

Sunil Vs. State Nct of Delhi

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Court : Delhi

Decided On : Sep-04-2014

Judge : Indermeet Kaur

Appellant : Sunil

Respondent : State Nct of Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :29.08.2014. Judgment delivered on :04.09.2014. CRL.A. 78/2003 SUNIL Through versus STATE NCT OF DELHI Through Appellant Ms.Ruchi Kapoor, Advocate. Respondent Mr.Ravi Nayak, APP for the State. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 10.12.2002 and 12.12.2002 respectively wherein appellant Sunil was convicted under Sections 376/506-II/452 of the IPC and sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.50,000/- and in default of payment of fine to undergo SI for two years for the offence under Section 376 of the IPC; for the offence under Section 452 of the IPC, he was sentenced to undergo RI for a period of three years and to pay a fine of Rs.25,000/- and in default of payment of fine to undergo SI for one year; for the offence under Section 506-II of the IPC, he was sentenced to pay a fine of Rs.10,000/and in default of payment of fine, to undergo SI for one year. 2 Record shows that the present FIR was registered on

the complaint of HL examined as PW-1. Her version was that on 13.06.2000 at about 12:30 PM when she was alone at home, the appellant entered her house and committed rape upon her. She was known to the appellant as her father was a tenant in the house of the father of the appellant, meaning thereby that the appellant was the son of the landlord and the victim was the daughter of the tenant. The initial complaint of the complainant was proved as Ex.PW-1/A. The FIR was registered one day after the incident i.e. on 14.06.2000. Submission was that this delay was for the reason that the victim was threatened by the appellant not to disclose the incident to anyone. 3 The father of the victim Bulaki Ram was examined as PW-2. He corroborated the version of his daughter. He deposed that on 13.06.2000, he left the house for work with his wife; when they returned in the evening, their daughter disclosed the incident to them. The matter was reported to the police. 4 The victim was medically examined on 14.06.2000. Her MLC Ex.PW-4/A was prepared by Dr. Anjali Singh (PW-4). On local examination, hymen was found torn and there was some tenderness present around the vagina. Vaginal swab was also preserved. The CFSL vide its report Ex.PW-5/A and Ex.PW-5/B, proved through Dr. D.S. Chakoutra examined as PW-5, had detected semen stains on the vaginal swab. 5 The accused was arrested on the pointing out of the victim. He was medically examined by Dr. Anand Aggarwal and Dr Bipul Bohra. The MLC Ex.PW-3/A was prepared; the signature of the Doctor was identified by record clerk M.K. Sharma, examined as PW-8. 6 The Investigating Officer SI Narender Singh was examined as PW-12. He had recorded the statements of the witnesses and prepared the site plan. 7 The statement of the accused was recorded under Section 313 of the Cr.PC. In this version, he set up a plea of alibi; he stated that as on fateful day at the relevant time he had gone to visit his sister Rekha who had been admitted in the clinic of Dr. Sunil Anand and he was present throughout the day and had returned home only at 10:30 pm; he was innocent and had been falsely roped in. 8 In defence, one witness ASI Ramjan Ali (DW-1) had come into the witness box to prove Ex.DW-1/A to Ex.DW-1/F, of which Ex DW1/A is the complaint of the prosecutrix, and Ex DW1B to Ex DW1E are the statements of prosecutrix, father of appellant Pratap Singh, cousin of prosecutrix Mahender and SI Naresh Singh, the Investigating Officer. His report was Ex DW1F. 9 The evidence, both oral and documentary, had been considered by the trial Judge to

arrive at the aforementioned finding of conviction qua the appellant. 10 On behalf of the appellant, arguments have been addressed in detail. It is pointed out that the version of the prosecutrix is full of inherent improbabilities. The incident had taken place on 13.06.2000 but the complaint was of 14.06.2000 and for that, there is no explanation. The MLC of the victim (Ex.PW-4/A) does not evidence any injury; there is no injury on the MLC of the accused either. If it was a forceful act of rape, scuffle marks which would be evident from bruise or injury would have been noted. Semen was also not detected on the clothes of both prosecutrix and appellant. The semen detected on the vaginal swabs was not grouped and thus cannot be traced to the appellant. Submission being that this is a clear case of false implication as this was initially a landlord-tenant dispute and in order to ward off the right of the landlord who was seeking eviction of his tenant (father of the victim) this false case had been set up. Further submission being that Ex.DW1/A to Ex.DW-1/F also substantiate the stand of the appellant; vigilance inquiry been conducted by the police clearly shows that this case has been falsely set up by the victim only to extort money from the appellant. The appellant is entitled to benefit of doubt on the basis of the aforementioned documentary evidence. The prosecution having failed to prove its case to the hilt, he is entitled to benefit of doubt. 11 Arguments have been refuted. It is pointed out that the version of the prosecutrix (PW-1) is fully supported by her father (PW-2) as also the medical evidence (Ex.PW-4/A) as also the scientific evidence (Ex.PW-5/A). The plea of alibi which has been set up in the statement of the accused recorded under Section 313 of the Cr.PC did not find mention in the cross-examination of the witnesses of the prosecution. The defence of the accused is confused. He is taking up a false plea. On no count, does the impugned judgment call for any interference. 12 Arguments have been heard. Record has been perused. 13 The star witness of the prosecution is PW-1. She has fully corroborated the version of the prosecution. She has on oath deposed that on 13.06.2000 at about 12:30 PM when she was sleeping in her house and was alone, the bolt of the door was forcefully opened; it was loose; the appellant entered her room. He was a married man and was the son of her landlord. He undressed PW-1 and after undressing himself, he committed rape upon her. While leaving, the appellant threatened to kill her if she disclosed the incident to anyone; PW-1 was frightened. She related the incident to

her parents when they returned home in the evening. Ex.PW-1/A was lodged. 14 Relevant would it be to note that the complaint was lodged on the same day i.e. in the intervening night of 13.06.2000 but the FIR had been registered in the early morning of 14.06.2000 after the formalities had been completed. Thus, by no stretch of imagination can it be said that there was any delay in lodging the FIR. 15 Further version of PW-1 was that on 20.07.2000, some persons had come to her house and informed her father that the accused had engaged an Advocate and he wanted to inquire something from her; she signed on a blank paper as she was asked by the Advocate; the Advocate assured her that this paper would not be misused; PW-1 was illiterate. 16 In her cross-examination, she admitted that document Ex.PW- 1/DA bears her signatures and had been notarized by a Notary Public; she signed the register. This document, purportedly written by her and duly signed by her, was to the effect that the matter stood settled with the appellant and she had no grievance against him. 17 Be that as it may, in a further part of her cross-examination, PW-1 denied the suggestion that she had sexual intercourse with the appellant with her consent. She further denied the suggestion that affidavit Ex.PW-1/DA was voluntary; submission being that it was obtained under pressure. 18 PW-2 Bulaki Ram has deposed on the same lines as his daughter. He has stated that they had taken this room on rent just two days prior to the incident i.e. 11.06.2000 from the father of the appellant. In the morning, he had gone for work along with his wife. When he returned in the evening his wife (to whom the incident had been narrated by his daughter PW-1) informed him. Police complaint was lodged. In his cross-examination, he admitted that his daughter was illiterate and had studied only up to 2nd standard. 19 Medical examination of the victim was conducted on 14.06.2000. Her hymen was found torn; there was tenderness present but there was no bleeding around the vagina. The other incriminating circumstance against the appellant was the CFSL report Ex.PW-5/A which had detected semen stains on the vaginal swab of the victim which had been taken on 14.06.2000 and had been preserved and thereafter sent to the CFSL for examination. However no blood grouping of this semen was possible. 20 The Investigating Officer Narender Singh (PW-12) in his cross- examination admitted that a copy of Ex.PW-1/DA was filed by the appellant along with his bail application and under the directions of the High Court, he had been directed to

investigate this affidavit. The statement of the accused recorded under Section 313 of the Cr.PC had set up a plea of alibi but this had not been proved. The trial Court has also correctly noted that this plea of alibi in his statement under Section 313 of the Cr.PC appeared to be an afterthought as in the entire crossexamination of the witnesses of the prosecution no such question had been put to any of the PWs. 21 ASI Ramjan Ali was examined as DW-1. He had brought the summoned record from the Vigilance department. As per record, he deposed that on 04.04.2001, a complaint of HL, received in their office had been marked to him to enquire into. This complaint was Ex.DW1/A. Parties were called in the office and their statements i.e. statement of the victim (PW-1), father of the appellant, Pratap Singh, cousin of the prosecutrix, Mahender and also of the Investigating Officer SI Naresh Singh were recorded and which were Ex.DW-1/B to Ex.DW1/E. His report Ex.DW-1/F was prepared. As per his conclusion, this complaint was made by the victim falsely for the purpose of extortion of money. He denied the suggestion that this report had been concocted. 22 The version of PW-1 is wholly cogent and coherent. It is also corroborated by the version of her father (PW-2). The MLC Ex.PW-4/A had noted a torn hymen as also tenderness; PW-1 had been examined just a few hours after the alleged time of incident. The CFSL had also detected semen on her vaginal swabs. It is but clear that the incident of 13.06.2000 as has been deposed to by the prosecutrix had taken place. Submission of the appellant that this was an act with consent is negated by the fact that as per the admitted case, the family of the victim had become tenants of the father of the appellant just two days prior to the incident i.e. 11.06.2000. It would be difficult to believe that within two days, the victim had become so friendly with the appellant that she consented to this act of sex with him. Moreover the victim in her statement had categorically stated that the appellant was a married man. She knew this fact. It would again be difficult to perceive that a young girl would think of entering into a relationship with a married man. The trial Court had rightly rejected this argument. 23 This argument that it was a case of consent was however lost track of at the time when the statement of the accused under Section 313 of the Cr.PC was recorded. The accused at that time had set up a plea of alibi. His version then was that at the time of the incident, he had gone to visit his sister Rekha who had been admitted in the clinic of Dr. Sunil Anand; he was absent throughout the day and

had returned home only at 10:30 pm and was not present at the time of the incident. This contradictory stand again throws a doubt on the version of the defence. 24 Inquiry conducted by DW-1 is of little relevance. The prosecutrix in her examination-in-chief has explained that on 20.07.2000, she being an illiterate girl and having studied only up to the 2 nd standard (as is clear from the version of PW-2 as well) had signed certain papers on the asking of an Advocate which as was informed to her would not be misused. It was these papers which had been misused and an affidavit had been procured on a blank paper bearing her signatures wherein it was stated that the victim had compromised the matter with the appellant. 25 The prosecution has been able to prove its case to the hilt. 26 The Supreme Court has time and again reiterated that the statement of the prosecutrix alone, if found credible and coherent, is sufficient to nail the accused. In the judgment of (2012) 7 SCC171Narender Kumar Vs. State, the Apex Court has dealt with this issue and it had been held that even in the absence of any injury mark the testimony of a victim of rape which is otherwise cogent and trustworthy cannot be rejected. In this context the following observations of the Apex Court are relevant and read herein as under:

It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

2. At the cost of repetition, the version of the prosecutrix is fully corroborated by the version of her father (PW-2), as also the medical and scientific evidence. The defence set up by the respondent is wholly unconvincing. It is full of contradictions. It cannot dent the version of the prosecution. 28 Appeal is without any merit. 29 Record shows that at the time when the appellant was released on bail, he has suffered incarceration of 5 years and 4 months besides remissions earned of 1 year and 5 months meaning thereby that he has undergone the sentence of about 7 years. He has almost completed the sentence. Accordingly, he be released on the period already undergone by him. 30 Appeal disposed off in the above terms. INDERMEET KAUR, J SEPTEMBER04 2014/A

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