

Manoj Vs. State

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Court : Delhi

Decided On : Nov-25-2014

Judge : Pratibha Rani

Appellant : Manoj

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

20. 11.2014 Pronounced on :

25. 11.2014 % + CRL.A. 23/2006 MANOJ Through: Appellant Ms. Rakhi Dubey, Advocate. versus STATE Through: Respondent Mr. Neeraj Kumar Singh, APP for the State. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

1. The Appellant Manoj has been convicted by learned Addl. Sessions Judge, Delhi in Sessions Case No.33/2002 in FIR No.361/2002 under Sections 376/452/506/342/323 IPC, PS Hauz Khas for committing the offence punishable under Sections 451/342/376/506 IPC and sentenced to undergo RI for one year with fine of Rs.500 and in default to undergo SI for one week for committing the offence punishable under Section 451 IPC, to undergo RI for six month for committing the offence punishable under Section 342 IPC, to undergo RI for seven years with fine of Rs.5000/- and in default to undergo SI for six months for

committing the offence punishable under Section 376 IPC and to undergo RI for two years for committing the offence punishable under Section 506 IPC and all the sentences were ordered to be run concurrently.

2. The prosecution case against the Appellant is based on the statement of Prosecutrix S (name of the Prosecutrix withheld to conceal her identity) which found basis of registration of FIR No.361/2002 under Sections 376/452/506/342/323 IPC, PS Hauz Khas (Ex.PW11/A). The time and date of incident has been recorded to be about 2.00 am on the night intervening 7/8-6-2002 whereas FIR has been recorded on 08.06.2002 at about 10.05 PM. The distance of place of occurrence and the Police Station has been reported to be one furlong in the North direction. The Prosecutrix, aged about 19 years, was working as maid servant at House No.A-59, Hauz Khas, New Delhi. On the night of occurrence, she alongwith three other servants was sleeping on the roof top. During night, one person caught her and when she woke up, she noticed that she had been caught by Guard of the adjoining house No.A60, whom she had seen earlier in a uniform and working as watchman. At that time, he was only in underwear and baniyan. She raised alarm and tried to run but he caught her from the right hand. She tried to hold the wire on the wall but he lifted her and threw her on the adjoining roof. Thereafter, he also came on the roof of A-60. She raised alarm calling the other three servants by their names but nobody woke up. She was dragged by the Appellant through the staircase and brought on the middle floor where she was pushed in a room and raped twice. Thereafter the Appellant brought her upto the roof of A-59 where she was sleeping. She went to the toilet and when she returned, she found that Appellant Manoj had already left. She was reluctant to wake up the other servant Shobit and continued lying there till morning. During the day time, while she was doing household work, as she was weeping, servant Mahavir asked her as to why she was weeping. Then she narrated the entire incident to him who disclosed the same to other servant Ravinder and Ravinder disclosed the same to lady of the house. The lady of the house then told her husband. Thereafter her employer made inquiries from the Guard of the adjoining house and it was revealed that the name of the Guard, who committed rape on her, was Manoj Kumar, Then she alongwith her employer came to the Police Station and made her statement Ex.PW4/A and thereafter FIR

was registered. During investigation, the Appellant was arrested, the Prosecutrix as well as the Appellant were subjected to medical examination and the exhibits were sent to FSL. After completion of investigation, the chargesheet was filed against the Appellant for the offences complained of.

3. Since the Appellant pleaded not guilty to the charges framed, the Prosecution examined 15 witnesses to prove its case. In his statement under Section 313 Cr.P.C. while denying commission of offence of rape, the Appellant claimed that the Prosecutrix was in relationship with Suchit, an employee of an Architect office at 2nd Floor of A-60, Hauz Khas. Suchit used to sleep in the office. Appellant used to object Prosecutrix visiting A-60, Hauz Khas to meet Suchit. On the night intervening 7/8.06.2002 when he saw the complainant on the roof of A-60 with Suchit, he again took objection to the same and due to this reason, he has been falsely implicated in this case.

4. The learned Trial Court, believing the testimony of the Prosecutrix to be convincing and inspiring confidence and plea of consent being not taken by the Appellant and the fact that the Complainant did not even know the name of the Appellant till it was inquired after the occurrence, considered it to be a case proved by the Prosecution beyond reasonable doubt. Thus, while convicting the Appellant for committing the offences punishable under Sections 376/452/506/342/323 IPC, sentenced him in the manner stated above.

5. Feeling aggrieved by his conviction and sentence awarded to him in this case, the Appellant has preferred the present appeal.

6. Perusal of the record reveals that the substantive sentence of the Appellant was suspended by this Court vide order dated 27.11.2006. thereafter the Appellant got his blood test conducted and filed an application praying for taking on record the blood test report of the Appellant which confirmed the blood group of the Appellant to be B+ however the semen detected on the undergarment of the Prosecutrix was of blood group A. Thereafter this Court also directed the blood test of the Appellant to be conducted through SHO concerned at some Govt. Hospital. Thereafter blood test report of the Appellant which was conducted at Safdarjung Hospital has been placed on record alongwith supporting affidavit of Mr.Neeraj Kumar, SHO, PS

Hauz Khas. The blood test report of the Appellant, which was conducted at Safdarjung Hospital also confirmed the blood group of the Appellant to be B+.

7. I have heard learned counsel for the Appellant as well as learned APP for the State.

8. During the course of arguments, it has been submitted on behalf of the Appellant that from day one, the plea of the Appellant was that he had not committed any offence and he has been falsely implicated in this case because of the objection being raised by him to the relationship of the Prosecutrix with Suchit, an employee of an Architect having office on the 2nd Floor of A-60, Hauz Khas. It has been further submitted that on that night also, the Appellant noticed both of them to be together and took strong objection to that as a result of which he has been falsely implicated in this case. It has been further submitted by learned counsel for the Appellant that now the innocence of the Appellant has been proved through scientific evidence that the semen detected on the undergarments of the Prosecutrix i.e. of blood group A, was not that of the Appellant as his blood group is B+. Further the MLC of the Prosecutrix shows that she was habitual to sexual intercourse. There was no fresh injury on any part of her body including private part. Had she been ravished in the manner as stated in the FIR i.e. after lifting and throwing her on the adjoining roof and dragging her through the staircase and thereafter committed rape on her twice within 15 minutes, there would have been injuries on her person which were not found present during her medical examination. Learned counsel for the Appellant submitted that the innocence of the Appellant being established through scientific evidence, the Appellant may be acquitted.

9. On behalf of State, genuineness of the medical report regarding blood group of the Appellant which was got conducted by SHO, PS Hauz Khas at Safdarjung Hospital under the custody of ASI Om Pal is not disputed. It is also not disputed that the person having blood group B+ will not have semen of blood group A. However, learned APP for the State submitted that since the Prosecutrix has fully supported the case of the Prosecution, the judgment be not interfered with.

10. I have considered the submission made on behalf of the parties and also carefully gone through the record.

11. In this case the Prosecution was medically examined on 08.06.2002 vide MLC Ex.PW9/A. However, on the MLC, the date and hour of arrival or time of medical examination is not mentioned. The MLC records :Alleged h/o rape : informant : self. S..... gave h/o been forcefully raped on 7/6/02 at 2 pm by a guard in the neighbourhood. Patient was sleeping at roof top of house when the guard came and slept with her. When she tried to run, she was forcefully caught and was physically assaulted, slapped and taken to next roof top, taken to a room forcefully. 12. As per the MLC, there was no mark of injury on any part of the body, however, the intercourse was done.

13. The photographs of the roof reveal that apart from parapet wall, there is an iron grill and height is further increased between roof of the two houses by putting partition of Bamboo Zafri. Thus, the partition wall between the two roofs appears to be about 4 to 5 feet. As per the version of the Prosecutrix in the FIR, she was physically lifted by Appellant and threw her on the adjoining roof. Thereafter the Appellant also came to the said adjoining roof (of A-60) and she was dragged through the staircase of House No.A-60 and brought to beechwala floor, pushed in a room and raped twice. This entire version of the Prosecutrix seems to be improbable and highly unbelievable for the following reasons : (i) There were four servants sleeping on the roof top of House No.A- 59 and even if two of them i.e. Mahavir and Kanti have left, PW-3 Shobit was still there and it is highly unbelievable that if a young girl aged about 19 years is struggling to get out of the clutches of the Appellant raising alarm, her cries would not be heard despite the fact that cries are made on an open roof during night time. PW-3 Shobit, who was sleeping on the same roof where the Prosecutrix was sleeping, stated that he did not know what happened in the night and that next day at about 1.00 pm, he came to know about the Prosecutrix being raped. (ii) The age of the Appellant is also stated to be 20 years and being a boy of 20 years, it was not probable to lift the Prosecutrix aged about 19 years physically and threw her on the adjoining roof having a partition wall of about 4 to 5 feet in between and then drag her through the staircase without even causing a bruise on her person. (iii) There is also

contradiction in the statement of Prosecutrix as to whether she had gone to the Police Station with Sahab or of her own with some other servant. It may be noted here that as per the statement of PW-2 Sh.Anil Bhandari, when he was informed about the incident through servants, he inquired about the name of the Guard on duty on the previous night and then came to know about the name which was written on a slip. Thereafter he telephoned the police. The Prosecutrix was sent to Police Station accompanied by another servant. In cross examination, PW-2 Mr.Anil Bhandari has specifically stated that he had not gone to the Police Station in connection with this case and that he came to know about the name of the Appellant through the slip handed over to him by another servant about the name of the Guard on duty. (iv) As per FSL report, the semen found on the underwear of the Prosecutrix Exhibit-2c was of group A and it is conclusively established before this Court that blood group of the Appellant is B+. Hence the semen detected on the underwear of the Prosecutrix was not that of the Appellant.

14. The MLC and the FSL report are sufficient to prove the innocence of the Appellant in this case. Absence of injury on the body of the Prosecutrix despite there being allegations of being thrown on the adjoining roof across the partition wall and dragged through the staircase and twisting her arm, makes version of the Prosecutrix highly improbable.

15. The effect of presence/absence of injuries in such type of cases has been considered by the Supreme Court in the case of Pratap Misra and Ors vs. State of Orissa AIR 1977 SC1307 In Pratap Misras case (Supra), it was held as under : Unless under the influence of drink or drugs or asleep or ill, a fully grown girl or adult woman should be able to resist a sex assault. We should expect to find evidence of a struggle to avoid sexual contact or penetration, and may well feel uncertainty about the real nature of an alleged assault in its absence.... A false accusation of rape may some times be exposed by marks of violence being wholly inadequate or absent. Bruises upon the arms or the neck may be considered to constitute some evidence of a struggle; and impressions of finger nails are also significant. Bruises or scratches about the inner side of the thighs and knees may be inflicted during., attempts to abduct the legs forcibly, and care must also be taken to examine the back, for the victim may have been pinned against the wall

or floor. It is important to record these in detail, and to say, if possible, how fresh they are. The ageing of bruises is, as was indicated in Volume I, a matter of some uncertainty in the absence of microscopy. Strong corroborative evidence of a struggle might be obtained from an examination of the accused for similar marks of bruises or scratches about the arms or face, and possibly even about his penis, though this is less likely. Though injury is most unlikely to the penis, a man may have had his face scratched or have been bitten during a sex assault. The clothing may bear some contact traces of the woman-hairs, vaginal secretion or blood, and, though of less significance, seminal stains. The medical evidence, therefore, clearly discloses that the prosecutrix does not appear to have put up any resistance to the alleged onslaught committed on her by the appellants. From this the only irresistible inference can be that the prosecutrix was a consenting party which would be reinforced by other circumstances to which we shall refer hereafter.

9. Another aspect of the matter is that where there has been any real resistance there is bound to be local injury and marks of violence on the body and the limbs of the victim. Taylor in his book Principles and Practice of Medical Jurisprudence, Vol. II, observes thus at p. 64: Nevertheless, it is most likely that when there has been some real resistance, local injury will be apparent and probably also marks of violence on the body and limbs. Although according to the prosecutrix, three persons raped her with great force and violence resulting in great pain to her and her breasts becoming swollen and red and other injuries, yet when she was examined by the Doctor P.W. 8 only after 16 to 17 hours of the occurrence, the Doctor found no marks of injuries on her body at all. In this connection P.W. .& has categorically stated thus: I examined her (P.W.

1) at 5-15 p. m. on 20-4-1972. There was no injury or bruise mark on the breasts or chest There was no injury mark on the face, thighs and over the whole body. If the story of the prosecutrix was true, then we should have expected an injury or bruise-mark on the breasts or chest or on the thighs or other part of the body. The learned Sessions Judge, with whom the High Court has agreed, seems to have brushed aside this important circumstance on the ground that as the prosecutrix was examined by the Doctor on April 20, 1972, at about 5 P. M about 17 hours

after the occurrence injuries may have disappeared and has relied on an observation of Taylor at p. 66 of his book which runs as follows: Injuries from rape may soon disappear or become obscure, especially in women who have been used to sexual intercourse. The Sessions Judge explained that as the prosecutrix was habituated to sexual intercourse injuries may have disappeared. While referring to one part of the observation of Taylor, the learned Sessions Judge has completely lost sight of the other part which explains the real issue and which runs thus: After 3 or 4 days, unless there has been unusual degree of violence, no traces may be found. Where there has been much violence, the signs may of course persist longer. Thus, if such a serious violence was caused to the prosecutrix by the appellants, the injuries are not likely to have disappeared before 2 or 3 days and the signs were bound to persist at least when she was examined by the Doctor. The absence of injuries on the person of the appellants as also on the person of the prosecutrix is yet another factor to negative the allegation of rape and to show that the appellants had sexual intercourse with the prosecutrix with her tacit consent. 16. Reverting to the facts of the instant case, the prosecution version is liable to be discarded not only for absence of injuries on the person of Prosecutrix but also scientific evidence that has exonerated the Appellant of having committed the rape on the Prosecutrix. Thus, merely because the Prosecutrix has preferred to make a statement against the Appellant naming him to be the person who committed rape on her twice within a short span of 15 minutes without leaving any mark of injury on any part of the body, makes her testimony highly improbable and not worthy of any credence.

17. In view of above discussion, the Appellant is acquitted of the charges framed against him. His bail bond stands cancelled and surety discharged.

18. The Appeal stands allowed. TCR be sent back alongwith copy of this order. A copy of this order be also sent to concerned Jail Superintendent for information. (PRATIBHA RANI) JUDGE NOVEMBER25 2014 st

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