

Ram Prabhu Sharma Vs. State

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Court : Delhi

Decided On : Apr-24-2014

Judge : Indermeet Kaur

Appellant : Ram Prabhu Sharma

Respondent : State

Judgement :

\$~R-41 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :17.4.2014 Judgment delivered on :24.4.2014 CRL.A. No.272/2003 RAM PRABHU SHARMA Through Appellant Appellant with his counsel Mr. Sanjay Jain, Adv. versus STATE Respondent Through Ms. Fizani Hussain, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment and order of sentence dated 05.4.2003 and 17.4.2003 respectively wherein he has been convicted under Section 376 of the IPC and has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.50,000/- in default of payment of fine to undergo SI for 1 year. 2 Record shows that as per the version of the prosecutrix (PW-3) on 07.7.2001 at about 9.00 a.m. she was called by the appellant to his house at Quarter No.14/1 Vayusenabad on the pretext of getting her a job; he told that she has to spent Rs.10,000/-; she told him that she does not have the money; he stated that in lieu of getting her a job she would have to serve him; at that point of

time the appellant took off her salwar and raped her from behind. She was in pain and bleeding but the appellant continued with the act. Thereafter the appellant absconded and he finally surrendered only on 11.10.2001. 3 On oath in Court the victim had not supported the version of the prosecution on the identity of the appellant. She had stated that the appellant was not the same R.P.Sharma who had committed the said act of rape upon her. She stated that that the accused present in the Court was not a resident of Quarter No.14/1 SMQ, Vayusenabad; she had seen the accused for the first time in the Court; the act and the incident were otherwise corroborated. 4 The investigating officer SI Balraj Singh was examined as PW-7. He had recorded the statement of the victim and had sent her for medical examination. The medical evidence which is the MLC Ex.PW-8/A had confirmed the act of rape as the hymen of the victim had been torn and she was found bleeding. There was, however, no unnatural intercourse through the anus. 5 The Court in its discretion had summoned Ranjit Singh as a court witness. Ranjit Singh was the allottee of Quarter No.14/1, SMQ, Vayusenabad where the alleged incident had taken place. He had deposed that this quarter had been allotted to him and at the relevant time on 07.7.2001 it was in his occupation; his wife Pushpa was living there with his son. He categorically denied that the accused was in possession of this accommodation. He admitted that the accused was his colleague and they were both working in the Air Force Unit; the accused was absconding till the time he surrendered i.e. on 11.10.2001. CW-2, the second court witness was Pushpa (wife of Ranjit Singh). She had reiterated the version given by her husband. She stated that on the fateful day i.e. 07.7.2001 she was living in the accommodation i.e. at quarter No.14/1 Vayusenabad. She denied the suggestion that the accused was in possession of the accommodation at the time. 6 The Trial Court had however returned a finding that the victim was deliberately not telling the truth and relying upon the version of the investigating officer (PW-7) who had recorded the statement of the victim thought it fit to convict the accused. The court had noted that this was a case where the victim had either been threatened or had been won over by the accused and that she was deliberately not identifying him in Court. The Court had also returned a finding that Quarter No.14/1, SMQ Vayusenabad although allotted to Ranjit Singh but was in possession of the appellant on the date of the incident. 7 The arguments of the appellant are four

fold:i. It is pointed out that in the absence of the identification of the appellant as is clear from the version of PW-3 the conviction of the appellant could not have followed. ii. It is pointed out that there is no evidence whatsoever with the trial judge to return a finding that the Quarter No.14, SMQ, Vayusenabad was in possession of the appellant on the date of the incident. iii. Third submission being that the trial court has illegally relied upon the version of investigating officer (PW-7) to return a finding that this quarter was in fact in possession of the appellant; submission being that the allottee (Ranjit Singh) examined as CW-1 himself has denied this fact; reliance by the trial judge on the testimony of PW-7 was wrong. For this proposition reliance has been placed upon (2005) 9 SCC736Ram Kishan and Ors. Vs. State of U.P. iv. Last submission of the learned counsel for the appellant being that even if there are certain discrepancies in the statement of the appellant recorded under Section 313 Cr. P.C. the same cannot be taken advantage of by the prosecution as the prosecution has to prove its case to the hilt. For this proposition reliance has been placed upon (2010) 11 SCC423Nanhar and Ors. Vs. State of Haryana. 8 Arguments have been refuted. It is pointed out that on no count does the impugned judgment call for any interference and for this purpose attention has been drawn to the finding returned by the Trial Court. 9 Arguments have been heard. Record perused. 10 Version of PW-3 has been perused. She has not identified the accused in Court; she has categorically stated that although the act of rape and incident had occurred but it was not the accused present in the court who had committed this act; he was not the said R.P.Sharma. She had seen the accused for the first time in the Court. R.P.Sharma who raped her used to visit her father before the death of her father; the accused present in the Court was not living at Quarter No.14/1, SMQ, Vayusenabad. PW-3 had stuck to her stand in the entire cross- examination both by learned public prosecutor and learned defence counsel. 11 Linked with this argument is the testimony of CW-1 i.e. Ranjit Singh. CW-1 was admittedly the allottee of Quarter No.14/1, SMQ, Vayusenabad which has been allotted to him by the Air Force in his capacity as its employee. He stated that at the relevant time when the incident occurred on 07.7.2001 the appellant was not his tenant. Admittedly, no statement of Ranjit Singh has been recorded by the investigating officer under Section 161 Cr. P.C. It was only at the direction of the Court that CW-1 had been summoned. Version of

CW-1 was supported by his wife Pushpa examined as CW-2. She has deposed that on the fateful day i.e. 07.7.2001 she was in possession of this quarter along with her son. Testimony of CW-1 and CW-2 remains unrebutted. 12 The evidence thus gathered clearly shows that the Quarter No.14/1, SMQ, Vayusenabad which was the alleged place of incident was allotted to Ranjit Singh and on the date of the incident it was in possession of his wife. In this background the trial judge relying upon the statement of PW-7 who has not even recorded any version of Ranjit Singh under Section 161 Cr.P.C. holding that Ranjit Singh was deliberately telling a lie to save his friend who was his colleague has committed an illegality. Such a statement could not have been admitted where the witness himself has made a categorical denial. In the absence of the identity of the appellant having been established the trial judge returning a finding that this was the same R.P.Sharma who had committed the offence of rape upon the victim is clearly an illegality. In the statement of the appellant under Section 313 Cr. P.C. he had admitted that after he learnt from the office about an FIR having been lodged against him he had become frightened and had absconded. He had surrendered on 11.10.2011 i.e. almost three months after the date of the incident. Learned public prosecutor has also drawn attention of this Court to the answers given by the appellant to Question Nos. 9 and 12 in his statement under Section 313 Cr.P.C. stating that these are irreconcilable answers. This Court is not in agreement with this submission. The appellant has candidly answered that he had become frightened and stopped going to his office. The fact that he had learnt about this case from his office is not contrary to the earlier version as the office could through a letter have communicated this fact to him; it was not necessary that his physical presence in the office was necessary to learn about this FIR. 13 In this background the conviction of the appellant cannot be sustained. Giving benefit of doubt to the appellant he is acquitted. Bail bond cancelled; surety discharged. 14 Appeal is allowed in the above terms. **INDERMEET KAUR, J**
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