

State Vs. Arvind

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Court : Delhi

Decided On : Aug-25-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Arvind

Judgement :

\$12 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 368/2014
STATE Represented by: Petitioner Mr. Varun Goswami, APP with SI Meena
Yadav, PS Inderpuri. versus ARVIND Respondent Represented by: None.
CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS.
JUSTICE MUKTA GUPTA

ORDER

2508.2014 % CrI.M.A.8588/2014 For the reasons stated in the application the
delay of 32 days in filing the petition is condoned. CrI.L.P.368/2014 1. By the
present petition, the State seeks leave to appeal against the judgment dated
November 20, 2013 whereby Arvind has been acquitted of the charge for offences
punishable under section 366/376 IPC.

2. Learned counsel for the State contends that delay in filing of the FIR ought not
to be a ground for discarding the testimony of the prosecutrix. The prosecution has
placed the record of the telephone calls to show that the prosecutrix and Arvind

were working in a factory and had become friends due to which prosecutrix went to the house of Arvind when he forcibly raped her. It is only after the prosecutrix was raped by Arvind even after his marriage that the FIR was lodged, which cannot belittle the offence committed on the prosecutrix. Hence, leave to appeal be granted.

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

4. The investigation was set into motion on receipt of a PCR call Ex.PW16/A on September 5, 2012 at 3.24 PM informing that Ek ladka kuch samay pehle rape karke bhaga tha jise yahan par pakad rakha hai. On reaching the PCR officials found that Arvind aged 31 years had been apprehended and it was informed that on the night of August 25/26, 2012 he had taken R to his house and there forcibly raped her.

5. W/ASI Meena Yadav recorded the statement of the prosecutrix at the police station and got her medically examined. In her statement Ex.PW4/A the prosecutrix stated that she had studied upto 10th class and was residing with her parents, brothers and sisters. Now she was staying at home. In September, 2011 she was working in a factory where envelopes were being made. In the same factory Arvind was also working. During work she developed friendship with Arvind and both of them started talking on phone. On September 21, 2011 while she was going to factory, Arvind met her on the way and stated that he was unwell. He took her to his house at Inderpuri. After taking medicine Arvind closed the room and gagged her mouth with his one hand and from the other he forcibly took out her clothes and had intercourse with her. He threatened her that in case she informed her parents he would kill her. So she did not tell anything to her parents. Arvind continued making phone calls to her. On August 26, 2012 which was a Sunday at about 8 PM when she went to purchase vegetables, Arvind met her and took her to his room forcibly and had sexual intercourse with her and threatened her not to tell the facts to anybody. She informed about the incident to her mother who told to her father. Her father followed Arvind and finally caught him at Sonia Vihar.

6. Subsequently, statement of the prosecutrix was recorded under section 164 Cr.P.C. by Sh. Ajay Singh Shekhawat, learned MM PW-13, which is in sync with

the statement recorded under section 161 Cr.P.C. In the witness box also the prosecutrix stood by her statement.

7. Thus, from the evidence of the prosecutrix it is alleged that Arvind had forcible sexual intercourse with her twice i.e. once on September 21, 2011 and secondly on August 26, 2012. A perusal of the MLC of the prosecutrix Ex.PW10/A shows no external injury was present obviously because the incident took place around nine days prior to the date of medical examination. However, surprisingly the hymen was noted to be freshly torn. This belies the version of the prosecutrix that the first sexual intercourse took place on September 21, 2011.

8. From the mobile phone record it is evident that the prosecutrix and the respondent were in constant touch with each other even after the incident dated September 21, 2011.

9. The defence of Arvind was that though the prosecutrix was working in the same factory in the year 2011 but they were not friends. He had complained about the prosecutrix to the contractor as she was not doing her work properly pursuant to which her service were terminated as a result of which her father bore a grudge against him and thus falsely implicated him. There are some traces of this version being correct from the testimony of the prosecutrix herself as she has admitted that of late she was not working in the factory and was at home only, however his version that the prosecutrix and he were not friends is incorrect.

10. The mother of the prosecutrix PW7 has admitted that the prosecutrix used to receive calls from Arvind and her husband made enquiries from the prosecutrix. Her husband made further enquiries and started beating the prosecutrix. The prosecutrix informed that she was raped by Arvind twice. They started searching Arvind and after one month her husband found him and took him to the police station. This version of the mother belies the version of the prosecutrix, who stated that the second time Arvind committed sexual intercourse with her on August 26, 2012 because according to the mother, after being informed it took around one month for the father of the prosecutrix to search Arvind.

11. The version of father of the prosecutrix PW9 is that in the month of September, 2011 his daughter and Arvind were working in the same factory at Nirvana. On September 5, 2011 a friend of his daughter informed that Arvind had passed some comments upon the prosecutrix. He visited the factory on November 6, 2011 and scolded Arvind. He also discontinued the job of the prosecutrix and thereafter she used to stay at home. However, in cross-examination PW9 stated that he never visited the factory where the prosecutrix was working either prior to joining the factory or after till the case was registered.

12. Thus, there are material contradictions in the testimony of the three main prosecution witnesses.

13. The prosecutrix has deposed that after the incident Arvind continued to call her. Though she never disconnected his call, however, she requested him not to call her. She further stated that when her father came to know, he made her speak on the phone to Arvind with the speaker on and thereafter he went in search of the respondent. It is thus evident that the father of the prosecutrix was annoyed with her friendship with Arvind and thus got him arrested.

14. In view of the fact that FIR was registered belatedly, the medical evidence does not support the version of the prosecutrix and inherent contradictions in the testimonies of material witnesses, we find no infirmity in the impugned judgment acquitting Arvind. We find no reason to grant leave to appeal. The petition is dismissed.

15. T.C.R. be returned. PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

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