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Ram Lakhan Vs. State

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Court : Delhi

Decided On : Apr-27-2015

Judge : Sunita Gupta

Appellant : Ram Lakhan

Respondent : State

Advocate for Def. : Mr. O.P. Saxena

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

27. h April, 2015 CRL.A. 1355/2011 RAM LAKHAN ..... Appellant Through: versus Ms. Rakhi Dubey, Advocate STATE Through: ..... Respondent Mr. O.P. Saxena, APP along with SI Sumer Chand, PS Nabi Karim CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
: SUNITA GUPTA, J.

1. The challenge in this appeal is to the impugned judgment dated 30.04.2011 and 03.05.2011 in Sessions Case No.92/09 arising out of FIR No.134/08 Police Station Nabi Karim, Delhi under Sections 376 IPC vide which the appellant was convicted under Section 376 IPC and was sentenced to undergo rigorous imprisonment for a period of eight (8) years and fine of Rs.10,000/-; in default thereof, one year simple

imprisonment.

2. Succinctly stated, the prosecution case is as follows.

3. On 11.09.2008, on receipt of DD No.23A, Sub Inspector Vijay Kumar alongwith Constable Suresh and Lady Constable Mukesh reached near Jindal Hotel, Nabi Karim where they came to know that the victim of rape was residing at C-235 Chinnot Basti, Nabi Karim. Accordingly, they went there where victim S, her mother and brother met them and informed that Ram Lakhan (the appellant herein) had committed rape on S. Accordingly, she was taken to Lady Harding Hospital for her medical examination where she was medically examined vide MLC No.737. Her hymen was found torn.

4. Sachin, brother of the victim, made a statement alleging therein that on 11.09.2008 at about 3 pm, he alongwith his mother and younger sister were present at the house. The accused/appellant who was known to them previously and was residing in the neighbourhood came to their house and asked him as to why he had not taken his mother to the doctor. Sachin replied that he would take her next day. After that Ram Lakhan told his sister S that he had brought good pens from his company and the same were lying in his room and asked her to accompany him to his room. He permitted S to accompany the accused to fetch the pen. Accordingly, Ram Lakhan/appellant left his house alongwith S. After about half an hour S came back weeping and on enquiry informed that Ram Lakhan committed rape on her. He also noticed semen on her underwear. He called his maternal uncle - Ranjit Chowdhary and thereafter police was informed. His statement culminated in registration of instant FIR under Section 376 IPC. During the course of investigation the blood sample of victim, her undergarments, vaginal swab, etc. were taken from the hospital. The accused was also arrested on the same day. He was got medically examined. The Investigating Officer collected sample of semen, pubic hair, blood sample, nail clipping and pant and shirt from the hospital. He made disclosure statement pursuant to which he got recovered one dirty shirt from his house which was seized. The statement of victim was got recorded under Section 164 Cr.PC. The sealed pulandas were sent to FSL, Rohini.

5. After completing investigation, charge-sheet was submitted against the accused/appellant. The accused abjured his guilt and claimed trial.

6. Eighteen (18) witnesses were examined by the prosecution in order to substantiate its case. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.PC wherein he denied all the incriminating evidence except the factum of his arrest, medical examination and preservation of his biological sample, shirt and trousers. He took the plea that he has been falsely implicated in this case at the instance of Sachin, brother of prosecutrix, as he had lent Rs.5,000/- to Sachin as he was suffering from Tuberculosis and required money for his treatment. Despite repeated demands, Sachin did not return the money. On 11.09.2009 he had gone to the work place of Sachin to demand his loan amount, but Sachin threatened to implicate him in a false case if he persisted with his demands of return of money. Hot words were exchanged between them. Thereafter, he returned to his room at about 3 pm and after some time police came and took him to Police Station and obtained his signatures on some papers and got him falsely implicated in this case. He examined DW1 - Mr Anil Kumar Aggarwal, manager of his company.

7. The learned Trial Court after considering the evidence adduced by the prosecution and the submissions of learned counsel for the parties, convicted the appellant and sentenced him as mentioned hereinbefore.

8. Feeling aggrieved, the instant appeal has been preferred by the appellant.

9. Ms Rakhi Dubey, Advocate from Delhi High Court Legal Services Committee representing the appellant - Ram Lakhan assailed the findings of learned Trial Court on the ground that no cogent evidence has come on record to prove the age of prosecutrix that she was 12 years old on the date of commission of offence. As per the ossification test, her age was opined to be between 12 to 14 years. The testimony of prosecutrix does not find corroboration from the medical evidence as no injury was found on her person. Even the scientific evidence in the form of FSL report does not support the prosecution. The brother of prosecutrix got the appellant falsely implicated in this case so that he will not have to repay the amount of Rs.5,000/- which he had taken from the appellant, as such, prosecution

has failed bring home the guilt of the accused beyond shadow of doubt and as such the impugned judgment is liable to set aside. Alternatively, it was submitted that out of total sentence of eight (8) years awarded to the appellant, he has already undergone around seven (7) years imprisonment. The appellant is the only bread earner of the family having responsibility of two minor children to maintain, as such, he be released on the period already undergone by him in custody and the default sentence for non-payment of fine be also reduced.

10. Opposing the submission of learned counsel for the appellant, learned Additional Public Prosecutor for the State submits that by a well-reasoned order, the learned Trial Court has convicted the appellant after scrutinizing the entire evidence and no infirmity can be found in the said findings and as such the appeal being devoid of merit be dismissed. It was further submitted that even no leniency is warranted in the instant case as the victim was below 16 years of age.

11. Testimonial potency of version of a victim of rape cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere sys that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must be attached in evaluation of her evidence as in the case of an injured complainant or a witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act, which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for corroboration required in the case of an accomplice. The nature of evidence required in to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. If the totality of the circumstances appearing on record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation

in accepting her evidence. Law to this effect was laid by the Apex Court in State of Maharashtra vs. Chanderprakash Kewal Chand Jain (1990) (1) SCC550 12. I may also refer to a judgment delivered by the Honble Supreme Court in the case of Rajoo and Ors. vs. State of M.P. (2008) 15 SCC133 where it has been held:

The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of rape or sexual molestation be viewed with doubt, disbelief or suspicions?. The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked

that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

13. In another case of S. Ramakrishna vs. The State (2009) 1 SCC133 Honble Apex Court while delivering judgment also observed:

A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short the Evidence Act) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence.

14. This proposition of law has been reiterated in Om Prakash vs. State of U.P., AIR 2000 SC2214 State of Punjab vs. Gurmit Singh, (1996) 2 SCC384 Nannu Gupta @ Bablu vs. The State 2010 II AD (Delhi) and 2010 I AD (Delhi) 130 Mohinder Singh Bhatti vs. State (NCT of Delhi).

15. Reverting to the case in hand, it is not in dispute that the appellant/accused was known to the prosecutrix and her family member from before as it has come on record that the accused and brother of prosecutrix Sachin were residing in a room as tenant for the last about one and a half years and during this period prosecutirx, her mother and sister were residing at their native village in Bihar. They had come to Delhi about two months prior to the incident. The accused was residing in the neighbourhood of the prosecutrix and was on visiting terms to her house. According to prosecutrix, on the fateful day, the accused came to her house and lured her by stating that he had brought some pens from his company and in case she comes to his house he would give the same to her. Since the

parties were well known to each other from before, PW3 - Sachin, her brother, permitted her to accompany the accused. Accordingly, the accused took the prosecutirx to his room. The prosecutrix has deposed that after taking her to his room, accused closed the door and thereafter committed rape on her. She further deposed that she was having acute pain and started crying but accused pressed her mouth with his hands. It has also come on record that the prosecutrix was below 16 years of age inasmuch as although mother and brother of prosecutrix could not give her exact age, her ossification test was conducted and as per the report Ex.PW17/A proved by Dr Mukta Rani age of the prosecutrix was between 12 to 14 years as on 01.11.2008. According to prosecutrix, after the incident she returned home and informed about the incident to her mother and brother who called her maternal uncle and then police was informed. The witness was subjected to cross examination but nothing material could be elicited to discredit her testimony. Her testimony is cogent, truthful and reliable. On material aspects, prosecutrix stood test of cross examination. In view of the legal settled proposition of law as enunciated above, her testimony does not call for any corroboration.

16. However, even if we look for corroboration of testimony of prosecutrix, same is available in abundance. PW3 - Sachin and PW7 - Smt. Subhadra, the brother and mother of prosecutrix respectively have deposed that on the fateful day, accused Ram Lakhan visited their house and took the prosecutrix with him on the pretext of giving some good pens to her. They further deposed that after about half an hour prosecutrix returned back and at that time she was scared and weeping. She narrated the incident to them. Such a conduct is relevant under Section 157 read with Section 8 of the Indian Evidence Act as held in Emperor vs. Phasunia Bhuran ACR1926 Pat. 58, Rameshwar Kalyan Singh vs. State of Rajasthan (1952) 3 SCR377 Nagrath Gangadhar vs. State 1988 Crl. L.J.

2220, Syed Pasha vs. State of Karnataka, 2004 Crl.L.J4123 Madanlal vs. State of Jammu & Kashmir 1988 SC386 17. Further the mother and brother of prosecutrix informed PW6 - Mr Ranjit Chowdhary, maternal uncle of the victim who reached the house of prosecutirx and then the police was informed on which DD No.23A Ex.PW2/A was recorded regarding commission of rape. On receipt of this DD, police swung into action and reached the house of prosecutrix and took her to

Lady Harding Hospital where her MLC Ex.PW1/A was prepared. At that time also, the history given to the doctor was alleged history of sexual assault by brothers friend. The girl was taken to nearby plot at 3 pm today and forcibly held and raped twice against her consent. On medical examination, her hymen was found torn. Although in pursuance to a suggestion given to the doctor the doctor has deposed that hymen can be torn due to sport activities also, but the appellant does not get any benefit from the same as it was a general opinion given by the doctor and in the instant case it is not even the case of the appellant that prosecutrix was involved in any sports activities which may have resulted in her hymen torn. Rather it has come on record that after the prosecutrix alongwith her family members came to Delhi she did not go to any school. As such, the factum of her hymen being torn is another corroborative piece of evidence to prove the factum of commission of rape on the prosecutrix.

18. The prosecutrix was also produced before the learned Metropolitan Magistrate for recording her statement under Section 164 Code of Criminal Procedure. PW13 - Shri Ajay Gupta, the then Metropolitan Magistrate recorded her statement Ex.PW4/A wherein also prosecutrix corroborated her version given to the police.

19. Not only that, the scientific evidence also proves the commission of rape on the person of the victim by the appellant. When the prosecutrix was medically examined, her biological samples including high vaginal swab, perineal smear, high vaginal smear were taken and sent to FSL and as per the FSL report (Ex.PW18/B), human semen was detected on the said exhibits which proved that prosecutrix was raped. Human semen was also detected on the underwear of prosecutrix. After medical examination of the accused his shirt and pant were taken into possession vide Ex.PW2/F and as per the FSL report human semen was detected on the same. Besides that blood was also detected on the clothes of the accused. It is further the case of prosecution that after the arrest of the accused he made a disclosure statement Ex.PW2/G and pursuant to the disclosure statement he got one shirt recovered from his house which was used by him for cleaning the private parts of prosecutrix and his own private parts. As per the FSL report semen was also detected on this shirt. The voluminous evidence on record proves the factum of commission of rape by the appellant/accused on

the prosecutrix.

20. The plea of the accused that he was falsely implicated in this case at the behest of Sachin, brother of prosecutirx as he failed to repay the loan of Rs.5,000/- given to him was rightly not believed by the learned Trial Court inasmuch as in his statement under Section 313 Cr.PC, the accused took the plea that he had lent a sum of Rs.5,000/- to Sachin for his treatment as he was suffering from tuberculosis and when he demanded the money he got him falsely implicated in this case. However, when Sachin appeared in the witness box it was suggested to him that Rs.5,000/- was given to him for treatment of his mother. Even no suggestion was given to Sachin that he was suffering from tuberculosis. It was suggested to the prosecutrix that Sachin had taken loan from the accused for his treatment but this suggestion was denied by her. Moreover, it was suggested to PW3 that on 11.09.2008 accused had visited the house of Sachin to raise demand of Rs.5,000/whereas in his statement under Section 313 Cr.PC he took the plea that he had visited the work place of Sachin and not his residence. Under the circumstances, the defence pleaded by the accused/appellant was not reliable. On the other hand, the ocular testimony of prosecutrix finds due corroboration from the testimony of her mother, brother and maternal uncle, medical evidence as well as scientific evidence. The learned Trial Court scrutinized and appreciated the entire evidence in right perspective while holding the accused/appellant guilty of offence under Section 376 IPC and the said finding does not call for any interference.

21. Coming to quantum of sentence. The appellant was awarded rigorous imprisonment for a term of eight (8) years and as per his nominal roll dated 21.04.2015, he has already undergone a period of six (6) years, seven (7) months and eleven (11) days besides earning remission of one year and one month. His unexpired portion of sentence is only three (3) months and nineteen (19) days. His overall conduct has been reported to be satisfactory. It is the case of the appellant/accused that he is the only bread-earner of the family and has the responsibility to maintain two minor children. Under the circumstances, the substantive sentence of the appellant is reduced to the period already undergone by him in custody. It is ordered accordingly.

22. As regards fine, the default sentence is one year simple imprisonment. While maintaining quantum of fine, the default sentence is reduced to two (2) months simple imprisonment. With above modification, the appeal stands dismissed. Trial Court record be returned alongwith a copy of this judgment. A copy of this judgment be also sent to Superintendent Jail for information to the appellant. (SUNITA GUPTA) JUDGE APRIL272015/rd

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