
(2011) 02 DEL CK 0038

In the Delhi High Court

Case No : Criminal Appeal No. 92 of 2011

Wakila and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 195, 372
Penal Code, 1860 (IPC) — Section 34, 343, 365, 366, 376

Citation : (2011) 02 DEL CK 0038

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : M.T. Malik and M.A. Khan, for the Appellant; Sunil Sharma, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This appeal u/s 372 Criminal Procedure Code has been preferred by the Appellants against the judgment dated 26th October 2010 passed by learned ASJ-II-NE, Rohini Courts acquitting the accused persons from the charges under Sections 366/365/376/343 read with Section 34 IPC. The Appellant Wakila was the complainant in the case. 2. The learned Sessions Judge after recording entire evidence analyze the evidence and came to following conclusions:

(i) Initially the prosecutrix at the time of her medical examination at Safdarjung Hospital disclosed to the doctor that she was raped by three police officials in a car. However, later on while making statement u/s 164 Criminal Procedure Code she gave a different version and stated that she was raped in a room at the police station.

(ii) The prosecutrix refused to submit herself to internal examination at Babu Jagjivan Ram Memorial Hospital.

(iii) The prosecutrix took a stand that she had not disclosed about the incident to

anybody till the release of her husband Nisar on 16th April, 2004 whereas as per the communication sent by her father in law Noman Khan to Chief Justice of Punjab & Haryana High Court on 15th April, 2004, it was alleged that the prosecutrix had been raped by the police officials.

(iv) The judicial TIP of accused Tek Chand was held and the prosecutrix in TIP could not identify Tek Chand, however, later on while deposing in the Court she identified Tek Chand. The other accused person i.e. Om Prakash being the investigating officer of the case against her husband,. was known to the prosecutrix and was named by her.

(v) In her testimony before the Court she stated that while rape was committed upon her, Om Prakash gave a teeth bite on her cheeks. However, none of her family member deposed of any bodily injury observed in the evening nor a bite mark on her cheek was found during her medical examination by the doctor nor she mentioned it to the doctor.

(vi) In her testimony, she stated that she became unconscious on being raped by Om Prakash and thereafter other accused persons raped her. The learned Sessions Judge observed that if she had become unconscious, she could not have been able to know as to who raped her subsequently, however, still she named and identified other accused Rakesh and Tek Chand as the persons who raped her during her unconscious state.

(vii) The learned Sessions Judge observed that she had deposed that she was bleeding for many days after the incident and got treatment from a private doctor. She did not mention this fact to the doctor who conducted her MLC neither it is recorded in her MLC. Her grandmother in law Smt. Akbari was examined as PW-17. She specifically stated that the prosecutrix was not taken to a private doctor for treatment. Neither any private doctor was examined by the prosecutrix as a witness. (viii) The prosecutrix identified all accused persons by name in the Court and admitted that she was told the names of accused persons by her father-in-law Noman Khan before the deposition. (ix) The prosecutrix alleged that she had gone to police station Jahangir Puri for registration of FIR but her FIR was not registered. The trial court observed that no complaint was made against SHO police station Jahangir Puri despite the fact the father in law of the prosecutrix had been sending communications to Chief Justice Punjab and Haryana High Court and Mumbai High Court on judicial side. (x) PW-17 her grandmother in law deposed before the court that the prosecutrix never disclosed to her about rape and was never examined by a local doctor. The court observed that the prosecutrix had ample opportunities to inform senior lady members of the family about the rape committed on her and they would have also noticed injuries on her cheek if the alleged incident had taken place. While prosecutrix deposed that her clothes were torn in the incident and she had changed her clothes, her father in law Noman Khan specifically deposed that neither he nor prosecutrix changed their clothes.

(xi) In her deposition prosecutrix had taken the stand that she and her father in law Noman Khan were kept in detention at CIA Office, Ferozepur Jhirka on 13th April, 2004. However, PW-24 Shabir and PW25 Ismile who were detained at CIA Office specifically deposed that no lady had been detained in the office at that time. A raid was conducted by learned Sessions Judge, Gurgaon at CIA Office, Ferozepur Jhirka. The proceedings of this raid are not disputed by the prosecutrix and the report of learned Sessions Judge does not show presence of either Nissar, husband of the prosecutrix or prosecutrix in CIA office. The report shows that Mubarak, Shabir, Ismile and one other person (out of which three were directed to be released) found detained. PW24 and PW25 deposed that each and every room of CIA Office was inspected by the learned Sessions Judge, Gurgaon. Had the husband of the prosecutrix or any of her family member been detained, that would have been noticed by the learned Sessions Judge, Gurgaon.

(xii) The other witnesses of the case i.e. neighbours of the prosecutrix did not support the case of the prosecutrix. PW23 Ms. Karuna stated that her affidavit filed by the prosecutrix did not bear her signatures and it was a forged document. The court compared her signatures with the admitted signatures and found that they were not tallying. The Court came to conclusion that father in law of the prosecutrix, who was involved in criminal cases, got the signatures of various neighbours forged with an intent to mislead the High Court into passing an order regarding registration of FIR. PW23 Ms. Karuna deposed that on the alleged day in the morning there was an incident at the house of the prosecutrix and in the evening when she met the prosecutrix, she informed her that the police officials of Haryana had come to her house to trace Aslam, a brother of her father in law. Thus, testimony of this witness showed that the prosecutrix was very much at her house on 9th April, 2004 when prosecutrix alleged that she was taken away by police officials.

2. After noting down all facts and testimony of witnesses, the learned Sessions Judge came to conclusion that the prosecution failed to prove and substantiate the allegations made against the accused persons of commission of offence. Rather the learned Sessions Judge came to conclusion that Nissar Ahmed, husband of the prosecutrix and Noman Khan, father in law of the prosecutrix lodged a false case implicating the Respondents/ accused persons falsely in the commission of a grave offence punishable for sentence not less than seven years knowing fully well and there was no lawful ground for such proceedings. The learned Sessions Judge therefore directed for lodging a complaint u/s 195 Criminal Procedure Code against the prosecutrix, her father in law Noman Khan to learned ACMM.

3. From the testimony of witnesses and the evidence, the conclusion arrived at by learned Sessions Judge is the only natural conclusion and there is no force in this appeal. The appeal is hereby dismissed.