

State Vs. Nirale Miyan and ors.

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Court : Delhi

Decided On : Aug-12-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Nirale Miyan and ors.

Judgement :

§~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 446/2014
STATE Represented by: Petitioner Ms.Aashaa Tiwari, APP for the State with
Inspector K.P.Sah, PS Madhu Vihar. versus NIRALE MIYAN & ORS. Represented
by: Respondents None. CORAM: HON'BLE MR. JUSTICE PRADEEP
NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

1208.2014 % CrI.M.A.No.11052/2014 (delay in filing) and 11054/2014 (delay in
refiling) 1. For the reasons stated in the applications the delay of 72 days in filing
and delay of 50 days in refiling the leave to appeal petition is condoned.

2. Applications are disposed of. CRL.L.P. 446/2014 1. Aggrieved by the judgment
dated November 16, 2013 acquitting the respondents for the charge of offence
punishable under Section 376(2)(g) IPC the State has filed the present petition
seeking leave to appeal.

2. Learned counsel for the State contends that since the prosecutrix lodged the complaint belatedly due to fear of the respondents, the same cannot be a ground to disbelieve her testimony as has been done by the learned Trial Court. The prosecutrix has explained the treatment she faced at the hands of the respondents and in view of her testimony the respondents ought to have been convicted for the offence punishable under Section 376(2)(g) IPC.

3. We have heard learned counsel for the State and perused the record.

4. On October 11, 2012 a complaint dated October 10, 2012 by the prosecutrix U through the In-charge, Prathadhi addressed to PS Shakarpur was received wherein she stated that she was aged 15 years and was living at Indra Camp with her parents and siblings. In her neighbourhood one Nirale Miyan stays. Two-three months ago Nirale took her away by enticing her. He along with two of his unknown friends committed rape on her and prepared video. When the matter was taken up by the police, due to fear she stated that she had gone of her own free will. The day before Nirale Miyan had beaten her with slaps and beaten her sister as well. A call was made at 100 number and she had gone to Madhu Vihar Police Station. According to her Nirale wanted to take her along for doing wrong acts. The prosecutrix used to go for cleaning utensils in the house and on the way he pressurised her to go along with him and would ask money from her. Thus she sought protection. On the basis of this complaint FIR No.335/2012 under Sections 376/366A/384/341/34 IPC was registered at PS Madhu Vihar vide Ex.PW10/A. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she reiterated the allegations. On the basis of this statement Nirale Miyan was arrested pursuant to his disclosure respondent Nos.2 and 3 were also arrested. The medical examination of the prosecutrix was also conducted and charge sheet was filed.

5. PW-1 Ms.Shikha, Programme Officer with Rape Crises Intervention Centre of Prathadhi was examined who stated that the prosecutrix and her mother came to her office on October 10, 2012 along with a written complaint. On October 11, 2012 she took the victim and her mother to the office of the DCP and then to the ACP. FIR was lodged on the same day and on October 12, 2012 the statement of

the prosecutrix was recorded under Section 164 Cr.P.C.

6. The prosecutrix who appeared as PW-5 stated that in April 2012 while she was returning from her work at 8.00 PM Nirale met her and told that his wife was calling her for urgent work. When she went to his room he beat her and raped her against her wishes. He locked her in a room and left. After 30 minutes he returned with his two friends whom she did not see earlier and they also raped her. She was kept confined in the room for three days without any food. After three days Nirale came to the room and threatened her not to make any complaint. Thereafter she returned to her house and her mother took her to the police station. Her statement was recorded in the police station but she did not state anything against Nirale. She was taken to the hospital but she refused to get her medical examination done. She was produced before a Court where also she did not make any statement due to the fear of the accused. In October 2012 the accused met her in the street and asked her to hand over her salary and also beat her. He also beat her sister. Thereafter she along with her mother went to the office of Prathadhi and from there to the office of ACP and then in her statement to the police and to the Court she stated everything.

7. The prosecutrix was cross-examined by the learned APP as she failed to depose complete facts. Even on cross-examination by the learned APP she stated that respondent Nos.2 and 3 were not those who committed rape on her besides Nirale Miyan. She also admitted that when Nirale kept her in a room he had two keys of the lock, one was handed over to her and from the other he locked the door. She admitted that for two days she stayed at Nari Niketan after registration of first FIR being FIR No.93/2012 and then in the village for two-three months.

8. After recording of the entire evidence and the statements of the accused the learned Trial Court came to the conclusion that the version of the prosecutrix was not trustworthy and reliable for the following reasons:

i. It is not believable that forcibly she was taken by accused Nirale Miyan in the full public glare to the room in April, 2012. As per prosecutrix, they reached in that room in 30 minutes. It cannot be believed that she kept on walking with accused who was taking her forcibly and did not raise any alarm on the way and did not

complaint to anyone. ii. As per prosecutrix, she was kept detained in that room for three days but she did not raise any alarm. As per her, there was a window in that room, then why she did not raise any alarm, no satisfactory explanation in this regard has been given by her. iii. On the complaint of PW4, i.e. Mother of the prosecutrix, an FIR No.93/12 was lodged in PS Madhu Vihar when prosecutrix went missing for three days. That FIR was closed by the orders of Ld.MM as prosecutrix did not make any allegation against any one and had just stated that she had gone to Kalkaji Temple and Ld.MM also recorded statement of PW4, while sending FIR for cancellation. iv. Why prosecutrix did not come out with true facts at that time either before the police or before Ld.MM, no satisfactory reason has been given by her. Why prosecutrix kept mum for six months and suddenly made this complaint in October 2012, no satisfactory explanation has come in this regard from the prosecution side.

9. The prosecutrix failed to identify the respondents Mustkim and Salman as the persons who raped her along with Nirale Miyan. Thus there being no evidence against respondent Nos.2 and 3 their acquittal was fully justified.

10. Now coming to the case of Nirale Miyan it may be noted that for this very incident, an earlier FIR No.93/2012 was registered at PS Madhu Vihar. The FIR was lodged by the mother of the prosecutrix who stated that her daughter i.e. the prosecutrix was missing since April 03, 2012 at about 8.00 PM, had gone out without telling her and did not return. Later when the prosecutrix was recovered, in her statement either to the police or under Section 164 Cr.P.C. she levelled no allegation of either kidnapping or rape. After six months of the earlier FIR this complaint was lodged through the intervention of the Rape Crises Intervention Centre of Prathadhi. The explanation of the prosecutrix is that Nirale Miyan had threatened that he had a video and he would show the same to everybody. This explanation does not stand to reason as the prosecutrix was produced before the learned Metropolitan Magistrate as well in FIR No.93/2012 and despite her comfortably answering the questions she did not implicate Nirale Miyan.

11. Further the prosecution has also examined PW-6 Zahir Ahmad, the landlord of Nirale Miyan who stated that he had given the room on rent to Nirale Miyan on

April 01, 2012 where Nirale lived for two days and on the third day he went to see his mother along with his wife and did not return back. Thus the version of the prosecutrix that she was made to stay in the said house for three days is not supported by the landlord of the premises.

12. The prosecutrix has admitted that she had in her possession one key of the room. However, no effort was made by her to get open the lock. Further the mother of the prosecutrix PW-4 admitted that six months ago when the prosecutrix was missing for three days Nirale used to stay in the camp in his house with his wife. She admitted that she had not made any allegation against Nirale in the first FIR.

13. Admittedly even as per the prosecutrix a day prior to October 10, 2012 Nirale had beaten the prosecutrix and her sister and the possibility of the same triggering the prosecutrix to lodge the complaint dated October 10, 2012 cannot be ruled out.

14. Having perused the Trial Court record and the reasoning of the learned Trial Court in acquitting and granting benefit of doubt to the respondents we are of the opinion that no perversity can be imputed to the impugned judgment. The same does not warrant any interference.

15. Consequently the leave to appeal petition is dismissed.

16. TCR be sent back. PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

AUGUST12 2014 vn

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