

Sunil Chand Gupta and ors Vs. State

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Court : Delhi

Decided On : Feb-05-2014

Judge : Indermeet Kaur

Appellant : Sunil Chand Gupta and ors

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on :

30. 01.2014 Judgment delivered on :

05. 02.2014 CRL.A. 28/2002 SUNIL CHAND GUPTA & ORS. Through:
Appellants Mr.D.M.Bhalla and Ms.Gousia Shah, Advocates. versus STATE
Respondent Through: Ms.Fizani Hussain, APP. CORAM: HON'BLE MS. JUSTICE
INDERMEET KAUR INDERMEET KAUR, J.

1 Appellants before this Court are Sunil Chand and Bimla Devi. They are aggrieved by the judgment and order of sentence dated 07.12.2001 and 13.12.2001 respectively wherein accused Sunil Chand had been convicted for the offence punishable under Section 498A IPC; co-accused Bimla Devi had been convicted for the offence punishable under Section 498A IPC as also for the offence under Section 376 read with Section 109 of the IPC. Accused Sunil Chand had been sentenced to undergo RI for 3 years and to pay a fine of Rs.500/- in default of payment of fine to undergo SI for three months. Accused Bimla Devi had

also been sentenced for the same period with the same amount of fine for the offence under Section 498A IPC; for the offence under Section 376 read with Section 109 IPC Bimla Devi had been sentenced to undergo RI for 7 years and to pay a fine of Rs.500/- in default of payment of fine to undergo SI for three months. These sentences were to run concurrently. Benefit of Section 428 Cr.P.C. had been accrued to the appellants. 2 The version of the prosecution was unfolded in the testimony of prosecutrix (PW-1). As per her statement she married Sunil Chand on 29.4.1999; for the first six months of their marriage she was treated well; thereafter demands of dowry were made both by her husband and her mother-in-law Bimla Devi. The demands were in the nature of T.V., fridge and washing machine. The parents of the victim were unable to meet these demands. The accused persons started beating her and treated her with cruelty. On 22.9.2000 a son was born to PW-1 but unfortunately he died within two weeks of his birth. On 30.10.2000 (which the date of the fateful incident) at about midnight when the victim was in her room her mother-in-law came and after opening the door she pushed Narender (tenant of Bimla Devi) in the room of the victim where Narender committed rape upon her and then fled away. When PW-1 narrated this incident to her husband; he stated that these things happen in their family. When PW-1 complained about this to her mother-in-law, she was rebuked by saying that PW-1 being a woman of bad character; she would be turned out of the house. In this incident she had sustained injuries on her arms. After 3-4 days of the incident, her younger brother and sister came to meet her and she narrated the incident to them. Her brother and sister informed their parents who in turn informed to the police. Statement of prosecutrix (Ex.PW-11/B) was thereafter recorded. This statement was recorded on 11.11.2000. 3 The corroborative witnesses to the version of PW-1 were PW-3 Renu Gupta, the sister of the victim and PW-4 Ajay, brother of the victim. The father of the victim Rameshwar Dayal was examined as PW-2. 4 The victim was medically examined on 11.11.2000 at about 7.45 p.m. in the evening; injury marks were not noted but an old healed superficial abrasion was noted on her left arm. The MLC was proved through Dr.Suman Lal (PW-8) as Ex. PW-8/A. 5 In the statement of the accused persons recorded under Section 313 Cr.P.C. they had pleaded innocence. Both of them had stated that they have been falsely implicated and it was only to tarnish their reputation that the

prosecutrix has built up this false version; the witnesses are interested. No evidence was led in defence. 6 On behalf of the appellants arguments have been addressed in detail. The first submission of the learned counsel for the appellant is that there are material improvements in the version of PW-1 and in her complaint Ex.PW-11/B she has only narrated that her mother-in-law was present at the time when she pushed Narender inside her room but in her version on oath in court she had roped in her husband and brother-in-law also stating that they were also in the room when the rape was committed upon her. Attention has been drawn to her examination-in-chief as also cross-examination so also to the versions of PW-2, PW-3 and PW-4. Submission being that PW-3 and PW-4 the sister and brother of the victim as per the version of PW-1 had come to her house 3-4 days after the incident i.e. on 4-5.11.2000 but there is no explanation as to why this complaint was lodged on 11.11.2000. The whole story has been concocted. Versions of the witnesses are not credible; they have all made substantial improvements in their versions. Version of the prosecution is liable to be discarded. Attention has also been drawn to the MLC of the victim where no injury mark had been noted upon her person. Submission being that PW-8 in his cross-examination has categorically stated that there was no evidence of injuries on the lips and perineum or any other external injury was noted upon the victim. Further submission of the learned counsel for the appellant being that Narender is only a ghost; no investigation has been carried out by the investigating agency to determine as to whether Narender was actually a tenant of Bimla Devi or not; he has been declared a proclaimed offender as he was a non-existent person; it would also be difficult to imagine that at the behest and call of Bimla Devi, Narender would have acted upon her dictates and committed rape upon a married woman. The status of Narender is totally unknown. The version of the prosecution that PW-1 was harassed for dowry is not correct for the reason that even as per this version PW-1 was happy for the first six months of their marriage and it would be difficult to imagine that after such a long gap of six months dowry demands would be made when there were admittedly no demands at the time of marriage or thereafter. On all counts benefit of doubt accrues in favour of the appellants and they are entitled to a consequent acquittal. 7 Arguments have been refuted by the learned public prosecutor. It is stated that on no count does the impugned order call for any

interference. Version of the prosecutrix is clear and categorical. She has coherently described not only the dowry demands which were made upon the prosecutrix by the appellants but also the manner in which her mother-in-law had abetted the crime of rape upon her; there was no reason for a married woman to have falsely implicated her in-laws except for the fact that it was true version. Had it been a false version nothing would have prevented the prosecutrix to have roped in any other family member but this had not been done. Minor discrepancies in the version of the prosecution cannot destroy her otherwise credible testimony. Impugned order does not call for any interference. 8 Arguments have been heard. Record has been perused. 9 The fulcrum of the case rests upon the version of PW-1. She is the star witness of the prosecution. Before adverting to her version on oath in Court it would be necessary to go back to the rukka i.e. her statement recorded under Section 161 Cr.P.C which had set the criminal law in motion. CrI.A. No.28/2002 This statement (Ex.PW-11/B) was recorded on Page 6 of 18 11.11.2000 at midnight by the investigating officer SI R.S.Meena (PW-11). In Ex.PW-11/B the version of prosecutrix is that she had been married on 29.4.1999 according to Hindu rites and for the first six months she was happy in her matrimonial life. Thereafter her mother-in-law Bimla Devi and husband Sunil Chand started making demands upon her and her family for washing machine, T.V. and fridge; they were unable to fulfill their demands; she was threatened that if she did not fulfill the appellants demands she would be sent to her parental house and the accused persons started beating her. On 22.9.2000 she had given a birth to a male child but she was not looked after even in the hospital. On 30.10.2000 at midnight at around 12.00 night when Prosecutrix was sleeping in her room, her mother-in-law Bimla Devi along with their tenant Narender came into her room; after getting her room opened; she left Narender in her room. Prosecutrix shouted; Narender gagged her mouth and thereupon rape was committed upon her. He thereafter fled away. When she narrated this incident to her mother-in-law, she (prosecutrix) was told that she would be thrown out of the house; her husband also told her that these things are quite normal in their family; she was not allowed to speak to her parents on phone; when her sister Renu and brother Ajay had come to her house she narrated the whole incident to them; this was on 11.11.2000. Action should be taken against them. This was the first version which prosecutrix

had given to the investigating officer. 10 Her version on oath in court was recorded on 30.7.2001 i.e. almost about 8 months after the date of the incident. In this version on oath in court she recited the fact that she had married Sunil Chand and for the first six months they were happy and thereafter while narrating the incident of 30.10.2010 (the date she did not remember) she had stated that her mother-in-law brought Narender who was a tenant in their house and her brother-in-law Anil, husband Sunil and her mother-in-law pushed Narender inside her room; Narender bolted the door from inside. He put a cloth on her mouth and committed rape upon her. This version of PW-1 has been highlighted by the learned counsel for the appellant as being a material improvement. Admittedly in Ex.PW-11/B it was only the mother-in-law who had pushed Narender into her room after getting her room opened. But in court the version has changed and it has been stated that apart from her mother-in-law, her brother-in-law also when they pushed Narender inside her room. In her cross-examination she had stated that at the time when rape was committed upon her mother-in-law, husband and brother-in-law were present in the room. This was in contrast with the version given in Ex.PW-11/B where no role has been given to the husband and brother-in-law at the time of rape. Another improvement pointed out by learned defence counsel being that on oath in court she has stated that after 3-4 days, her brother and sister came to meet her; then she narrated this incident to them which would be 3-4.11.2000. In Ex.PW-11/B she stated that this incident was narrated to them on 11.11.2000 which was also the date of the lodging of the complaint. 11 In another part of her cross-examination, PW-1 has stated that on the ground floor there is a hotel as also two residential rooms; on the first floor there are three rooms. The tenant used to live in the first floor. She was occupying the room on the ground floor. PW-11, the investigating officer, has admitted that a site plan has been prepared at the pointing out of prosecutrix but this site plan was not proved. On a specific query put to PW-11 in this regard he has admitted that although he has prepared the site plan but the site plan has not been filed along with the challan. Submission of the learned counsel for the appellant being that an adverse inference for not producing the site plan has to be drawn against the prosecution; if the site plan was produced on record, it would have depicted that there is in fact no room on the first floor which is tenanted out and even PW-1 in her deposition has stated that although there were

three rooms on the first floor but all were being used for residence. 12 Adverting back to the testimony of PW-1 submission of the learned counsel for the appellant that she has made substantial improvements in her deposition on oath in court qua her first version (Ex.PW-11/B) carried weight. 13 The offences for which the appellants have been charged are Sections 498A and 376 read with Section 109 of the IPC. The abetment of the offence of rape which has allegedly been done by co-accused Bimla Devi i.e. the mother-in-law of the victim appears to be suspicious for many reasons. Firstly, as per the version of PW-1 this incident had taken place on 30.10.2000. This was at midnight. PW-1 was sleeping alone in her room. In Ex.PW-11/B she had stated that her mother-in-law came along with Narender and after getting the door opened pushed Narender inside. On oath in court her version has turned turtle; she has roped in not only her mother-in-law Bimla Devi but also her husband Sunil Chand and her brother-in-law Anil. This did not find mention in her first statement. In her cross-examination she further stated that all persons i.e. Bimla Devi, Anil and Sunil Chand were present in the room at the time when rape was committed upon her by Narender; this was in contrast to her version in Ex.PW-11/B. These improvements are material, vital and go to the root of the matter and the gist of the offence for which the appellant Bimla Devi had been charged. Secondly, PW-1 on oath in court has stated that she had narrated this incident to her sister and brother (PW-3 and PW-4) when they came to her house 3-4 days after the incident i.e. on 3-4.11.2000. However, in Ex.PW-11/B which was recorded on 11.11.2000 she had stated that the incident was narrated by her to her brother and sister on that day. 14 In another part of her deposition on oath in court PW-1 has stated that after her marriage her husband did not sleep in her room except for the few days i.e. first 5-6 days. This version of PW-1 appears to be incorrect as a child was born to the parties on 22.9.2000 i.e. after more than 1 years of the marriage. This version of PW-1 that her husband slept with her only for the first 5-6 days is patently incorrect. 15 PW-3 Renu Gupta was the sister of the victim. She has deposed that her sister told her that she had been raped by one Narender. In her cross-examination she stated that when she along with her brother went to the house of their sister police had been informed at 100 number. PW-4 Ajay brother of the victim has stated that his sister complained that she had been raped by the accused Narender at the behest of her brother-in-

law. This version of PW-4 is again in contrast with the version of PW-1 where already noted that she had given different roles as to who had instigated and abetted Narender to commit rape upon her. In his cross-examination PW-4 has stated that the police came at the spot i.e. at his sisters house at 11.30 a.m. after they had rung up the police and a complaint was lodged. This version of PW-4 is also not in conformity with the version of the prosecution. PW-11 the investigating officer has reiterated that after DD No.11A had been received reporting that at RZ-197, Gali No.15, Tuglakabad Extension, New Delhi a rape had taken place they reached the spot; neither PW-1 nor her sister and brother met them. They then went to the house of Prosecutrix where her parents were found present. Version of PW-4 on this count is again in contrast with the version of PW-11. 16 MLC of the victim in history shows that rape has been committed by a known person but the name was not disclosed as the history chart narrated that this name was not known to the victim although she can identify the person by face. This MLC is dated 11.11.2000 recorded at 7.45 p.m. Rukka was dispatched on 11.11.2000 at 5.10 p.m.. The name and all other personal details of Narender had been given in the rukka which was recorded prior in time to the MLC. PW-1 clearly stated that Narender was their tenant and he had committed rape upon her. Thus the version in the MLC is again in contrast with the version of PW-1 recorded in the rukka. 17 There is no doubt to the legal proposition that the testimony of a rape victim which if credible and trustworthy is sufficient even without corroboration to nail the accused. However, the deposition of PW-1 as noted supra is not only full of improvements, contradictions and inconsistencies but also in contrast with the version given by her sister and brother PW-3 and PW-4 and her medical record Ex.PW-8/A. 18 The MLC has also noted no injury mark. The trial court has illegally relied upon a superficial old healed abrasion coinciding with the version given by PW-1 who had stated that she had received injury on her left arm when Narender committed rape upon her. MLC clearly states that it is an old superficial abrasion on the left arm. PW-8 the doctor has also in his deposition clearly stated that there was no evidence of injury either on the lips and perineum and or on another body part of the victim. No external injuries were noted. 19 The victim was 22 year of age. She had delivered a child just about one month prior i.e. on 22.9.2000; the incident is dated 30.10.2000. Deposition of PW-1 that the accused had gagged her

mouth by putting a cloth in her mouth and thereafter on opening her petticoat committed rape upon her as a result of which she sustained injury on her left arm. When this act was committed with such a force as has been described by PW-1 and PW-1 (as noted supra just having delivered a child) in normal course some kind of injury would have appeared on her body. 20 There is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. An accused has also rights which are to be protected and the possibility of false implication has to be ruled out. The Supreme Court in Radhu vs. State of Madhya Pradesh reported in 2007 Cri LJ4704 had in this context noted as follows:

The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

21 The investigating officer PW-11 had prepared a site plan but he chose not to file it on record. This would have depicted the tenancy of Narender as alleged by PW-1. There is no such material on record. That apart no other line of investigation had also been adopted by the investigating officer to find out his whereabouts and the submission of the learned counsel for the appellant that he is a non-existent person cannot at this stage be totally ignored. 22 The version of PW-1 is full of embellishments and exaggerations. This was a matrimonial dispute between the victim Prosecutrix and her husband Sunil Chand; it started with the dowry demands made by the accused persons which included her husband and her mother-in-law. For the first six months of the marriage PW-1 was happy in the matrimonial home. Six months later demands of dowry which included T.V., fridge and washing machine were made upon the complainant. Her version being that these demands could not be fulfilled as a result of which she was given beatings. Her version that her husband shared cordial relations with her for 5-6 days only has been falsified by the fact that on 22.9.2000 she gave birth to a male child. unfortunately died. The child It appears that thereafter the relations between

prosecutrix and Sunil Chand which were already discordant became worse. It is also difficult to believe that if the incident had occurred on 30.10.2000 and the same having been narrated by PW-1 to her sister and brother after 3-4 days; who in turn informed their parents and they had waited up to 11.11.2000 to finally report the matter to the police. Versions of PW-3 and PW-4 are also in conflict with the testimony of PW-1. The MLC of the victim also does not support her oral deposition. The so-called tenant Narender has not come into picture. He was a tenant but no details of his tenancy could have been obtained by the investigating officer. 23 The appellants in their statement recorded under Section 313 Cr.P.C. have stated that the prosecutrix had falsely implicated them in order to tarnish their reputation in the society; this was otherwise also the line of defence adopted by learned defence counsel while crossexamining PW-1. Version of PW-1 being tainted, the conscience of this court does not permit it to hold the accused persons guilty on such a tarnished version. 24 The allegations of the dowry demands are also difficult to imbibe. No details as to when these demands were made and upon whom these demands had been made have been given. Version of PW-1 on this count that for the first six months her marriage was hunky-dory and only thereafter the demands started. Versions of PW-1, PW-2, PW-3 and PW-4 are bereft of details on this count. Admittedly before the marriage and at the time of marriage no such demands have been made. In fact PW-2 has stated that he had given fridge and furniture in the marriage. PW-2 was silent on this count; his version being that he had already given a fridge in the marriage. His version is in contrast with the version of PW-1 who stated that demand of fridge was made. Versions of PW-3 and PW-4 are only general in nature and without dates or details. 25 This is a concocted version of PW-1 to seek revenge upon her husband and his family members. The relations between the parties had become sour and worsened after the death of their child just one month prior to the alleged incident. Court is not inclined to accept these conflicting stands of PW-1. 26 Giving benefit of doubt to the appellants, the appellants are acquitted of the charges leveled against them. Bail bonds are cancelled; sureties discharged. 27 Appeal allowed. **INDERMEET KAUR**, J FEBRUARY05 2014 ndn