

Vishnu Pandit Vs. State

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Court : Delhi

Decided On : May-21-1993

Reported in : 1993CriLJ3223; 1993(26)DRJ199; ILR1994Delhi143

Judge : R.L. Gupta, J.

Appeal No. : Crl.M. (M) No. 537 of 1993

Appellant : Vishnu Pandit

Respondent : State

Advocate for Def. : Mr. B.T. Singh, Adv.

Advocate for Pet/Ap. : Sh. D.R. Sethi, Sr. Adv. and; Mr. B.K. Sharma, Adv

Judgement :

ORDER

1. Petitioner is being prosecuted under sections 366/376/342/506 read with S. 34, IPC in FIR No. 427/92 registered in PS Shahdara. He has filed the present petition for grant of bail.

2. The story of the prosecution is that on 12-11-1992 ASI Rami Chand of PS Shahdara on receipt of information through DD No. 33-A at about 6-55 a.m. that a serious quarrel/altercation was going on in the Anjana Photostat Street, proceeded towards the side along with constable Dharam Pal. He reached Jaina Building

near the office of MCD. There he found a PCR van, the prosecutrix Smt. Kamlesh Arya and her husband. Kamlesh Arya gave her statement to him to the following effect.

'I reside along with my family at A-24, Dilshad Garden, Delhi. My husband is an employee of DDA. My mother-in-law Rupa Devi is admitted in Gupta Nursing Home, Naveen Shahdara for treatment since 30-9-92. I and my husband keep on going to the Nursing Home to look after her. On 5-11-92 I and my husband had taken food to the Nursing Home and on that day they came to know Vishnu Pandit, the petitioner because one of his acquaintance was also admitted in the Nursing Home. We had a dispute with Sh. P. P. Sharma, Manager of the Nursing Home on account of the bill. The petitioner assured us to get the matter settled. On 9-11-92 I and my son Kailash Chand had come to the Nursing Home with food and we were returning to our house at about 11.00 p.m. The petitioner was standing outside the Nursing Home with his white Maruti van along with his driver, whom I can identify when brought before me. The petitioner told us that he will leave us at our house. I and my son both sat in the van. The petitioner and his driver took us inside Jaina Building. The petitioner took me in a small room in the rear portion of the building while the driver sat with my son in the outer room. I enquired from him the reason of my being brought there. The petitioner scolded me, and asked me to keep silent and if I raised noise, my son was in their custody and he will be done to death. The petitioner forcibly raped me and threatened that if I disclosed this fact to anybody they will kill her son. On account of the aforesaid fear and to save myself from the defamation/humiliation, I did not mention this fact to anybody. My son told me that the driver had shown him the revolver and gave threats that he should keep silent about this matter. My son was very much scared on this account. Later on they left us near our house. Yesterday night i.e. the night of 11-11-92 I and my husband had gone to see my mother-in-law in the Gupta Nursing Home. It was about 12-00 mid-night and my husband Swami Raj Arya had already come out of the Nursing Home. When I came out, I saw Vishnu Pandit and that very driver standing and waiting outside with a Maroon coloured car and at that time they were making my husband sit in the car. While remembering the previous incident I ran and asked my husband not to sit in the car whereupon both i.e. the petitioner and the driver pushed me also inside the car and closed the

doors. The glass panes of the doors of the car, were already closed. Vishnu Pandit also sat in the car and they then sped the car towards his office in Jaina Building. My husband enquired from them as to why we had been brought there. Threat to our lives was given and we were taken to the same rear room. Vishnu Pandit then undressed me in front of my husband and almost for the whole night went on kissing and teasing me. When towards the morning Vishnu Pandit was raping me, my husband on finding a chance ran from there and brought the police. Vishnu Pandit in the midst of the act ran away from there along with his driver by picking up his clothes also.'

3. The police also recorded the statement of her husband Swami Raj on the same day i.e. 12-11-1992 and he substantially corroborated the statement of his wife. He also narrated how Vishnu Pandit almost pressurised him to sit in his car when he was not willing to go with them and the manner in which his wife asked him to get down from the car and the way in which she was pushed inside the car. He also said that at that time the tape-recorder in the car was at a very high pitch. One of the servants of Vishnu Pandit also joined at the Jaina Building and also three of them then took them in the office of Vishnu Pandit on the first floor. Both of them entreated before Vishnu Pandit, but in vain. He also narrated how Vishnu Pandit undressed his wife in his presence and so on. The police also recorded the statement of her son Kailash Chand.

4. I have heard arguments advanced by learned counsel for the parties. Learned counsel for the petitioner contended that the statement of Smt. Kamlesh Arya did not inspire confidence at all. In fact it appeared to be a highly improbable story. It was not possible for the petitioner to drive her in the Maruti van from the Nursing Home to Jaina Building. The road between Nursing Home and the Jaina Building was also uprooted in those days and how could it be believed that the prosecutrix would not raise noise at all on the way when admittedly the place i.e. Jaina Building is surrounded by so many shops and it abuts almost on the main road. He also pointed out that the story of the prosecution was also contradictory on the point as to whether the police itself reached the spot or was brought by somebody. Then it is further contended that if actually the first outrage of rape was committed upon Kamlesh Arya on 9-11-92, she would have definitely mentioned this fact to

her husband or somebody else and, therefore, the story of her being taken forcibly by the petitioner on the second occasion becomes very doubtful. If she had been subjected to rape on the first occasion, she could not have accompanied the petitioner on the second occasion and thus the story of the alleged rape on the first occasion also becomes highly doubtful. In fact, if she had been raped on the first occasion, she would not at all have liked to go to the Nursing Home and would have stopped visiting her mother-in-law. She could have at least raised noise in the Nursing Home itself on the second occasion and it was also unnatural that she would have chosen to stay in Nursing Home till mid-night when she is alleged to have been taken away forcibly by the petitioner. Learned counsel also drew my attention to the report of the CFSL in respect of the underwear of the prosecutrix, micro slide of the vaginal swab and her medical examination. The argument is that semen stains could not be detected by the laboratory on the underwear of the petitioner although these were detected on the underwear of the prosecutrix. It is further pointed out that group of the semen stains on the underwear of the prosecutrix is found to be AB and it is not shown by the prosecution if that group corresponded to the semen group of the petitioner. Learned counsel also submitted that there was practically no injury found on the person of the prosecutrix except a small bruise on her thigh and therefore, the whole case of the prosecution becomes doubtful. She is alleged not to have offered any resistance and so, if at all, such an incident took place the prosecutrix must have been a consenting party. Another suspicious circumstance suggested is that if the petitioner actually wanted to rape the prosecutrix why should he have taken and kept her son or her husband in the building at the same time. In this respect my attention has been drawn to the case of *Salveraj v. State of Tamil Nadu* : 1976 CriLJ1541 . In the light of this authority it is argued that if actually the petitioner had taken liberty with the prosecutrix, her husband could not have tolerated to sit there merely as a silent spectator. At least he would have raised hue and cry. It is, therefore, ultimately contended that the case against the petitioner was highly doubtful and if at all he was to be subjected to the agony of the trial, he could be released on bail by imposing any reasonable conditions. His wife is also alleged to be suffering from cancer. Some more authorities were also cited by him.

5. On behalf of the State Mr. Singh refuted all these contentions and also cited some authorities. I am of the opinion that the facts of the present case are quite different from the facts of the case of Salveraj (supra). In that case the prosecutrix was the wife of the cousin of the accused and he was alleged to have gone to the house of the prosecutrix. In the present case the prosecutrix is allegedly taken by the petitioner to his own office. The argument that no injury appears on the person of the prosecutrix also does not seem to have much force at this stage for grant of bail. In the case of Harpal Singh v. State of Himachal Pradesh, : 1981 CriLJ1 there was no injury on the private parts of the prosecutrix and she was also found to be used to sexual intercourse. The Supreme Court held that these circumstances were immaterial. There was also a delay of ten days in recording the FIR. Even that was considered insignificant because the honour of the family of the prosecutrix was involved and its members had to decided whether to take the matter to court or not. In the present case also, according to the prosecutrix the rape was not committed upon her in the presence of his son on the first occasion although he was made to sit in another room by the co-accused driver of the petitioner. Primarily the prosecutrix might have thought that since she was not raped in the presence of her son, it may not be wise to spread information about that incident to anybody. In the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, : 1983 CriLJ1096 the Supreme Court held at page 1100 (of Cri LJ). 'A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including he own family members, relatives, friends, and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.' These observations were again relied upon in another rape case by the Supreme Court in the case of Gagan Bihari Samal v. State of Orissa : [1991]2SCR839 , and further that the aforesaid observations came by relying on the case of Rameshwar v. The State of Rajasthan : 1952 CriLJ547 . So it will be seen that the law in this respect has remained uniform since long and still holds the filed. thereforee, in the light of the observations of Hon'ble the Supreme Court, the argument that the prosecutrix, if

she had been actually raped on the first occasion, would have raised hue and cry and would not have gone to see her mother-in-law in the Nursing Home seems prima facie to have no force. In this very authority it was further ruled that, 'Corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion To do so is to justify the charge of male chauvinism in a male dominated society.' The observations extracted above also prima facie rule out the argument of learned counsel for the petitioner that the testimony of the prosecutrix was not corroborated by medical evidence. However, this observation should not be understood so as to give an impression that the report of the CFSL or the MLC do or do not corroborate the testimony of the prosecutrix. It is not the state to go into depth of the entire evidence of the prosecution and weigh the same in golden scales. Suffice it to say, the statement of the prosecutrix is corroborated by her own husband who was a pathetic spectator to the incident of the rape of his own wife. The statement of the husband and the son prima facie lend corroboration to the statement of the prosecutrix. At this stage the question also is not whether the route through which the prosecutrix was taken to Jaina Building was motorable or in proper shape. It seems to have not much relevance at this stage. In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*, : (1991) IILLJ269SC a woman of easy virtue was held entitled to privacy which could not be invaded by any person. therefore, to say that the circumstances, if at all anything happened, suggest consent of the prosecutrix do not prima facie inspire confidence. Learned counsel for the petitioner heavily relied upon the observations of the Supreme Court in the case of *Salveraj* (supra). That was a murder case. Supreme Court found inherent Improbabilities in the story put forward by the eye witnesses. Their testimony was not corroborated by medical evidence and the evidence of recovery of knife was also found to be unreliable. In the background of those circumstances the conviction was set aside. therefore, it will be seen that so many circumstances combined in this case on account of which the Supreme Court found the case of the prosecution unreliable and, therefore, set aside the

conviction. In the case of Solanki Chimanbhai Ukabhai v. State of Gujarat, : 1983 CriLJ822 there was some inconsistency between the testimony of eye-witnesses and medical evidence. The Supreme Court held that it was no ground to discard testimony of eye-witnesses unless the medical evidence went so far that it completely ruled out all possibilities whatsoever of injuries taking place in the manner alleged by the eye-witnesses. In the present case there is an injury on one of the thighs of the prosecutrix. Her statement finds corroboration prima facie from the statement of her husband and son. In the case of State of Maharashtra v. Chandraprakash Kewalchand Jain : 1990 CriLJ889 , the Supreme Court went to the extent of observing that (at page 894 of Cri LJ) 'The prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars.'

6. Learned counsel for the petitioner also contended that the prosecutrix in her statement under S. 164 Criminal Procedure Code made many improvements which go to show that the case of the prosecution was doubtful. I am afraid, that it is not possible for me to draw such a conclusion. Even the statement recorded at the first instance by the police prime facie indicates that the petitioner with which he has been charged by the prosecution.

7. Learned counsel for the State also brought to my notice that the petitioner had been involved in a number of cases earlier also. He is such a desperate character that nobody dares to come forward to depose against him and so generally the cases end in acquittal. In this respect, I may also mention that the prosecutrix lodged DD report No. 17 in Police Post GTB Chowk. P.S. Seema Puri on 18-11-92 wherein she stated that some bad characters known to the petitioner were giving threats at their house that the proceedings lodged against the petitioner should be taken back and that they should change their statements or otherwise the consequences will be very bad. It is being further threatened that the petitioner is a rich person and nobody could do anything against him. That morning two persons also come to her house. But she did not open the door although they were insisting that door should be opened. It was the apprehension of the prosecutrix that if the petitioner came out from jail either he himself or through some hired bad

characters would cause harm to their person or property. It may be remembered that it was on 18-11-92 that the Additional Sessions Judge had passed an order of bail in favor of the petitioner and, therefore, the possibility of the well-wishes of the petitioner having become active that day in the hope of his coming out from jail cannot be ruled out.

8. Taking the totality of circumstances into consideration, therefore, I am of the view that it is not a fit case for grant of bail at this stage, specially before the depositions of material witnesses in the Court. However, it may be clarified that all observations in this case have been made primarily with a view to decide the bail application and, therefore, none of these observations should be taken as an expression of opinion by this Court at the time of the final decision on merits of the case.

9. Order accordingly.