital, Jafarpur in PCR and admitted her there for treatment. This witness was not cross-examined. ?X? was medically examined by PW-3 (Dr. Nikhil Nishant) who testified that on 09.04.2013 he was posted as Emergency Medical Officer in RTRM Hospital, Jafarpur. On that day, a girl ?X? aged around 20 years was brought by PCR officials in injured condition. After examination, he found incised wounds upon her neck, right arm, right wrist, right index finger, right hand and right thumb. The nature of injuries sustained by the victim was dangerous and caused by a sharp edged weapon. He prepared MLC (Ex.PW-3/A) and referred her to higher centre for surgical opinion. In the cross-examination, he denied if the injuries noticed on victim?s body could be sustained in a road accident. Subsequently, knife (Ex.P5) - the crime weapon was recovered at appellant?s instance. The knife was shown to PW- 13 (Dr.Parvinder Singh) on 13.04.2013. He prepared the sketch of the knife (Ex.PW-13/B) and rendered his opinion (Ex.PW-13/A) to the effect that the injuries mentioned in the MLC (Ex.PW-3/A) could be possible by the weapon of offence like one produced before him for examination or some other weapon of similar shape and dimension. His testimony remained unchallenged in the cross-examination. The victim remained in the hospital for treatment for about 12 ? 13 days. ?X? had no ulterior motive to fake dangerous injuries on her vital organs.

8. In her 164 Cr.P.C. statement (Ex.PW-1/A), the victim categorically implicated

the appellant to be the perpetrator of the crime. She gave detailed account as to how and under what circumstances, she was not only injured but also sexually assaulted by the appellant when she was taken to an isolated place on the pretext to give her the remaining instalments of the chit fund committee.

9. In her Court statement as PW-1 ?X? proved the version given to the police at first instance as well as the one narrated before the learned Metropolitan Magistrate in 164 Cr.P.C. statement without any variation. Regarding the incident dated 04.03.2013, she disclosed that on that day she had left her house at around 10.00 a.m. to go to her elder sister?s house at a distance of about 2 k.m. from her residence. When she entered the house of her sister, the accused suddenly came there. She asked him to pay the instalments of the committee and he flatly refused to do so. The accused slapped her; manhandled her and her sister. He abused and threatened to kill her. Her sister made call at 100. Police officials arrived and recorded her statement and that of her sister. Later on the accused was arrested. Thereafter accused?s parents came to their house in the evening and agreed to pay all the instalments of the committee and requested to settle the matter. The accused was released from custody and she stopped talking to him. It did not deter the accused and he continued to scare ?X?.

10. The victim further deposed that on 09.04.2013 at about 01.30 p.m. when she was going towards the school at Najafgarh for admission of her brother, she received a call on her mobile No.9958157498 from the accused who asked her to meet him at Metro Station Sector-11 Dwarka to pay all the committee?s instalments. She met the accused at around 03.30 p.m. and he took her towards Chhawla saying that he would borrow some money from his friend after mortgaging RC of his motorcycle. On reaching near BSF Camp, Chhawla on motorcycle, the accused turned the motorcycle towards the drain (Nala) and after some time stopped it at a secluded place.

The accused asked her to wait on the pretext to ease himself. When she turned her face towards the motorcycle and kept standing, the accused came suddenly from behind and pressed her throat. Thereafter, he took out a big size kitchen knife having cello tape on its handle and stabbed her. As a result of which, she sustained injuries and started bleeding. Thereafter, the accused stabbed her on her left hand and near her right shoulder. After that the accused pushed her and laid her on the road, took off her jeans upto knee level, pulled down his jeans upto knee level and committed rape upon her. Thereafter the accused pushed her down the slope of the drain and fled. The accused was heard calling his father to inform that he had killed her. The accused also took away her stoll and purse containing Rs.2,000/-. She further elaborated that at about 05.00 p.m. after regaining strength, she came up to the road and signalled the passersby to stop. She found her mobile in her pocket and made a telephone call to her elder sister who in-turn informed the police. After the PCR arrived at the spot she was taken to the hospital.

11. In the cross-examination, she elaborated that she had met the accused for

the first time in February, 2012 when he had offered to get a job for her. She was introduced to the accused by her friend Jyoti who was her class fellow in 9th class. She explained that the accused had got her the job with M/s. Gupta Property Dealer at Sector-13, Dwarka, where she worked for a month. Thereafter, she got another job at Rohini on 17.04.2012. She fairly admitted that a friendship had grown between her and the accused and they both used to visit each other's house. She, however, denied if she wanted to marry the accused or had sexual intercourse with him. She further reiterated that she had withdrawn a sum of Rs.1 lac from the committee and had given it to the accused to meet his financial hardship. The accused did not repay the instalments despite her repeated reminders. She further disclosed that the employment of the accused at Rohini was terminated in November, 2012. She also resigned from the job at Rohini in the same month and they both had taken another job at M/s. Crazy Deals at Dwarka. She denied that the accused had taken her to Haridwar on 02.03.2013 and on return they had taken a room on rent in Noida on 03.03.2013. She further denied if on 04.03.2013 she had seen the accused with another girl on the motorcycle. She denied that the accused was falsely implicated as he had declined to marry her.

12. On appreciation of the victim's statement in its entirety it reveals that despite searching cross-examination no material discrepancies or infirmities could be extracted to suspect her version. No ulterior motive was assigned to the victim for making false allegations of serious nature against the appellant. Material facts stated in examination-in-chief have remained unchallenged and uncontroverted. In the cross-examination, no suggestion was put to the prosecutrix that the accused had not met her on the date of occurrence and had not taken her to the secluded place where the occurrence took place. The accused did not specifically deny if no injuries were inflicted by him upon victim's body. The accused did not deny his presence at the spot at the relevant date and time. He did not claim himself to be present at some other specific place. The injuries sustained by the victim were not challenged. In 313 Cr.P.C. statement for the first time the accused came up with the plea that he suspected victim's character and did not intend to marry her. Nothing has however been elaborated as to with whom the prosecutrix had any objectionable relations. The defence deserves outright rejection. No such defence was put in the cross-examination of the prosecutrix and she was not confronted with any such individual with whom she had objectionable relations. Inconsistent defence has been put in the cross-examination alleging false implication due to accused's refusal to pay money to her. Nothing has emerged on record if any time the prosecutrix had demanded any money from the accused or he was financially capable to meet her demands. Facts speak to the contrary when the prosecutrix had assisted him to get Rs.1 lac from chit fund committee and it had enabled the accused to purchase a motorcycle.

13. Victim's statement is consistent throughout. It has been further corroborated by medical evidence. As per MLC (Ex.PW-3/A), victim's hymen was found

ruptured. Subsequently, in an opinion given by the concerned doctor it was disclosed that the victim had disclosed that it was a case of 'sexual assault'. FSL report result (Ex.PA) is also in consonance with the victim's statement. Human semen was detected on victim's vaginal swab, vulvul swab, vaginal wall swab and vaginal smear. Blood was detected on the pubic hair, nail clippings, vaginal wall swab, vulvul swab, mobile phone, T-shirt, brasserie, jeans, pant underwear, jooti and dupatta (stoll) of the victim as well as on the knife (Ex.P5).

14. PW-8 (Anju), victim's sister, has further corroborated her version. She deposed that on 09.04.2013 at around 05.00 / 05.30 p.m. on receipt of a call from the victim about stabbing incident on her throat by a knife by the accused, she had made a call at 100. She also deposed about the incident dated 04.03.2013 when she and the victim were manhandled and threatened by the accused.

15. In 313 Cr.P.C. statement the accused did not give plausible explanation to the incriminating circumstances proved against him. In the absence of any prior animosity, the victim of sexual assault is not expected to level serious allegations of rape and physical injury. There are no reasons as to why the prosecutrix 'X' should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any person of rape sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society.

16. The evidence shows that the appellant after stabbing 'X' sexually assaulted her. After the rape, the appellant pushed her down the slope of drain leaving her in that condition to die. The testimony of prosecutrix has been corroborated by doctor, who after examining her found her hymen 'torn'. The learned Trial Court has rightly analysed the evidence and convicted the appellant under Section 376 IPC. On perusal of the evidence on record, it can safely be inferred that the appellant had intended to commit victim's murder. Various injuries on various body parts including a vital one were inflicted by a sharp edged weapon. The accused had deliberately taken the prosecutrix to an isolated place where she had no chance to get any assistance or help. The accused after inflicting dangerous injuries on the vital body parts of the prosecutrix left her abandoned at a deserted place. He had pre-planned the crime and had procured a sharp object to harm the unsuspecting girl. Apparently, the accused had attempted to commit victim's murder and conviction under Section 307 IPC cannot be faulted.

17. Minor discrepancies highlighted by the appellant's counsel are of no consequence as they do not affect the core of the prosecution case. There are no valid reasons to disbelieve the affirmative deposition of the prosecutrix 'X' and her sister PW-8 (Anju) coupled with medical and scientific evidence. The judgment based upon fair appreciation of the evidence cannot be faulted and

intervened.

18. Regarding sentence, the appellant was awarded RI for ten years with fine Rs.25,000/- each under Sections 307/376 IPC. The sentences were to operate one after the other. Nominal Roll dated 28.07.2015 reveals that the appellant has undergone two years, one month and thirteen days incarceration besides remission for three months and twenty-one days as on 27.07.2015. He is aged around 21 years and is not a previous convict. He is a first time offender and his overall jail conduct is satisfactory. The appellant and the victim were friends prior to the occurrence. Their relations turned sour due to non-payment of instalments by the accused. At one stage, they had worked together at various places; the prosecutrix had no grievance against him. However, subsequently to avoid payment of Rs.1 lac the appellant became revengeful and planned to inflict injuries to the prosecutrix.

19. Apparently, the crime committed by the accused is horrible and is a betrayal of trust; he deserves no leniency. At the same time, the impugned order ordering both the sentences awarded under Sections 307/376 IPC one after the other is excessive and unreasonable considering the mitigating circumstances.

20. Considering all these facts and circumstances, the Sentence Order is modified to the extent that the substantive sentences under both the offences under Sections 307/376 IPC shall run concurrently. Default sentence for non-payment of Rs.25,000/- each shall be SI for two months each. Other terms and conditions of the Sentence Order are left undisturbed.

21. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.