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State Vs. Ashok Kumar Jain

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Court : Delhi

Decided On : Feb-07-2014

Judge : Kailash Gambhir

Appellant : State

Respondent : Ashok Kumar Jain

Advocate for Pet/Ap. : Mr. Sunil Sharma, Mr. Yashpal

Judgement :

$~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 17/2014 STATE Through: ..... Petitioner Mr. Sunil Sharma, learned Additional Public Prosecutor for the State with Mr. Yashpal, Inspector. versus ASHOK KUMAR JAIN ..... Respondent Through: None. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
% 07.02.2014 Crl.M.A. No.311/2014 (Condonation of delay) By this application filed under Section 5 of Limitation Act read with Section 482 of Cr.P.C., the petitioner is seeking condonation of delay of 18 days in filing the accompanying criminal leave to appeal. For the reason stated in the application, the same is allowed and the delay of 18 days in filing the accompanying petition seeking leave to appeal against the impugned judgment is condoned. Application stands disposed of. Crl.L.P.No.17/2014 By this petition filed under Section 378 (1)

Cr.P.C., the petitioner is seeking leave to appeal against the order dated 31 st August 2013 passed by learned Additional Sessions Judge, thereby acquitting the respondent from all the charges framed against him under Sections 452/342/506/323/324/307 IPC. Addressing arguments on behalf of the appellant - State, Mr. Sunil Sharma, learned Additional Public Prosecutor for the State submits that the learned trial court has not properly appreciated the evidence of PW-1, who herself was a victim of the crime and whose deposition remained totally infallible and unimpeachable. Learned APP for the State argued that even the medical evidence proved on record by the prosecution fully supports the testimony of PW-1. As per the prosecution case, on 11.09.2008 at about 12.30 p.m., accused came to the house of Rajni with a box of sweets, as he was blessed with a son. Rajni asked accused to deliver the box of sweets to her husband, however, the accused told her that her husband only told him to give the box of sweets at his residence. Rajni opened the door and took the box and when she tried to close the door, the accused asked her for a glass of water and at that point of time he entered inside the house. Rajni gave a glass of water to him and asked the accused to leave, but the accused wanted to use the toilet and therefore, he went to the washroom. In the meanwhile, Rajni made a call to her husband informing him that somebody has come to their house to give a box of sweets and she gave the landline phone to the accused to have a word with her husband. After talking with the husband of Rajni, the accused told her that her husband wants to talk to her, but she told the accused that she will talk to him later. On this, the accused informed Rajni that her husband has some emergency and it was then, she took the phone, but till that time the phone was found disconnected. In the meanwhile, the accused had put one of his hand on her mouth and from the other hand he caught hold of her hairs and dragged her inside the room. Rajni gave a bite on the hand of the accused and asked him as to what was he doing. The accused told her that he has come to kill her. Accused also had a knife with which he attacked her but Rajni succeeded in preventing the assault with her left hand, although she sustained injury on her left hand. Thereafter, the accused dragged her inside the other room. The accused was carrying a wide tape with which he covered her mouth. The accused also tied her hands and legs with a piece of cloth lying in her house. Rajni somehow managed to open her hands and

legs, however the accused again tied her hands and asked her for cash. The accused sat on her, while placing his knees on her neck and gave her many slaps. He also dragged her towards the outer room in which the almirahs were kept. He took keys from her and tried to open the door of almirah but as he was about to open the door of the locker, the nephew (bhatija) of Rajni knocked the door and shouted to open the door. On hearing him, Rajni shouted Mohit-Mohit but the accused pushed her on the floor keeping his shoe on her mouth and hit her with his shoe. The accused dragged her to the inner room and started beating her, because of which she fell unconscious. Mohit alongwith Gaurav tried to open the door by hitting it with a hockey stick and consequently the strips from the wooden door came out. As soon as the door opened, the accused fled away and hide himself in a godown of a tea shop. When Rajni regained consciousness, she found that the outer door was broken by Mohit and Gaurav and the accused had run away. The Police apprehended the accused from the said tea shop in the presence of public. Police recorded the statement of Rajni, which was proved on record as Ex.PW-1/A. The cloth with which accused tied up Rajni was also seized vide seizure Memo Ex. PW-1/C. During her deposition, Rajni identified one tie Ex.P-1, with which the accused tried to hang her with the ceiling fan and also one nighty through which the accused tried to tie her hands and legs. To prove its case, the prosecution in all examined eight witnesses. Learned trial court after evaluating the prosecution evidence found that the testimony of PW-1 was full of improvements and also there was a total failure on the part of the prosecution to collect other important evidence, failure of which led the trial court to acquit the accused on the premise that the prosecution has failed to prove its case against the appellant beyond reasonable doubts. The lapses which in our view were quite serious on the part of the Investigating Officer have been spelt out by the learned trial court in para 20 of the impugned judgment and the same are reproduced as hereunder:

As per the Pw-1 accused came at the spot with sweet box but no sweets box was seized from the spot. Similarly PW-1 stated that she had attacked on the hand by knife but no knife was recovered from the spot. She has also stated that accused brought tape by which he tied her mouth but no tape was seized. The knife by which accused allegedly attacked on the complainant was not seized from the

spot. The prosecution has failed to prove where all these articles have gone. Further PW-1 has claimed that she made call to her husband and got accused to talk with her husband but call details of her mobile phone or her husband were not placed on record to prove that she had made call to him telling him about the arrival of accused. Neither her husband has been made a witness to corroborate the said part of testimony of PW-1. Further PW-1 has claimed that she had bite on the hand of the accused but no MLC of accused is produced to prove bite mark on his person. Further, PW-1 had stated that she was hit by knife with the intention to kill her and she stopped the assault by her left hand. On perusal of her MLC, I found that there is only lacerated wound over left thumb whereas if she received any injury by knife then it would have been cut injury and that too not only on thumb but on the part of hand because thumb will never came on the way while stopped the assault of knife. Further no independent witness from public who had apprehended the accused has been joined in the investigation. Hence prosecution has failed to corroborate the testimony of PW1.

With utter disgust and dismay we express our utmost displeasure with regard to the manner of investigation, as was carried out by the investigating officer in this case. Pursuant to direction given by this court, Investigating Officer/Inspector Yashpal, PS South Rohini, is present in court. When questioned as to why the accused was not medically examined, Inspector Yashpal stated that the accused was medically examined and the MLC of the accused was available on the police file. This is utmost shocking that if the accused was medically examined and his MLC report was obtained from the hospital then for what reasons the same was not placed by the Investigating Officer alongwith the charge sheet. With the kind of investigation as has been carried out in this case, we have no hesitation in saying that this Police Officer has no basic knowledge or competence for conducting investigation in any crime and due to this reason alone, he made no efforts to seize the box of sweets, which was brought by the accused while taking entry into the house of the victim. The police also made no attempt to recover the knife with which the accused had attacked the victim. No efforts were made to produce on record the evidence with regard to the telephonic call made by the victim to her husband. The police even failed to join independent public witness although as per the case of the prosecution, a lot of people gathered at the time of apprehending

the accused. Husband of the victim was also not made a prosecution witness to prove his telephonic conversation with his wife and the accused. The MLC of the accused was also not placed on record. This is not a solitary case where we find the failure of the Investigating Agency to commit such serious lapses. This is primarily due to the incompetency of many such police officers who are entrusted with such a sensitive job of carrying out investigation into any crime and secondly because of lack of willingness on the part of the government to separate the investigation from the law and order, despite being directed by the Honble Supreme Court many a times, right from the authoritative pronouncement in Prakash Singh vs. Union of India reported in (2006) 8 SCC1and various recommendations made by Law Commission of India in this regard. In many cases, the court also feels helpless where such serious lapses are committed by the investigating agencies in not carrying out its most solemn duty of conducting fair, honest, flawless and scientific investigation into any crime and the ultimate result of this is the acquittal of criminals, which increases the rate of acquittals and results in multiplication of crimes in the society. All such erring police officers who are responsible and who become cause for failure in any prosecution case on account of their sheer negligence or culpable lapses or incompetence must suffer departmental action as has been recently held by the Honble Apex Court in the case of State of Gujarat vs. Kishanbhai reported in 2014 (1) SCALE177 While directing notice of the present leave petition, we direct the concerned Joint Commissioner of Police to initiate departmental proceedings against the Investigating Officer of this case and other erring police officials and submit a compliance report by way of affidavit, before the next date of hearing. Issue notice of this petition/application to the respondent by all legally permissible modes of service, returnable on 12th March, 2014. A copy of this order be given Dasti to learned APP for the State. KAILASH GAMBHIR, J SUNITA GUPTA, J FEBRUARY07 2014 pkb

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