

Dharamwati Vs. State

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Court : Delhi

Decided On : May-22-2014

Judge : Indermeet Kaur

Appellant : Dharamwati

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :19.5.2014 Judgment delivered on :22.5.2014 + CRL.A.93/2002 3509/2014 & DHARAMWATI Through: CRL.M.A. Nos.364/2002, 9572/2009, Appellant Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Adv. Versus STATE Through: + .Respondent Mr.Varun Goswami, APP. CRL.A.94/2002 & CRL.M.A. No.3511/2014 SUKHBIR SINGH Through: Appellant Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Adv. Versus STATE Through: .Respondent Mr.Varun Goswami, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1. Both husband and wife i.e. Sukhbir and Dharamwati have been convicted for the offence under Sections 366/376/342 read with Section 120-B of the IPC. Appellant Sukhbir has been held guilty of the offence under Section 120-B of the IPC read with Sections 366, 376 & 342 of the IPC; his wife Dharamwati has also been convicted under Section 120-B of the IPC read with Section 376, 366 & 342 of the IPC. Accused Sukhbir has been sentenced to undergo RI for a period of 7

years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo SI for 6 months for the offence under Section 120-B of the IPC read with Sections 366, 376 & 342 of the IPC. Accused Dharamwati has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo SI for 6 months for the offence under Section 120-B of the IPC read with Sections 366, 376 & 342 of the IPC. The sentences were to run concurrently. Benefit of Section 428 of the Cr.PC had been granted.

2. Nominal rolls of the appellants have been requisitioned which show that as on the date when appellant Sukhbir was granted bail, he has suffered incarceration of 7 months and 12 days whereas his wife Dharamwati as per the jail record was never lodged in jail in this case.

3. Version of the prosecution is based on the testimony of the prosecutrix ID examined as PW-1. Her complaint was that on 16.10.1999 at about 08:15 pm she had been invited by both the appellants for an outing; after taking permission from her husband, she accompanied the appellants. Accused Sukhbir was driving the car; he stopped the car to jungle. His wife Dharamwati left the car on the pretext of bringing some water. In the meanwhile, Sukhbir forcibly committed rape upon the victim at the rear seat of the car. She was taken to the house of the appellants. She managed to flee. On the way, she met a person Rattan Singh (PW-5). Her husband Balbir Singh (PW-2) was informed. Police complaint was lodged.

4. The prosecution in support of its case has examined 15 witnesses of whom the star witness was PW-1, the prosecutrix. Her husband has been examined as PW-2. The son of PW-1 and PW-2 namely Deepak was examined as PW-3. The person who had helped the victim to escape namely Rattan Singh was examined as PW-5. His wife Maya Devi was examined as PW-6. Besides the oral testimonies, the MLC of the victim Ex.PB by Doctor Alka; no injury was noted upon her person; the vaginal smear of the victim was taken. The MLC of appellant Sukhbir was proved as Ex.PA. No injury was noted upon his person. His blood sample was taken by the Investigating Officer. Salwar of the victim was also seized and sent to FSL. The FSL report Ex.PX had detected human semen on her salwar, the blood group on the salwar being B.

5. In defence, appellant Sukhbir had adduced evidence to substantiate his submission that his blood group is O positive and even presuming that there was a B group blood detected on the salwar of the victim, there was nothing to connect the accused with the said blood grouping. The trial Judge had however not relied upon this evidence.

6. Before this Court on an oral submission made by the learned senior counsel for the appellants, the blood grouping of appellant Sukhbir had been directed to be carried out by the Investigating Officer. The report has been placed on record reaffirming the position that the blood group of Sukhbir is O positive.

7. The evidence collected by the trial Judge had led to the conviction of the appellants and sentenced as aforementioned.

8. On behalf of the appellants, arguments have been addressed in detail. It is pointed out that this is a clear case of false implication as both the accused and the family of the victim were well known to each other; even as per the version of PW-1, she had accompanied the accused persons after taking permission from her husband; this was at 08:15 pm; it would be difficult to believe that till midnight when the victim had not returned to her house, no effort was made by the husband of PW-1 to trace her out. Further submission of the learned senior counsel for the appellants being that the testimony of PW-5 and PW-6 is totally in contrast with the version of PW-1; PW-1 had stated that after she had been confined in the house of the appellants, she had managed to escape to the house of PW-5 who had gone in the night to call her husband i.e. PW-2 but since there was a dog there, he could not inform him. Version of PW-5 and PW-6 being different on this score; version of PW-5 and PW-6 being that they had gone only on the next morning i.e. on 17.10.1999 to inform PW-2. It is pointed out that the MLC also does not support the case of the prosecution; if the victim was resisting while she was being raped why no injury had noted upon her person. This is a clear case of false implication because of a dispute over a buffalo and a scooter transaction between the parties; all these factors clearly show that the prosecution has failed to prove its case beyond reasonable doubt; benefit of doubt must accrue in favour of the appellants.

9. Arguments have been refuted. It is pointed out that on no count, does the impugned judgment suffer from any infirmity. It is stated that the testimony of the prosecutrix even by itself is sufficient to nail the accused; in this case, her version has been trustworthy and credible and the trial Court has rightly relied upon her version. Minor discrepancies in the version of PW-5 and PW-6 have necessarily to be ignored.

10. Arguments have been heard. Record has been perused.

11. PW-1 was the star witness of the prosecution. She had deposed that she along with her husband (PW-2) had been working for the last 10 years at the Bansal Farm House. On 16.10.1999, she had come back from farm house at 05:00 pm. Her husband (PW-2) and son Deepak (PW-3) remained in the farm house. At about 06:00 PM, both the accused persons Sukhbir and his wife Dharamwati had come to her house asking her to join them for outing. PW-1's son (PW-3) informed her that her husband (PW-2) had granted permission for going out with the accused; she accordingly accompanied them and sat in their car. Both the ladies i.e. Dharamwati and victim sat on the rear seat whereas Sukhbir was driving the car. They went to her farm house where her husband (PW-2) was present; PW-2 given permission to PW-1 to accompany the accused persons. She went with them in the car. Accused Sukhbir drove the car towards the jungle where he stopped. Dharamwati on the pretext of bringing the water went out of the car. Sukhbir opened the rear door of the car. PW-1 wanted to get out of the car; he caught her legs and thereafter forcibly in the rear seat of the vehicle, he committed rape upon her. PW-1 called for Dharamwati. When Dharamwati came to the spot, Sukhbir asked her to bring an axe. Dharamwati took out the axe from rear seat of the car. Accused persons took her to their house where she was restrained; they told her that they would drop her back in the morning; Dharamwati and victim were sitting in one room and Sukhbir was in the other room. After sometime, the son of Sukhbir went out and he left the door ajar; this was at 11:00 pm; PW-1 managed to escape; Sukhbir followed her; PW-1 had entered a lane; he was driving his car and he put on the tape recorder at a loud volume; he forcibly tried to pull PW-1 back in the car by catching her hair and gagging her mouth; he however did not succeed. People gathered there; PW-1 managed to escape and went to the house

of Rattan Singh (PW-5); she spent night at his house. PW-5 went to the house of PW-1 to inform her husband but since there was a dog, he could not enter the farm house. In the morning, her husband (PW-2) came to her rescue at 05:00 am. Police was then called. Her salwar was taken into possession.

12. In her cross-examination, she admitted that she knew the accused persons for the last 10-12 years; her husband and Sukhbir used to be on visiting terms. She admitted that her husband had purchased one buffalo from accused Sukhbir and the horn of that buffalo had broken; Sukhbir left it at their house. The buffalo has been given by Sukhbir 2-3 days prior to this incident; Sukhbir has not paid any money for the buffalo. Her husband had paid Rs.15,500/- to Sukhbir for that buffalo; Sukhbir had to pay the money to them in that account. She denied the suggestion that her husband had to pay any money to Sukhbir on that count. She also admitted that Sukhbirs scooter was mortgaged with them but that scooter had not been registered in her husbands name till date. She admitted that this scooter is with them since the last 8-9 years.

13. The husband of the victim Balbir Singh was examined as PW-2. He has deposed that on 16.10.1994 between 07:00-08:00 pm, the accused persons had come to his farm house. The accused were known to him. They had stated that they are going to the temple and had sought permission to allow his wife to accompany them. He had allowed them to do so. Further deposition being that on the next date, one person came and told him that his wife was staying in his house; he accordingly accompanied that person to his house where she related the incident to him.

14. In his cross-examination, he admitted that had paid Rs.15,000/- for the purchase of a buffalo to Sukhbir; he also admitted that Sukhbir had mortgaged a scooter with PW-2 for which Rs.2,000/- had been paid by PW-2 to Sukhbir.

15. Deepak was the son of PW-1 and PW-2. He was examined as PW-3. His deposition is to the effect that his mother had accompanied the accused persons as they were going to the temple. In his crossexamination, he admitted that they have a scooter but he does not know from where it was brought.

16. Rattan Singh (PW-5) has however deposed differently from the version of PW-1. He has deposed that on the fateful day i.e. on 17.10.1999, one lady knocked at his door at midnight; he opened the door; she stayed at night in his house. Next morning, he informed her husband Balbir Singh about this fact. This witness was partly hostile and was permitted to be cross-examined by the learned public prosecutor. He denied the suggestion that accused Sukhbir dragging PW-1 at which time, PW-5 had allowed PW-1 to come and stay in his house. In his cross-examination, he admitted that the farm house of PW-2 is at a distance of one mile. He had gone on cycle to call PW-2. This was at 07:30 am in the morning.

17. The wife of PW-5 Maya Devi has been examined as PW-6. She also toed the version of PW-5 deposing that her husband (PW-5) had gone to inform PW-2 the next morning. Thus the oral depositions of PW-1, PW-5 and PW-6 are in contrast. Whereas PW-1 had stated she was confined in the house of the appellants and managed to escape at 11:00 pm whereupon accused Sukhbir had followed her in his car and tried to pull her back in the car by catching her hairs and gagging her mouth at which time PW-5 rescued her and thereafter PW-1 spent the night in his house.

18. Version of PW-5 and PW-6 is in contrast with PW-1. PW-5 had stated that it was midnight when PW-1 came to his house knocking his door and he permitted her to stay in his house. Another contrast in the version of PW-1 and PW-5 is that PW-1 had stated that PW-5 had gone to call her husband in the night itself but he could not enter the farm house because a dog was there. PW-5 however deposed that the distance between his house and the farm house of PW-2 is only one mile away.

19. Not only are these versions in conflict and in contrast throwing a doubt on the veracity of PW-1, even otherwise, it would be difficult to believe that a mature adult lady in her mid thirties and who was admittedly known to the family of the accused since the last 10-12 years; parties being on visiting terms was raped at the back seat of a maruti vehicle with the wife of appellant Sukhbir allowing her husband to commit this gruesome act and although the victim had put a stiff resistance, she had suffered no injury. Not only the victim put a resistance at the time when she

was being raped in the maruti car, her deposition is that when she tried to escape, accused Sukhbir had followed her in his car and tried to pull her back in the car by catching her hair and gagging her mouth, at this point of time also, no injury was suffered by her. This is evident from her MLC Ex.PB which shows that there was no injury upon the victim. Her clothes were also not torn. In fact there was no reflection of any struggle by the victim. Again the version of the prosecutrix become doubtful when she states that after the rape had been committed upon her, she was taken to the house of the appellants where she along with co-accused Dharamwati was sitting in one room and Sukhbir was sitting in another room; at about 11:00 PM when the son of the appellants had gone out, he had left the door ajar; at that point of time, she managed to escape. She had entered into a lane where accused Sukhbir followed her in his car. At the time when he was attempting to put her back into the car, people gathered there and she got rescued by Rattan Singh (PW-5). As per this version, PW-5 was the person unknown to her but she agreed to spend night in the house of PW-5; PW-5 had admitted that the farm house of the husband of the victim (PW-2) was just one mile away; she however did not ask Rattan Singh to take her to her own farm house. Version of PW-1 is that Rattan Singh had gone to call her husband in the night itself but he could not be contacted because there was a dog in the farm house. PW-5 & PW-6, as noted supra, have given a contrary version.

20. The FSL report (Ex.PX) shows that the salwar of the victim had semen stains. This had a blood group of B. The blood group of the appellant is O positive; this has been established by evidence before this Court wherein this Court vide its order dated 15.05.2014 had directed the Investigating Officer to take the blood sample of appellant Sukhbir and to report this Court about the blood grouping of appellant Sukhbir. This has been reported as O positive.

21. The defence of the appellants all along has been that the accused persons have been falsely implicated because of a dispute which had arisen between their families over a buffalo and which had been sold by Sukhbir to PW-2 whose horn had been broken. The buffalo had been returned back to the appellants. He was asking the money for it but he was not being paid any money. This was the one reason for the dispute. The next reason of quarrel and discord between the parties

was over a scooter which had admittedly been mortgaged by the appellants with PW-3 for a loan of Rs.2,000/-. This scooter (as per the deposition of PW-1 & PW-2) was with PW-2 since the last 8-9 years but the papers had still not been transferred in his name. This was the second reason of the quarrel. This defence which has been urged before this Court appeared in the cross-examination of the witnesses of the prosecution, in the statement of the accused recorded under Section 313 of the Cr.PC and also in the defence evidence led by the accused. This defence has been successive at all stages of the trial.

22. There is no doubt to the proposition that the testimony of a sole prosecutrix even by itself, if cogent and credible, is sufficient to nail the accused. However before convicting any person on the testimony of a sole prosecutrix, this Court must be confident that such a version is cogent, credible and wholly trustworthy; this is clearly not so in the instant case. This Court has serious doubts about the version of PW-1. Not only is in contrast with the version of her husband (PW-2) but it is also contrary to the versions of PW-5 & PW-6 who were the public witnesses. The medical evidence and the FSL report also do not in any manner advance the version of the prosecution. There is no corroborative evidence.

23. In this background, giving benefit of doubt to both the appellants, the impugned judgment is set aside. Appeals are allowed. Both the accused persons are acquitted of the charges leveled against them. Their bail bonds cancelled; surety discharged. INDERMEET KAUR, J MAY22 2014 A

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