

State Vs. Lalita

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Court : Delhi

Decided On : Sep-16-2013

Judge : G.P. Mittal

Appellant : State

Respondent : Lalita

Advocate for Pet/Ap. : Mr. Saleem Ahmed

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

16. h September, 2013 + CRL.L.P. 501/2013 STATE Through: Petitioner Mr. Saleem Ahmed, ASC for the State. versus LALITA Respondent Through: Nemo. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G. P. MITTAL J.

(ORAL) CRL.M.A. 13958/2013 (delay) 1. This application has been filed by the State seeking condonation of 94 days delay in filing the present petition for leave to appeal.

2. Heard. For the reasons stated in the application, present application is allowed. Delay in filing the petition for leave to appeal is condoned.

3. Application stands disposed of. CRL.L.P. 501/2013 4. By this petition under Section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the State seeks leave to appeal against the judgment dated 11.03.2013 passed by the learned Additional Sessions Judge (ASJ), (North-West) Rohini, Delhi in Sessions Case No.12/2009 whereby the respondent was acquitted of the charge under Sections 363/372/376/34 of the Indian Penal Code, 1860 (IPC).

5. The prosecutrix J got missing on 31.12.2006 at 6:00 A.M. A DD No.11A (Ex.PW-12/A) dated 06.01.2007 was recorded at Police Station Uttam Nagar. ASI Tej Singh (PW-12) reached at DDA Flat No.D-230, Bindapur where father of the prosecutrix informed him that his daughter aged about 15 years had been missing since 31.12.2006 from 6:00 A.M. He was unable to trace the whereabouts of his missing daughter despite best efforts. He further informed the ASI that one Lalita, wife of Dalip, resident of Flat No.D-223, DDA Flats, Bindapur was a frequent visitor to their house and she too had been missing along with her husband and children since the same time. The complainant expressed his suspicion that his daughter might have been enticed away by Smt. Lalita (the respondent) and her husband Dalip Singh. On the basis of the complaint, FIR was registered under Section 363 read with Section 34 of the IPC.

6. During investigation of the case, on 07.01.2007, ASI Tej Singh received a phone call from SI Rajender Pandey of P.S. Char Bagh, Lucknow regarding apprehension of the prosecutrix along with respondent Lalita. Further investigation of the case was assigned to ASI Om Prakash who along with Constable Rajesh Kumar and W/Constable Rekha reached Lucknow and met ASI Rajender Pandey of GRP Lucknow. The prosecutrix was brought to the Police Post GRP from the children home. Respondent Lalita along with her three children was also found there. Statement of the prosecutrix was recorded by ASI Om Prakash wherein she informed the IO that she was kidnapped from the lawful guardianship of her parents by the respondent and her husband Dalip on the morning of 31.12.2006 on the pretext of attending a marriage in the village. She was taken to Sitamari

(Bihar) where she was raped by Dalip (PO) with the assistance of the respondent. The prosecutrix as well as the respondent were brought to Delhi.

7. On an application moved by the IO, statement (Ex.PW-1/A) of the prosecutrix was recorded under Section 164 of the Cr.P.C. Whereabouts of the main accused Dalip Singh were not known. NBWs issued against him remained unexecuted. He was ultimately declared a proclaimed offender (PO).

8. On the respondent pleading not guilty to the charge for the offence punishable under Sections 363/372/376 read with Section 34 of the IPC, the prosecution examined 13 witnesses. On close of the prosecution evidence, in order to afford an opportunity to the respondent to explain the incriminating evidence appearing against her, she was examined under Section 313 Cr.P.C. She denied the prosecution allegations and came out with a specific defence that it was the prosecutrix who had herself eloped with her husband (Dalip Singh) on 31.12.2006. She (the respondent) went in search of the prosecutrix as well as her husband. She stated that while she, her husband and the prosecutrix were present at the railway station, (for returning to Delhi) her husband ran away from the railway station leaving her and the prosecutrix there. Thereafter, the prosecutrix got her implicated in the case falsely.

9. On appreciation of the evidence, the Trial Court disbelieved the prosecution version that the prosecutrix could have been made to leave her parents house consisting of just one room tenement, that too in the early hours of 31.12.2006 when all the family members were present at home and were busy in the early morning chores. Crl. L.P. 501/2013 The Trial Court Page 3 of 12 noticed various improvements vis-a-vis statements under Section 161 Cr.P.C., 164 Cr.P.C. and the testimony made in the court and also contradictions in the prosecution version and acquitted the respondent giving her benefit of doubt.

10. The learned counsel for the State urges that in case of sexual assault conviction can be based on the sole testimony of the prosecutrix. The Trial Court erred in disbelieving the testimony of the prosecutrix and attached unnecessary importance to the delay of seven days in recording the FIR. The learned counsel, therefore, contends that the order of acquittal passed by the Trial Court cannot be

sustained.

11. A perusal of the Trial Court judgment reveals that the Trial Court was conscious of the proposition of law that evidence of a solitary witness if it inspires confidence is sufficient to base conviction of the accused. The Trial Court referred to this proposition in Para 37 of the impugned judgment. The Trial Court also opined that the prosecutrix who is a victim of sexual assault is not to be treated as an accomplice and if her evidence inspires confidence, the court should not have any hesitation in accepting the same.

12. In the instant leave petition which arises out of the order of acquittal in respect of respondent Lalita, we are not concerned with the case as against co-accused Dalip Singh who was declared a PO. PW-1 the prosecutrix was the star witness of the prosecution. The prosecutrix's testimony was discussed in great detail by the Trial Court and in the circumstances, the Court observed that the prosecutrix was unworthy of reliance and there was no explanation as to why the complainant, that is, the prosecutrix's father after having received phone call from the prosecutrix on 05.01.2007 did not lodge a police report even thereafter once they did not give any satisfactory explanation about the delay in lodging the FIR. The observations of the Trial Court are extracted hereunder:

40 In the present case when we scrutinize the testimony of prosecutrix carefully we find that the same is full of contradictions and embellishments which make it difficult to rely upon her testimony alone to convict the accused Lalita. In the first instance when the prosecutrix stated in her statement Ex.PW1/ DA made to the Police that accused Lalita had come to her house to call her, it appeared that accused Lalita had come to her all of a sudden and prosecutrix also went with her without any preparation and it was only when prosecutrix reached house of accused Lalita, accused Lalita and her husband convinced prosecutrix to accompany them and their children to their native village and assured prosecutrix that her father would have no objection to it as they had already taken permission from him. In her statement u/s.164 Cr PC Ex.PW1/ A made to learned MM, prosecutrix stated that accused Lalita had come to her house on 31.12.2006 in the morning at about 6:00 AM and had influenced her to leave her parental house and

to accompany her to her village at Bihar where she made her husband to commit wrong act with the prosecutrix. In her statement Ex.PW1/A again there is no clue that prosecutrix had made any preparation before going with accused Lalita i.e. taking her clothes etc. From statement Ex.PW1/ A it appears that husband of accused Lalita i.e. accused Dalip was already in the village. There is no mention of the children of accused Lalita in Ex.PW1/A. In her deposition before the Court as PW1, the prosecutrix has made further improvements in as much as she states that when accused Lalita came to her house on 31.12.2006, her father and brother were present in their one room accommodation and that she did not speak to her father or brother before leaving with accused Lalita. She volunteered to state that accused Lalita had already sought permission of her father, however, at the same time prosecutrix states that she had left with a bag containing some clothes to be worn for the marriage ceremony. From this response of prosecutrix, it appears that she was well prepared to leave with accused Lalita, if at all accused Lalita had come to take her. Further contrary to her earlier statements i.e. Ex.PW1/DA and Ex.PW1/ A in her cross-examination as PW1 prosecutrix stated that she had gone straightaway from her house to Railway Station. Thus there was no occasion for prosecutrix to be enticed or induced to go by accused Lalita after prosecutrix had left her house. There is nothing on record to show that prosecutrix had gone with accused Lalita, without telling her father about it, on any previous occasion. It is rather unusual for prosecutrix to be convinced by accused Lalita on such short notice, to accompany her to Bihar, without even seeking permission of her father or brother, who were very much present in the house when she had not done so on an earlier occasion and was otherwise an obedient child, as claimed by her. 41 Further in her statement Ex.PW1/ DA, prosecutrix has stated that accused Lalita and her husband accused Dalip had taken her to house of their relative on 01.01.2007 where accused Dalip had committed wrong act with her with the help of accused Lalita for 2 days and thereafter accused Lalita and Dalip took her to Village Kishan Pur, P.S. Bela, District Sitamari, Bihar, and kept her in her house where also accused Dalip committed wrong act with her for 3 - 4 days and then they both decided to use her for illicit flesh trade and earn money by selling her. In her statement u/s.164 Cr PC Ex.PW1/ A, prosecutrix does not mention about going to any other place with accused Lalita and accused Dalip from their village in

Bihar. She also does not state about presence of any relative of the accused. She further states that it was accused Lalita, who was taking her in train so that she could sell prosecutrix in Nepal and that she told one aunty everything who made call to the Police. Prosecutrix herself claims to have given phone call to her father. In her testimony before the Court, prosecutrix has again made further improvements in her statements Ex.PW1/DA and Ex.PW1/A wherein she claims that accused had taken her to Sitamari, Bihar, to house of their Bhabhi where they stay for 2 - 3 days and that during the said stay, accused Dalip used to return home at night heavily drunk and that accused Lalita used to remove her clothes and hand over prosecutrix to him and that accused Dalip also removed his clothes and committed sexual intercourse with PW-1 against her wishes and that at that time accused Lalita used to press her mouth. It is noteworthy that from the cross-examination of the prosecutrix it is brought out that there were several other persons staying in house of said relative / Bhabhi i.e. her child, her husband and 4 - 5 men, all of whom used to sleep inside the room of said house which comprised of two rooms and kitchen. During her subsequent crossexamination, however, prosecutrix stated that she did not remember how many members were there in the house of Bhabhi of accused apart from herself, accused persons and the said Bhabhi. It is pertinent to note that accused Lalita and accused Dalip (Proclaimed Offender) had already been married for good numbers of years, at the time of incident, and had three children born from their wedlock. There is nothing on record to show that accused Dalip was otherwise a womanizer and a pervert, who paid no heed to presence of his wife while publicly demonstrating his lustful behaviour. In these circumstances, it is difficult to comprehend that a married woman with three children would aid and abet her husband in satisfying his lust with a young woman and jeopardize her own married life and future of her small children by encouraging such untowards behaviour of her husband that too in presence of several relatives, in whose house they themselves were guests, and in presence of her children and the children of the relatives with whom they were staying. Further the claim that during stay at Bhabhi's house, accused Dalip used to return home at night heavily drunk and that accused Lalita used to remove clothes of PW-1 and hand her over to her husband has also been made for the first time by prosecutrix in the statement as PW1. In the said statement,

prosecutrix also states that from Sitamari, they had gone to house of father of accused Dalip and that the said house was locked and that lock was broken open by the accused Dalip. The prosecutrix did not raise any alarm while going Sitamari to the house of parents of accused Dalip and though she claims that she was scared, such a plea does not inspire any confidence considering that she has not mentioned about it in any of her previous statements. The prosecutrix tried to cover up by stating that driver was known to accused Dalip but does not explain how she got the information that driver was a person known to accused Dalip. It is also brought out from the cross examination of the prosecutrix that she had made further improvements upon her earlier statements in as much as she states that she had made a telephonic call to her father on 05.01.2007 and then she stated that she had made call to her aunt Savita as her father was not having mobile phone. During her said cross examination, prosecutrix also stated that she had taken help from a person residing in neighbourhood of house of the parents of accused Dalip and had given call from his mobile phone and that at that time she was accompanied by a girl, who was residing in the neighbourhood. These facts have nowhere been disclosed by prosecutrix in her statement Ex.PW1/A or Ex.PW1/ DA. The manner in which prosecutrix was rescued and accused Lalita was apprehended also vary in various statements made by prosecutrix. In her statement Ex.PW1/DA prosecutrix states that when accused Lalita was taking her in train. She raised alarm hearing which public person stopped train. In her statement Ex.PW1/A, prosecutrix stated that she had told everything to one aunty, who was also going in train in which accused Lalita was taking her and that said aunty called Police and train was stopped. In her statement as PW-1, prosecutrix again stated that she, accused Lalita and her children were going somewhere in train and she raised alarm, hearing which copassengers handed over PW1 to Lucknow Police. 42 In all when all the three statements of the prosecutrix are considered conjointly, it is seen that she has changed her version in each of the statements regarding the manner in which she was enticed away by the accused Lalita to accompany her and accused Dalip to their native village at Bihar, the manner in which they arrived to Bihar, the place where they stayed in Bihar, during period from 31.12.2006 to 07.01.2007, the manner in which accused Lalita assisted her husband in raping the prosecutrix, the manner in which prosecutrix

informed her family about her whereabouts and also the manner in which prosecutrix and accused Lalita were ultimately apprehended by the Police. The fact that no public witness either from the places where prosecutrix and / or accused persons had resided and the persons/passengers who had handed over the prosecutrix and the accused Lalita to PW-11 SI Rajinder Pandey have not been joined in investigations also casts a doubt about the prosecution case. The call details of the phone from which prosecutrix had informed her father, which otherwise prosecutrix has denied as PW-1, have also not been placed on record. Further the delay in lodging of the FIR also does not stand explained, in the present case. The father of prosecutrix, who was examined as PW-2 has stated that he had found prosecutrix missing from house on 31.12.2006 at about 8:00 AM i.e. within 2 -3 hours of prosecutrix going amiss. He claims to have received a phone call from prosecutrix on 05.01.2007. Even assuming that father of prosecutrix continued to search for prosecutrix from 31.12.2006 to 05.01.2007 does not explain why he waited for another day and informed the Police about missing of his daughter only on 06.01.2007 and filed his complaint Ex.PW2/A thereafter. The delay in lodging the FIR also does not stand explained satisfactorily.

13. Thus, the Trial Court noticed improvements and contradictions in PW-1s testimony in the court and her previous statement under Section 161 Cr.P.C. as to how she was enticed, how she was kept at different places, how she was moved from one place to another place and how and why did she not avail an opportunity to inform the public that she had been kidnapped or that she had been raped by Dalip Singh in connivance with the present respondent and found her unworthy of reliance.

14. In our view, the Trial Court has given good and valid reasons to disbelieve the prosecutrix. In *Rai Sandeep @ Deepu vs. State of NCT of Delhi* (2012) 8 SCC 21. the Supreme Court commented about the quality of the sole testimony of the prosecutrix which could be made basis to convict the accused. The Supreme Court held as under:

22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

15. In the case of *Abbas Ahmed Choudhury v. State of Assam* (2010) 12 SCC 115, while observing that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully, the Honble Supreme Court

observed as under:

Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully. In the instant case, not only the testimony of the victim woman is highly disputed and unreliable, her testimony has been thoroughly demolished by the deposition of DW-1

16. Similarly, in *Raju v. State of Madhya Pradesh* (2008) 15 SCC 133, the Supreme Court stated that the testimony of a victim of rape has to be tested as if she is an injured witness but cannot be presumed to be a gospel truth. Para 11 of the judgment is extracted hereunder:

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

17. It is important to note that the respondent is a married lady with three children. No evidence was brought in by the prosecution that the respondent was in flesh trade. Ordinarily a married woman with three children will not abet, assist and aid her husband to commit rape on a young girl of 15 years and that too in the house of her husband's sister-in-law/parents. Although, the prosecutrix tried to build up a case in her testimony in the court that she heard the two accused saying that the prosecutrix was beautiful and that she could be sold for money, the same was, however, disbelieved by the Trial Court being an improvement to her earlier statements under Section 161 Cr.P.C. and 164 Cr.P.C. There were not only grave

doubts in the prosecution case, but the story put forth was highly improbable and unbelievable. On the other hand, the explanation given by the respondent that the prosecutrix ran away with her husband and that she had gone to the village in search of the prosecutrix and her husband and that while they all three were at the railway station, her husband fled away and she was implicated falsely is more plausible and probable. In the circumstances, the judgment of acquittal recorded by the trial court does not call for any interference.

18. The leave petition is meritless; the same is accordingly dismissed. (G.P. MITTAL) JUDGE (G.S. SISTANI) JUDGE SEPTEMBER 16 2013 vk

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