

Raju Vs. State

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Court : Delhi

Decided On : Mar-20-2014

Judge : Indermeet Kaur

Appellant : Raju

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:13.3.2014 Judgment delivered on:20.3.2014 CRL.A. 828/2001 RAJU Appellant Through Appellant with his counsel Mr.A.K.Singh, Mr. Jai Singh Kanwar, Mr. Anurag Gohil, Mr. Pramod K. Tiwary and Mr. Arun K. Panwar, Advs. versus STATE Respondent Through Mr. Varun Goswami, APP along with SI Shashi Kant. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 Present appeal has impugned the judgment and order of sentence both dated 06.8.2001 wherein appellant Raju has been convicted under Section 376 IPC and has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.1000/- in default of payment of fine to undergo SI for 1 month. Benefit of Section 428 Cr.P.C. had been granted to him. 2 Record shows that the present FIR has been registered on the statement of the mother of the prosecutrix Omwati (PW-6). The complaint was registered on 04.12.1999 wherein it was disclosed by her that while she was sleeping along with her husband on the ground floor of their

house she heard cries from the roof and on reaching there she saw that her daughters clothes were blood-stained; she was crying; she told her that she had been raped by their neighbour Raju; complaint Ex.PW-5/A was lodged. 3 The prosecutrix R(PW-1) was taken to the Guru Teg Bahadur Hospital, Shahdara accompanied by lady constable Neelam (PW-2). This was on 04.12.1999. Her MLC was proved by Dr.Seema Sinha (PW-12) as Ex.PW-12/A. No injury marks had been noted. The vaginal intertis noted admission of one finger; two vaginal smears were taken on slides and the under-clothes worn by the prosecutrix at the time of the examination were changed. 4 Statement of PW-1 was recorded under Section 164 Cr.P.C. before the learned M.M. Mrs.Mamta Tayal, who has been examined as PW-13 and had proved this statement as Ex.PW-13/A. 5 The father of the prosecutrix Mohan Lal was examined as PW-5. He has reiterated the version of his wife (PW-6). 6 The Investigating Officer Avtar Singh (PW-14) had prepared the site plan Ex.14/A; during the course of investigation underwear of the accused had also been seized which was recovered pursuant to his disclosure statement. This recovery memo has been proved as Ex.PW-4/C. The other witnesses of the prosecution included the SubRegistrar of Births and Death (PW-9) who had produced the birth record of the prosecutrix evidencing her date of birth as 14.5.1982; Ram Vakeel the teacher of the school where the prosecutrix was studying has been examined as PW-11; ossification report of the prosecutrix and her X-ray plates have been proved through Dr. Raj Pal (PW-8) and the boney age report of the victim has been proved as Ex.PW-8/A. The fact that the victim was physically and mentally unstable was proved through the version of Dr.Anil Dhal (PW-7). He has issued a disability certificate in favour of the victim; she had 40% physical disability. Prosecution has also established that her mental faculties were impaired by 25%. The CFSL report proved through Dr.Dhruv Sharma (PW-16) had noted human blood of AB origin on the salwar of the prosecutrix and the underwear of the accused; although at one point in the report salwar has been mentioned whereas at another point petticoat has been mentioned. PW-16 has come into witness box and explained that this was a typographical error and what he had examined was a salwar and not a petticoat. 7 On the basis of the aforementioned evidence collected by the prosecution the accused was convicted and sentenced as aforesaid. 8 In the statement of the accused recorded under

Section 313 Cr.P.C. he had pleaded innocence. His submission was that he has been falsely implicated in the present case because the parents of the prosecutrix wished him to marry the prosecutrix whom he did not want to marry and this false case thus has been planted upon him. 9 One witness Mr. Mahesh Kumar Maurya has been examined in defence, he knew both the parties i.e. the family of the prosecutrix as also the accused. He had corroborated the defence sought to be set up by the accused in his statement recorded under Section 313 Cr.P.C. 10 On behalf of the appellant arguments have been addressed in detail. It is pointed out that the statement of the prosecutrix suffers from inherent improbabilities; it is impossible to believe that on a cold winter morning at 3.00 a.m. the prosecutrix who was physically and mentally challenged was washing clothes and taking a bath on the roof of her house and even when she had tried to shout no one heard her cries in the nearby houses. To support this submission attention has been drawn to the site plan. It is pointed out that the version set up by the prosecution is false and in fact malafide and the accused has been falsely implicated only for the reason that the appellant had refused to marry the prosecutrix which arrangement was being harped upon by her parents. Submission being that the versions of the parents of the prosecutrix PW-5 and PW-6 are contradictory wherein in their statements recorded under Section 161 Cr.P.C. they had stated that they were sleeping on the ground floor when they heard the cries of their daughter who was on the roof yet in their deposition on oath they had reversed these stands. This is clearly for the reason that they are not truthful witnesses. It is pointed out that the medical evidence also does not support the version of the prosecution; for the offence of rape there must be a complete penetration but in this case apart from the fact that there are no injury marks or bleeding noted in the MLC, there is also a report to the effect that only one finger could be inserted inside her vagina which clearly shows that the hymen of the victim was intact and no rape was committed upon her. It is pointed out that the CFSL report also does not support the case of the prosecution as apart from the fact that no semen was detected on the exhibits; the blood group of AB origin detected on the salwar and the so-called underwear of the accused is not a connecting piece of evidence as the prosecution has not been able to show that the accused or the prosecutrix had a blood group of AB origin. The seizure memo Ex.PW-4/C is liable to be disbelieved as PW-5 has

categorically stated that no underwear of the accused was recovered in his presence. This demolishes the recovery. Submission being reiterated that this is a clear case of false implication. To support his submission learned counsel for the appellant has placed reliance upon 2013 VIII AD9SC) 273 State of Rajasthan Vs. Babu Meena, AIR 2002 SC2281 Narender Kumar Vs. State (NCT of Delhi), 2013(6) ALJ85Ram Sagar & Ors. Vs. State of UP, 2007 CRI. L.J.

3304 State of Orrisa Vs. Daman Mahanta and Criminal Appeal No.399-SB of 1985 titled Charan Singh and Anr. Vs. State of Haryana decided on 19.4.1988. It is pointed out that where two views are possible the settled rule of criminal jurisprudence is that the view favouring the accused must be adopted. 11 Arguments have been refuted by learned public prosecutor. It is stated that on no count does the impugned order call for any interference. The testimony of the prosecutrix (PW-4) is clear, cogent and coherent. Even presuming that there are certain contradictions in the version of her parents (PW-5 and PW-6) these being minor necessarily have to be ignored. Moreover the testimony of a victim of rape if credible can be relied upon and it does not even require corroboration. It is pointed out that to complete the offence of rape a minor penetration is also sufficient and there also do not necessarily have to be any injury marks. To support this submission learned public prosecutor has placed reliance upon a judgment of the Apex Court reported as JT201212) SC616Radhakrishna Nagesh Vs. State of A.P. Submission being that in this case also where the hymen of the victim was intact and no injury marks had been found upon her body yet the court relying upon the version of the prosecutrix had convicted the accused under Section 376 IPC. 12 Arguments have been heard and record has been perused. 13 Present FIR has been registered on the statement of the mother of the victim. In her complaint she had stated that the accused who was their neighbour had committed rape upon her daughter in the early morning hours of 04.12.1999; she had heard cries of her daughter when she along with her husband were on the ground floor; these cries were emanating from their roof; on reaching there they found that salwar of her daughter was smeared with blood and was lying on the cot after having been removed. On oath in court she had told the version of the prosecution but has deviated to the extent wherein she has stated that she along with her husband were sleeping on the first floor of the house when they heard the cries of their

daughter. This contradiction has been brought to the notice of the court. She has otherwise supported the stand of the prosecution. 14 PW-5 is the father of the victim. He has also supported the stand of his wife. He has also deviated to the extent wherein in his statement recorded under Section 161 Cr.P.C. he has stated that he along with his wife were sleeping on the ground floor when they heard the cries of their daughter but on oath he has stated that he was on the first floor and on hearing the cries of his daughter he had gone to the ground floor. 15 Presuming for the sake of argument that these contradictions has noted supra do not really go to the gist of offence and if the testimony of PW-1 is credible, inspiring and coherent, the law also being settled on this point that the sole testimony of a rape victim may be sufficient to nail the accused, these contradictions in the version of the parents of the victim may not be relevant. 16 Let us now examine the version of PW-1. She was admittedly 17 years of age on the date of incident. There is no dispute to this. This has also been established by evidence both oral and documentary. In the first part of her deposition in court PW-1 had stated incident had occurred at about 3.00 a.m. on 02.12.1999 when she had gone to the roof to have a bath and wash clothes as water did not come freely in their area during day time and that is why she has chosen the night time to have a bath and wash her clothes. In a later part of her version she has stated that the incident had taken place in the intervening night of 34.12.1999 and date of 02.12.1999 has been given by mistake. Further part of her deposition is that when she was washing clothes the accused came on the roof; he was naked; he committed rape upon her. She tried to cry but her mouth was gagged. After committing rape the accused fled away; she reported the matter to her mother. In her cross-examination she has largely stuck to her stand reiterating that this act of rape has been committed upon her by the accused. She denied the suggestion that her parents wanted her to marry the accused; she also denied the suggestion that this case has been falsely planted upon him or that she has been tutored by her parents to depose against the accused. 17 Evidence of PW-1 is been faulty and sketchy on various scores. Starting from giving a wrong date i.e. the date of 02.12.1999 which was later on clarified as the intervening night of 3-4.12.1999; it would also be extremely difficult to perceive that a 40% physically disabled girl and 25% mentally unstable girl and being a victim of polio would in the middle of a cold

winter night go to the roof to have a bath and wash clothes. It was month of December; the peak of the cold season; PW-1 had also admitted that it was chilly winter morning; PW-1 had also stated that it was pitch dark at that time. For the sake of arguments even believing the version of the prosecution that tap water was not coming regularly, normal course of conduct would be to store the tap water and use it for whenever any errands were required to be run. In the middle of the night in a screen of darkness PW-1 not even wearing a sweater (as is her version) had gone to the roof to have a bath and to wash clothes; such a version as set up by the prosecution appears to be highly improbable. 18 In this background the contrast in the versions of PW-5 and PW-6 on oath qua their earlier statements gains relevance. These contradictions may not have been relevant by themselves but this court has to examine their versions in this background which has been built up to conclude as to whether they are truthful witness or not. The incident as per the prosecution had occurred on the terrace and as per the complainant PW-5 and PW-6 were sleeping on the ground floor when they heard the cries of their daughter. On oath they reversed this stand stating that they were on the first floor and came down when they heard the cries of their daughter. Meaning thereby that the scene of incident had also changed. On oath in court neither PW-5 nor PW-6 have stated that the incident had occurred on the roof top which is the version of PW-1. Neither of them have also stated that as to for what purpose their daughter had gone to the roof top in the middle of the night. Thus the contrast in their versions on oath qua their earlier statements has now gained relevance and being contrary and in conflict with the version of PW-1 have to be disbelieved. 19 PW-6 has stated that her daughter was bleeding from her private parts. PW-1 the prosecutrix has not deposed any such fact. PW-6 has also stated her daughter had become unconscious and regained consciousness in the evening; but later stated that she regained consciousness before going to the police station; the matter was admittedly reported in the police station before noon. MLC of the victim was conducted at 12.30 p.m. on 04.12.1999; thus the statement of PW-6 in a later part that PW-1 had regained consciousness before evening clearly shows that she has improved her version. PW-6 has also deposed that the under-clothes of her daughter had been taken by the IO. PW-1 has not deposed this fact. 20 Medical evidence i.e.the

MLC shows that there were no injury marks. No bleeding was also noted. This examination has taken place on 04.12.1999 at about 12.30 p.m. Incident as per PW-1 had occurred in the early morning at about 3.00 p.m. Injuries or bleeding if any suffered by the victim if present would have been noted. The nonnoting of the injuries or any bleeding on the body of the victim by the doctor (PW-12) as well was for the obvious reason that there was no injury or bleeding. 21 The MLC has also not recorded any history of rape. In the history given by the patient it was noted by the doctor that she was forcefully taken away by the accused at about 3.00 O'Clock in the early morning hours. Apart from the fact that there was no injury or no bleeding on her person her medical examination also revealed that her vagina admits one finger; no semen was also detected on any clothes either of the victim or of the accused. Blood of AB group was noted upon the salwar of the victim but there was no evidence with the prosecution to hold that either the prosecutrix or the accused was having this blood group. 22 Further version of the prosecution is that the undergarments of the prosecutrix were seized and sealed. This has been noted in the MLC and is also the version of PW-12 which is to the effect that the undergarments brought by the mother of the victim were sealed. Even as per the seizure memo (Ex.PW-2/A) as also from the deposition of PW-2 the undergarments of the prosecutrix were seized. However, what had been examined by the CFSL upon which blood group AB had been noted was not an undergarment but a salwar. There is no evidence with the prosecution to show that the salwar of the victim had ever been seized. A salwar does not qualify as an undergarment. The CFSL report on all counts also has to be ignored. 23 The recovery memo Ex.PW-4/C vide which the underwear of the accused was recovered has also to be ignored. This document has been attested by PW-5 Mohan Lal the father of the victim. PW-5 has however stated that no such underwear of the accused was got recovered in his presence; he stated that the underwear was seen by him for the first time in the police station when he had appended his signatures on the Ex.PW-4/C. 24 In this scenario the factual situation which has been built up and which has been borne out from the evidence brought on record both oral and documentary it does not permit the conscience of this Court to place reliance upon it. 25 Defence built up by the accused which emanates from the cross- examination of the witnesses of the prosecution; the

statement under Section 313 Cr.P.C. and thereafter the version of DW-1 who is a neighbour and known to both the parties was that the parents of the victim wanted her to marry the accused. Since he did not accept this proposal this false case has been planted upon him. The defence appears to be probable. This defence has created a dent in the version of the prosecution which even otherwise has not been established. On all counts, benefit of doubt must accrue to the appellant. 26 Appeal is allowed. Appellant is acquitted; his bail bond cancelled. Surety discharged. INDERMEET KAUR, J MARCH20 2014 ndn

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