

Meena Sharma Vs. the State

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Court : Delhi

Decided On : Apr-16-2014

Judge : Indermeet Kaur

Appellant : Meena Sharma

Respondent : The State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :03.4.2014 Judgment delivered on :

16. 4.2014 CRL.A. 79/2003 MEENA SHARMA Through Appellant Ms.Rakhi Dubey and Mr.Anuj Pal, Advocates. versus THE STATE Respondent Through + Ms.Kusum Dhalla, APP. CRL.A. 237/2003 RAJINDER KUMAR SHARMA Through Appellant Ms.Rakhi Dubey and Mr. Anuj Pal, Advocates. versus THE STATE Respondent Through Ms.Kusum Dhalla, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 There are two appellants before this Court. They are husband and wife. Appellant Rajinder Kumar Sharma has been convicted by the Session Judge for the offence under Sections 376/325/342 of the IPC whereas appellant Meena Sharma has been convicted for the offence under Section 376 read with Section 109 of the IPC as also for the offence under Section 342 of the IPC. Appellant Rajinder Kumar Sharma has been sentenced to undergo RI for 7 year and to pay

a fine of Rs.5000/- in default of payment of fine to undergo SI for 3 months for the offence under Section 376 IPC; for the offence under Section 325 IPC he has been sentenced to undergo RI for 1 years and to pay a fine of Rs.2000/- in default of payment of fine to undergo SI for 2 months; for the offence under Section 342 he has been sentenced to undergo RI for 6 months. The second appellant Meena Sharma has been sentenced to undergo RI for 3 years and to pay a fine of Rs.5000/- in default of payment of fine to undergo SI for 3 months for the offence under Section 109 of the IPC read with Section 376 IPC; for the offence under Section 342 she has been sentenced to undergo SI for 6 months. Sentences were to run concurrently. Benefit of Section 428 of the Cr.P.C. had been granted to the appellants. 2 Version of the prosecution is that on 13.10.1999 the prosecutrix M while returning home from her friends house at Sewa Nagar met the accused Meena Sharma; she was known to her as she used to live in her neighborhood. PW-1 accompanied Meena to her house; there was no one present at that time; after sometime Meena left the house and locked the door from outside. Thereupon accused Rajinder entered the house; he covered the mouth of the victim with his palm; he committed rape upon her; when she regained consciousness she was in the hospital. Her statement (Ex.PW-1/A) was recorded. Pursuant to this statement the rukka (Ex.PW10/2) was taken and the FIR was registered at 11.00 a.m. on the same day. The victim was subjected to a medical examination. Her MLC Ex.PW-8/1 records that she had been brought to the AIIMS hospital by her father; alleged history of being abducted by neighbor and being kept in a wooden box was noted. The patient was not responding to oral commands; there was a flickering of eye lashes and only on noxious stimulus being given the patient responded; no external injury was noted. This MLC was proved as Ex.PW-8/1. The Senior Resident Doctor had referred the patient to a gynecologist and the gynecologist also noted that there was no obvious injury on the external genitalia but slight bleeding was noted; the hymen was not torn; she was having her period; vaginal slide and underwear of the prosecutrix were preserved. 3 Statement of the prosecutrix was recorded under Section 164 Cr.P.C on the following day i.e. 15.10.1994 by Dr.S.K.Jain, Ld. M.M. (PW-15); this statement was proved as Ex.PW-15/A; this version was a reiteration of Ex.PW-1/A. 4 On oath in Court the victim was examined as PW-1. She had stuck to the same version. On oath she

deposed that on the fateful day when she was returning home from her friends house she met Meena aunty and at her asking she went to her house. After sometime Meena left the house and bolted the door from outside; co-accused Rajinder entered the house; he committed rape upon her. She did not remember what had happened thereafter; when she regained consciousness she found herself in the hospital. 5 In her cross-examination, she admitted that the accused persons were known to her and family and they were on visiting terms. She admitted that her father was working as a Home Guard. She further stated that she did not know whether there was any loan transaction between the accused and her father; she admitted that she was accompanied by her brother when she was returning from her friends house. She explained that she was medically examined on the same day but since she had lost consciousness she did not remember the details. She denied the suggestion that the accused has been falsely implicated because of the loan which her father had taken from the accused and which he was not intending to return. 6 The sister of the victim Seema was examined as PW-3. She reiterated that on 13.10.1999 her sister M left the house at about 7.30 p.m.; when she did not return they went looking for her. PW-3 and her family members went to the house of the appellants as their daughter was a friend of PW-1; house was found locked; accused Meenu was sitting in the Ramleela ground with her children; on reaching the house of Meena they heard a noise from the first floor; at first Meena was reluctant to come to the house but on pressurizing her, she came to her house; on opening the door they saw that appellant Rajinder was inside the house; M could not be seen; on lifting the lid of the bed they saw M inside the box of the bed; she was unconscious; she was removed to the hospital. 7 Har Bai-the mother of the victim, was examined as PW-4. She also deposed on the same lines as PW-3. This version of PW-4 was reiterated by her husband examined as PW-7. 8 Arvind Kumar (PW-6) was the landlord of the appellant Rajinder who had let out his jhuggi i.e. M-336, Sewa Nagar since the last 15 days to the appellants. This version of PW-6 has in fact been substantiated by the accused who in his statement under Section 313 Cr.P.C. admitted that he was residing in the same neighbourhood as the accused persons; but because of this false allegation which had been leveled against him he had shifted from there; substantiating the stand of PW-6 that this place i.e. M-

336 was his residence only since the last few days. 9 The investigating officer SI Vimal Kishore has been examined as PW-10. He had received DD No.18A on 13.10.1999 pursuant to which he had initiated the investigation. On reaching the spot he learnt that the victim had already been removed to the hospital. He had recorded her statement; he had also taken the vaginal swab and slides of M so also her underwear. The underwear of the accused as also his blood sample had been seized. The report of the CFSL is Ex.PW-10/8. A perusal of this report shows that it does not advance the version of the prosecution as neither any blood nor any semen has been detected in these exhibits. 10 In his cross-examination PW-10 denied the suggestion that a false case has been set up against the appellants at the behest of the father of the prosecutrix who was working as a Home Guard. He stated that he did not know if there is any money transaction between the accused and the father of the victim. 11 The age of the prosecutrix was opined by the trial court as 16.6 years on the basis of her documentary evidence handed over by PW-7 (father of the victim) to the investigating officer which included school progress report Ex.PW-7/3 & Ex.PW-7/4 wherein her date of birth was evidenced as 05.5.1983. This version of PW-7 has been corroborated by PW-10. The bony age test of the victim was conducted by Dr.Sangeet Ghai (PW-11) and was opined more than 16.4 years; thus on all counts for the offence of rape M was a major. 12 In the statement of the accused persons recorded under Section 313 Cr.P.C. both of them pleaded innocence. As noted supra accused Rajinder has stated that there was a money transaction between himself and the father of the victim which had led to this false implication by the victim upon him. 13 Two witnesses were produced in defence. This was to establish the version of the accused that there was a loan transaction between the complainant and the father of the victim and in fact a tape recorded conversation to this effect has also been got recorded by DW-2. This tape recorded conversation was, however, not played; as such this defence sought to be projected through this version of DW-2 remained unsubstantiated. 14 On behalf of the appellants, arguments have been addressed by Ms.Rakhi Dubey, Amicus Curiae. It is stated that it is a clear case of false implication as the medical record of the victim does not support her oral testimony. Ex.Pw-8/1 has clearly recorded that the hymen of the victim was not torn; no injury marks were noted upon her version. The defence of the appellants

all along has been that they have been falsely implicated because of the loan taken by the father of the victim and this has appeared right from the cross-examination of the witnesses of the prosecution, even in statement recorded under Section 313 Cr.P.C. as also through the version of DW-1 and DW-2; a dent has been created in the version of the prosecution. Attention has also been drawn to the version of PW-1 wherein she has admitted that she was accompanied by her brother when she was returning from her friends house; there is no explanation as to why the brother of the victim has not been examined. Adverse inference should be drawn against the prosecution on this count. Additional submission being that the version of PW-3, PW-6 and PW-7 are clearly tutored as they are interested witnesses being the close relations of the victim and they have joined hands together to foist this false case upon the appellants. It is pointed out that concoction of the story is evident from the fact that on reaching the house of the appellants, the parents of the victim removed the victim to the hospital on their own without waiting for the police. No independent witness has been examined to substantiate their versions. On all counts, appellants are entitled to benefit of doubt and a consequent acquittal. Reliance has been placed upon (2007) 12 SCC 57 Radhu Vs. State of Madhya Pradesh to substantiate a submission that false charges of rape are not uncommon and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of rape either to take revenge or extort money or to get rid of financial liability. Submission being that this judgment squarely applies to the facts of this case. 15 Arguments have been refuted by the learned public prosecutor. It is stated that on no count does the impugned order call for any interference. The version of the prosecution by itself is sufficient to nail the accused as it is credible and coherent; other oral versions of PW-3, PW-6 and PW-7 apart from the documentary evidence which is the MLC of the victim support the case of the prosecution. 16 Arguments have been heard. Record perused. 17 PW-1 is the victim. Incident is dated 13.10.1999. In her first complaint which was recorded at about 6.30 p.m. which is proximate to the time of the incident she had stated that when she was returning home from her friends house she met Meena aunty; she was invited inside the house; at that no one was present there; after sometime Meena aunty left the house; her husband Rajinder uncle then came inside and after closing the

door he forcibly committed rape upon her; while leaving the house Meena aunty had locked the door. This version in Ex.PW-1/A has been reiterated by her on 15.10.1999 when her statement under Section 164 Cr.P.C. was recorded on oath by the Magistrate. She has explained that when Meena aunty left the house, she locked the door from outside, the lock was opened by Rajinder uncle when he came inside the room and committed rape upon her. consciousness only in the hospital. discussed supra) has been reiterated. CrI.A. Nos.79/2003 & 237/2003 She regained her On oath version of PW-1 (as She admitted that she was Page 10 of 24 accompanied by her younger brother; her younger brother was not examined. 18 PW-3 was the 12 year old sister of the victim. Her testimony has been noted supra. In her cross-examination, she has admitted that the house of the accused person is on the way and while passing through their house, they heard a throttling voice from inside the room; this voice resembled the voice of her sister; PW-3 had accordingly gone to call her parents; PW-3 admitted that although the daughter of the accused persons used to come to their house but her sister never used to visit their house. She reiterated that she along with PW-4 had located Meena in the Ramleela ground watching Ramleela; she further admitted that the police reached the spot within the next 10-15 minutes. She denied the suggestion that her father owed a sum of Rs.30,000/- to the accused and that is why this false case has been planted upon the accused; she denied the suggestion that her father had taken her sister directly to the hospital from their own house; she denied the suggestion that her sister was not found in the house of the accused persons. 19 Version of Smt. Har Bai (PW-4), the mother of the prosecutrix is also on the same lines. She has also stated that her daughter had left the house at 07:30 pm and when she did not return till 08:00 pm, PW-4 along with PW-3 had gone looking for her; they presumed that the victim had gone to the house of the accused to meet her friend; on reaching near the house, they saw that the house was locked; they went looking for Meena in the Ramleela ground; on persuasion, she came back and on opening the room accused Rajender was found inside; on lifting the dewan i.e. box type bed, M was found inside; she was unconscious; she was taken to the hospital by PW-4 and her husband (PW-7). In her cross-examination, she admitted that loudspeakers were used in the Ramleela ground; when they entered the house of the accused, there was no light; they had

reached the hospital at 10:00 pm; she denied the suggestion that her husband had owed any money to the accused Rajender and because of this dispute, the accused have been falsely implicated. 20 Mangtu Ram (PW-7) is the father of the victim. He was working as a home guard; he stated that his daughter had left the house at 06:00 pm; PW-3 & PW-4 had gone searching for her as he had not returned home. At about 07:00 p.m. they heard a throttling voice from the house of the accused; his house was locked from outside; PW-7 accompanied PW-3 and PW-4 where they went looking for Meena; she was in the Ramleela ground; on persuasion, she came back to the house and opened it; Rajender was present there; his daughter was found hidden in the bed box; she was unconscious at that time; she was taken to the hospital by PW-7 & PW-4. PW-7 has reiterated that his daughter had told him that she had been raped by the accused and this was after Meena had left the house after locking it from outside. In his cross-examination, he admitted that he knows the accused persons since the last 2-3 months and prior to this incident, they were residing in front of their jhuggi since the last 1- 1 months. He never visited the accused but they used to meet him sometime at the common temple. His wife had told him that she could hear the noise of their daughter coming from the house of the accused. The police reached the spot after about half an hour; he admitted that he had taken the prosecutrix to the hospital on his own; the police had not accompanied him. He denied the suggestion that there was a money dealing with the accused and this false case has been planted upon the accused in connivance with the police as he was working as a home guard. 21 PW-3, PW-4 & PW-7 are admittedly close relations of the victim i.e. PW-1. They may not qualify as interested witnesses if their testimony is found to be trustworthy and credible; yet the testimony of such witnesses when admittedly there is no public witness (as the only two public witnesses who had been brought into the witness box (PW-2 & PW-5) in support of the version of the prosecution had not supported their version) has to be more closely scrutinized. 22 It has come on record that the daughter of the accused persons was a friend of the victim but the victim never used to go to their house. The victim was found missing between 06:00 to 07:00 pm. PW-3 and PW-4 went looking for her. They are residents of jhuggi No.Q-3, Sewa Nagar, Delhi; the site plan (Ex.PW-10/4) has been perused. This deciphers that in M block there are several jhuggies; Jhuggi No.M-336 was

the place of the incident; the residence of the appellants was on the first floor. All these are admitted facts. It has also come in the version of PW-7 that the accused persons had been staying opposite the house of PW-7 for about 1- 1 months but thereafter they had shifted their residence and presently they were residing at the aforementioned place i.e. M-336, Sewa Nagar. This has been corroborated by the landlord of this place who has been examined as PW-6 who on oath stated that he has given his jhuggi i.e. M-336 to Rajender Sharma for the last about 15 days. Version of the accused Rajender in his statement under Section 313 of the Cr.PC matches this version; he had stated that earlier he was residing opposite the house of PW-7 but because of the false rumors being spread about him, he had shifted his residence. Further version in this statement being that he had loaned a sum of Rs.45,000/- to PW-7. When the same was demanded, it was not returned; it was promised to be returned on 20.10.1999 but since the deadline was expiring and PW-7 was not making the payment in spite of pressure upon him by the accused persons; this false case has been planted upon him. 23 This defence which has been projected by the appellant in his statement under Section 313 of the Cr.PC had been projected by him even in the cross-examination of the witnesses of the prosecution i.e. cross-examination of PW-1, PW-3, PW-6 & PW-7. At this stage, it may also be relevant to point out that two witnesses in this context had been examined by the defence i.e. DW-1 and DW-2 of whom DW-2, co-accused Meena has been disbelieved for the reason that if there was a loan transaction between the parties and the conversation has been taperecorded (as has been deposed by DW-2) why this tape recorded conversation has not been put in the cross-examination of PW-7 had not been explained; the trial Court had also noted that the details from where this tape-recorder was purchased and no documentary proof being available about its purchase, the defence had been rejected. 24 This Court shall revert back to the defence at a later stage. Record records that all the three witnesses i.e. PW-3, PW-4 & PW-7 went looking for co-accused Meena at the Ramleela ground. They found the house locked from the outside; they heard a throttling voice coming from the first floor of the house. PW-3 and PW-4 had gone looking for M in the direction of the house of the accused as they had presumed that she might have gone there. This story appears to be highly improbable. PW-3 has admitted that her sister never used to visit the house

of the victim. How in these circumstance, the first suspicion which had come into the mind of PW-3 and PW-4 was that their daughter had gone to the house of the accused is not explained. Further if their daughter was found inside the box bed of the house of the accused which was on the first floor and they had heard a throttling sound on the street and recognized it as the voice of M why other jhuggi residents of the locality did not heard the noise creates a suspicion. It is also unexplained as to how PW-3 and PW-4 located coaccused Meena at the Ramleela ground; how they were so sure that Meena would be found there?. PW-3 and PW-4 have given the time as 07:30 pm when their daughter had left the house. PW-7 has stated that it was around 06:00 pm which is also the version of PW-1. The timings also appear to be discrepant. It is also improbable that if the police had reached the spot within 10-15 minutes of the incident (as stated by PW-7), PW-7 choose to take his daughter to the hospital by himself and not be accompanied by the police who had already reached there. This version of PW-7 is also in contrast with the version of PW-10 who had stated that when he reached the spot, he came to know that the injured had already been removed to the AIIMS hospital. 25 The MLC of the victim Ex.PW-8/1 is also an important document. The original of this document is also a part of the file. Ex.PW-8/1 is the photocopy. It is not a replica of the original. The original MLC shows (page 219 of the paper book) that the victim had been brought to the AIIMS hospital in the emergency department at about 09:30 pm by her father Mangtu Ram; his residence has been disclosed as Q-806, Jhuggi No.3. History of the patient records that there was an alleged incident of being abducted and kept in a wooden box; patient was not responding to oral commands; there were flickering of eye lashes; patient responded only on giving noxious stimulus; her other parameters were normal; there were no signs of external injury. She was advised reference to the Gynecologist for any signs of injury to her external genitalia/sexual assault. The first report has been prepared by Dr.Amit Gupta. The senior Gynecologist who had examined the victim at a subsequent point of time was Dr.Anjali Gupta examined as PW-8. In the MLC, she had noted that the injured had not given any history of sexual assault; on examination of her genitalia, no obvious injury was noted; she was under menstruation; her hymen was not torn; slides were made and underwear was sealed. This documentary evidence has been corroborated on

oath by PW-8. PW-8 deposed that the patient at the time of her examination was under menstruation; there was no injury and her hymen was not torn. In a further part of her examination, she has stated that there was no obvious sign from which penetration could be inferred but it is possible that penetration can take place without the hymen being torn. In her cross-examination, PW-8 reiterated that the patient did not give alleged history of rape; the doctor had specifically asked the patient whether she had been sexually assaulted but she did not allege any sexual assault. 26 This cross-examination of PW-8 has given a positive averment stating that the victim had not alleged any history of rape. Injuries had also not been noted upon the victim; hymen was also intact. Section 375 of the IPC states that there must be a penetration to constitute rape; it is a settled legal position that even without the hymen being torn there can be a rape. However each case has to be dealt with in the background of the facts in which it takes place. The medical evidence of the victim shows that she has been queried by two different doctors. Dr. Amit Gupta had first questioned her where she had not given any history of rape but had merely stated that she had been put in wooden box; the trial Judge had noted that this could probably be for the reason that at the time when PW-1 was brought into the hospital she was not fully conscious and thus could not disclose the incident at that time. Be that as it may, the fact is that the victim was again at a later point of time examined by a senior Gynecologist. At that time, the victim was fully conscious. PW-8 the doctor has positively deposed that on query about sexual assault, the victim had denied it. This version of the doctor cannot be ignored. This oral version of PW-8 is fully corroborated by the fact that no injury was noted upon the person of the victim; her hymen was also intact; she was also menstruating at that time. It would be difficult to believe that a girl who is menstruating would be subjected to a rape. This is especially so keeping in view the scientific evidence which has been proved. The underwear and the vaginal swabs of the victim had been sent to the CFSL for examination. The report of the CFSL is Ex.PW-10/8. This shows that no semen was detected on Ex.-1, Ex.2a, 2b & 2c. Ex-1 i.e. the underwear of the victim and her vaginal swabs. Semen detected on the underwear of the accused does not advance the version of the prosecution. There was no blood noted on the underwear of the accused. This is again an indication that if the accused had committed rape upon a victim who was

menstruating, there would have been blood on his underwear as well. 27 Thus both the medical and the scientific evidence as noted supra being in contrast to the version set up by the victim, this Court is not inclined to believe the version of the prosecution. 28 PW-1 had ample opportunity to disclose her version to the two doctors who had examined her; she had not done so; PW-8 has categorically stated that even on a specific query, the victim denied sexual assault. 29 The defence of the victim in these circumstance becomes very probable; right from the inception the accused Rajinder Kumar Sharma has set up a defence that there was a money transaction between the parties and he had loaned a sum of money to PW-7 who was working as a home-guard; since this money was not being paid, this false case has been set up at the behest of PW-7 who being in the police has got this case planted upon him. 30 At the cost of repetition, this defence has been projected by the accused right from the inception i.e. from the cross-examination of the witnesses of the prosecution being reiterated in his statement under Section 313 of the Cr.P.C. and thereafter again projected in the version of DW-1 and DW-2 of whom DW-2 was co-accused Meena Sharma. 31 In a criminal trial, the defence needs only to create a dent in the version of the prosecution and if it is successful in doing so, the prosecution must fail. 32 The probabilities also point to a case of a false implication. Apart from what has been discussed above, it would again be relevant to revert to the site plan (Ex.PW-10/4). Admittedly the complainant party was a resident of jhuggi No.3 which was in the Q block. This address has been noted in the MLC of the victim Ex.PW-8/1. The accused although admittedly was earlier residing in front of the house of the victim but for last about 15 days had shifted to the M block. This has been established in the version of PW-8. The site plan depicts several jhuggies in the M block; L block has also been depicted; meaning thereby that Q block where the accused persons were residing was at a distance. When PW-3 and PW-4 went looking for the victim they headed straight towards the house of the accused; why were they suspicious of the accused and especially when PW-3 has admitted that her sister never used to visit their house?. The throttling voice resembling the voice of the victim having been heard in the street from the first floor of the place of incident by PW-3 and PW-4 and not being heard by the other residents of that area, again throws a doubt on this version of the prosecution. Again why the parents of the victim took the victim to the hospital

on their own when the police had reached there within 10-15 minutes which is the version of both PW-3 and PW-7 yet PW-7 choose to take his daughter without the assistance of the police again casts a suspicion and probablizes the defence of the accused which is in the nature of the suggestions given to the witnesses of the prosecution that the victim had been taken to the hospital from the house of PW-7 itself. 33 Thus this Court for all the aforementioned reasons is not inclined to believe this version set up by the prosecution. 34 There is no doubt to the proposition that where the testimony of the prosecutrix is credible and trustworthy it by itself may be sufficient to nail an accused and corroboration may not be necessary; but where the testimony itself is suspicious and is in contrast with the other evidence and the defence of the accused is more probable, benefit of doubt must accrue to the accused. 35 The Supreme Court while dealing with a false charge of rape at the behest of the parents of the victim in the case of Radhu (supra) had noted that where the testimony of the victim was discrepant, benefit of doubt had been given to the accused. The Court in this context had interalia noted as under:

The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instance where a parent 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.

36 The conscience of this Court does not permit it to believe the version of the prosecution. Benefit of doubt is accordingly given to the appellants. Giving them benefit of doubt, they are acquitted of the charges leveled against them. Their bail bonds are cancelled. Surety discharged. 37 Appeals are allowed in the above terms. *INDERMEET KAUR*, J APRIL16 2014 ndn

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