

State Vs. Sandeep Sharma and ors

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Court : Delhi

Decided On : Aug-08-2013

Judge : Hima Kohli

Appellant : State

Respondent : Sandeep Sharma and ors

Advocate for Pet/Ap. : Mr. Dayan Krishnan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 134/2013 Decided on 08.08.2013 IN THE MATTER OF : STATE Appellant Through: Mr. Dayan Krishnan, ASC for State versus SANDEEP SHARMA & ORS. Through: None. Respondent CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

(Oral) 1. The present petition has been filed by the petitioner/State under Section 378 (1)(b) Cr.P.C. praying inter alia for grant of leave to file an appeal against the acquittal order 6.3.2012 passed by the learned ASJ, Saket Court, in SC No.10/2006/2010, arising out of case FIR No.775/2004 (Ex.PW-3/A) lodged under Sections 367/377/506/323/34 IPC at PS Kalkaji, Delhi.

2. The brief facts of the case as set up by the prosecution and relevant for deciding the present petition are that on 28.8.2004, at about 8.00 AM, when the complainant, Imran Khan was travelling in a public bus along with his friend Amjad Khan, four persons, namely, Mohd. Yunus @ Chhotu Bihari(accused No.3),

Sandeep Sharma @ Tittoo (accused No.1), Dinesh (accused No.2) and one Shakeel had forced him out of the bus and had taken him in a TSR to a locked factory premises at Lakkarpur Jungle, where he was assaulted and his clothes were removed whereafter, accused No.1 had caught his hands and made him kneel, accused No.2 threatened him with a knife and accused No.3 had sodomised him. Thereafter, all the accused persons had threatened to kill the complainant if he informed anybody or made any noise and they took him to Okhla Service Road, TPoint R.D. Marg in a TSR and dropped him there. The complainant reached the police station at 11.00 AM and made a complaint. After 4-5 hours of waiting at the police station, he was sent to AIIMS for a medical examination. The subject FIR came to registered at 9.05 PM.

3. Initially, accused Nos.1 & 2 were arrested on 31.8.2004 and a charge- sheet was filed against them on 18.10.2004. Accused No.3 was arrested after a month, on 18.11.2004. However, Shakeel could not be arrested by the police. Vide order dated 27.7.2006, the Sessions Court charged all the accused with offence punishable under Sections 367/377/506/323/34 IPC.

4. Initially, the case was tried by the learned MM, who had proceeded to record the testimony of the prosecution witnesses and that of the accused persons under Section 313 Cr.P.C. CRL.L.P.No.134/2013 that an offence under Section 367 IPC is exclusively triable by the Sessions Court, the case was committed to the Sessions Court.

5. All the witnesses were then recalled by the Sessions Court for their examination and cross-examination. Out of seven witnesses, cited by the prosecution and duly examined before the learned MM, six witnesses had appeared for their examination and cross-examination before the Sessions Court. However, the seventh witness, Amjad Khan, a friend of the complainant who was allegedly accompanying him in the bus on the date of the incident and had appeared before the learned MM, failed to appear before the Sessions Court as he remained untraceable.

6. Out of six witnesses, who had appeared before the Sessions Court, the most important witnesses are the complainant (PW-1), IO-ASI Attar Singh (PW-2) and

Dr. Manish (PW-4). After conclusion of the evidence of the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C. and all the incriminating evidence was put to them. They however denied the said evidence and alleged false implication and stated that they were innocent. Thereafter, arguments were advanced by both sides. After perusing the record and analyzing the evidence, the trial court arrived at the conclusion that the prosecution evidence was not trustworthy enough to convict the accused persons. As a result, benefit of doubt was given to them and all of them were acquitted in the case.

7. Aggrieved by the aforesaid acquittal order, the State has preferred the present petition and seeks leave to file an appeal. The main grounds urged by learned ASC for the State to assail the impugned judgment are that the trial court had erred in overlooking the medical evidence placed on record which had corroborated the testimony of the complainant and further, that having regard to the nature of the crime, no public witness could be found and in such circumstances, the testimony of the complainant readwith the medical evidence were sufficient to convict all the accused.

8. This Court has examined the trial court record, including the evidence placed on record, both, ocular and documentary, and has carefully considered the impugned judgment in the light of the submissions made by the learned ASC for the State.

9. A perusal of the impugned judgment reveals that after considering the deposition of three of the most relevant witnesses, namely, the complainant (PW-1), IO-ASI Attar Singh (PW-2) and Dr. Manish (PW-4), the trial court had arrived at the conclusion that the testimony of the complainant was full of contradictions. To substantiate the said observation, the court had observed that although the accused No.3 had been arrested at his instance, the complainant had failed to identify him in the court. The complainant had alleged that four persons had forced him off from the bus and committed carnal intercourse with him, but strangely, he neither raised any hue or cry when he alighted from the bus, nor did he seek any help from anyone on his way to the police station. It was further noticed that the complainant had claimed that he went to the police station alongwith his mother, but surprisingly, she was not made a witness by the prosecution and IO-ASI Attar

Singh (PW-2) also did not state in his deposition that the complainants mother had accompanied him.

10. Coming next to the testimony of Dr. Parthasarthy (PW-1 before learned MM), who had been examined before the learned MM as also that of Dr. Manish (PW-4), who was examined before the Sessions Court, it has been observed in the impugned judgment that both the doctors were uncertain about the factum of carnal intercourse. Pertinently, Dr. Parthasarthy (PW-1 before the learned MM), who had prepared the MLC of the complainant (Ex.PW-1/A) in the hospital had not seized his clothes for being handed over to the IO for investigation and nor had the IO made any such effort to seize the apparel of the complainant, which was incumbent when the offence in question related to carnal intercourse. Had the clothes of the complainant been seized, it would have certainly assisted in establishing as to whether there were any stains of semen found on them to corroborate the prosecution version. The learned ASJ had further observed that the same was the position with regard to the examination of the accused persons and the doctor who had examined accused No.3, had not bothered to seize his clothes for purposes of analysis.

11. Lastly, coming to the testimony of the IO-ASI Attar Singh (PW-2), the Sessions Court had observed that the time of registering the FIR was mentioned as 9.05 PM whereas, as per the MLC report (Ex.PW-1/A), the complainant had been medically examined on the very same date at 9.06 PM, which was rather surprising and it could not be physically possible that the complainant was taken to AIIMS for his MLC (Ex.PW-1/A) within one minute of registering the FIR. Moreover, as per the complainant, the incident in question had occurred just two or three hours prior to his medical examination. But, there was no evidence on record to corroborate that part of the complainants testimony.

12. The trial court has observed that as per the prosecution version, on the date of the incident, one Amjad Khan (who had appeared as PW-6 before the learned MM) was accompanying the complainant in the bus and it was in his presence that the four accused had forcibly made the complainant alight from the bus and then had taken him away in a TSR. However, at the time when the deposition of Amjad

Khan was being recorded before the learned MM on 31.1.2005, when the learned APP had pointed out the four accused persons, who were present in the court, he had stated that he could not identify any of the accused persons.

13. It is rather strange that Amjad Khan (PW-6 before the learned MM), who was allegedly known to the complainant and had boarded the bus with him from Hamdard Nagar, and had stated that the four accused persons had forcibly made the complainant alight from the bus, neither raised an alarm nor did he inform the police or anyone else of the said incident. As noted earlier, the aforesaid witness did not appear before the Sessions Court as he had remained untraceable and as a result, the complainants testimony with regard to the identification of the remaining two accused persons, could not be corroborated.

14. Having perused the impugned judgment in the light of the evidence placed on record, this Court is of the opinion that the conclusion arrived at by the trial court that the deposition of the prosecution witness was not of sterling quality and insufficient to convict the accused persons does not deserve to be interfered with. The testimony of the main witness, who is the complainant in the present case (PW-1), reveals a number of contradictions. Further, failure on the part of the prosecution to have seized the complainants clothes and that of the accused for purposes of serological analysis so as to verify as to whether there were any stains of semen found thereon has also added a nail to the coffin.

15. Had a sincere effort been made by the prosecution to support its case with blemishless scientific evidence, perhaps the conclusion of the trial court would have been different as the said independent scientific evidence would have corroborated the testimony of PW-1. But failure on the part of the prosecution in taking necessary steps to seize the clothes of the complainant and that of the accused persons for purposes of analysis has left a yawning gap in the evidence, apart from contradictory testimony of the prime witnesses including the complainant, thus resulting in the trial court giving benefit of doubt to the accused persons.

16. In view of the aforesaid fact and circumstances, this Court is not inclined to allow the present petition for seeking leave to appeal, which is accordingly

dismissed. AUGUST08 2013 sk CRL.L.P.No.134/2013 (HIMA KOHLI)

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