

Sunil Saxena Vs. State

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Court : Delhi

Decided On : Aug-14-1991

Reported in : 45(1991)DLT394

Judge : R.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1608 of 1991

Appellant : Sunil Saxena

Respondent : State

Advocate for Pet/Ap. : K.K. Sud and; B.D. Batra, Advs

Judgement :

R.L. Gupta, J.

(1) Petitioner who is facing prosecution in a case under Sections 376/506/341 read with Section 34 of the Indian Penal Code in FIR No. 80/91 registered at Police Station Chankaya Puri, has applied for bail.

(2) I have heard arguments advanced by learned Counsel for the petitioner as well as the State. The case of the prosecution is based on the statement of the prosecutrix, Sheela Devi wife of Babu Lal. She had accompanied one Sat Pal to

Budha Jayanti Garden on 2.4.91. They were sitting under a tree thereafter taking some rounds in the garden. Satpal told her that his friend Onkaris working in the garden and he wanted to meet him. They got up and had hardly walked a few paces when the co-accused whose name was later on known as Parhlad Singh met them and said that he had over heard their talks. He knew Onkar Singh and he offered to take them to him. He took them towards bushes inside the garden at a considerable distance near fencing wire. He asked them to stay there so that he could go and call Onkar Singh. In the meanwhile four persons including the petitioner arrived there. Three of them captured Sheela Devi while the 4th one Along with Parhlad over-powered Satpal. The three persons forcibly took Sheela to be bind the bushes at some distance and felled her to the ground. She tried to raise alarm and push them away. But they threatened that if she raised alarm or tried to free herself they would kill her. With the threat they also gave a fist blow by the side of her chest. She was thus terrorised. One of the co-accused Dalveer removed her Salwar by force and raped her. Thereafter the other co-accused Wazir Singh and Suresh Kumar forcibly committed inter-course with her. Meanwhile Dalveer went to Satpal and with the help of Suresh and Wazir Singh over-powered Satpal while the other two including the petitioner came and raped her. She then got up while Satpal started raising alarm Bachao BACHAO. 5-6 persons and two police officers arrived there who apprehended all the five accused including the petitioner at the spot.

(3) Learned Counsel for the petitioner has argued that the statement of the prosecutrix implicating the petitioner was highly improbable. Her medical examination does not reveal any injuries upon her breasts, thighs or abdomen or any injury whatsoever on her body. According to the learned Counsel, the absence of injuries on her person indicated the falsity of her statement. He further argued that petitioner was returning from his office and being in the crowd was trying to make enquiries about the incident when he was falsely implicated. I am of the view that the absence of injuries on the person of the prosecutrix may be due to the fact that she was actually over-powered by a number of persons while they forcibly committed inter-course with her turn by turn. The petitioner was also medically examined and a photo copy of bids MLC has also been produced on record. It appears that semen stains were found on his underwear. Thus prima-facie it

connects him with the offence of rape. Learned Counsel for the petitioner also pointed out that in the Fir the time of occurrence is given as 4.15 P.M. while in the statement under Section 164 of the Code of Criminal Procedure, it is recorded as 2.30 P.M. In this respect it may be noted that even in the Mlc, the prosecutrix has mentioned time of occurrence at about 2.30 P.M. therefore, it appears that the time of occurrence as 4.15 P.M. in the Fir has been recorded under some misapprehension. In view of the fact that it is a case of the prosecutrix being gang raped by five persons, the absence of injuries on her person does not seem to have any significant effect. The petitioner and all others have been arrested at the spot and the presence of semen stains on the underwear of the petitioner at the time of his medical examination at 6.15 P.M., i.e., within a few hours of the occurrence is a pointer prima-facie to his complicity in this heinous crime. Petition has no merit and the same is hereby dismissed. Any observations made above will not be taken as an opinion on the merits of the case.

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