

**Ajay Singh Vs. State**

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**Court :** Delhi

**Decided On :** Dec-02-1994

**Reported in :** 56(1994)DLT716; 1994(31)DRJ564

**Judge :** Jaspal Singh, J.

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

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 2933 of 1994

**Appellant :** Ajay Singh

**Respondent :** State

**Advocate for Pet/Ap. :** R.K. Anand,; O.P. Verma and; R.K. Bahri, Advs

**Judgement :**

**Jaspal Singh, J.**

(1) The petitioner seeks bail in a case which charges him with having violated the body of a nineteen summers old girl.

(2) What does the prosecution show? There was a boy named Parveen who lived in the same locality. She. fell for him. And, he promised to marry her. An usual paper-back stuff? Perhaps. But surely it is more sor did. In this age when women can do the old, cool-guy stuff - fly an aircraft, beat a man at poker, run a tractor

and light a cigarette in a high wind, they seem to still remain most vulnerable in the matter of heart and this girl, probably being no exception, and little Realizing that she was being led to deserted islands of pain and agony, went Unquestioningly Along with him to a flat. It was the first day of the first month of 1994. There she was raped not by Parveen alone but by one Mukesh @ Bitto as well. As if all this was not enough, she was even photographed in the act. That photograph became a ready tool in the subsequent games of the flesh. The first week of April saw it being played again. The victim remained the same. The venue changed: Besides the old hands Parveen and Mukesh @ Bitto. there was addition of three more namely, Sunil Sharma. Anil Rawat and Manish. She was raped on July 17, 1994 also with only Manish missing from the cast. On the morning of September 5, the present petitioner A)ay Singh joined Parveen and Rohit Bansal to violate her already tormented body and soul. The center-stage was provided by the office of Ajay. And, the same evening saw Parveen and one Balbir @ Balli pounding her already battered body. Thus yet another woman instead of being treated as an individual above all was reduced to a simple sexual object. Perhaps, R.Tong is not very wrong, in saying that law is not a panacea for women's woes (See: R. Tong, 'Woman, Six and the Law the Law (New Jersey: Rowman and Allan held, 1984)].

(3) Ajay Singh says he is innocent. He says the story put forth by the prosecution is incredible. Above all, he says his identity is not established.

(4) It would not be advisable, at this stage, to dissect the material collected so far by the prosecution. That stage is yet to come. I am leaving it for the trial judge. At present, we have the statement of the victim clearly implicating the petitioner. We have a photograph too which lends general support to her version. We have the disclosure statement of Parveen leading to the office of Ajay Singh and we have on record the fact that it was at the pointing out of the victim that Ajay was arrested. For the present this is enough.

(5) Is the version of the victim incredible? Mr. R.K. Anand, Senior Advocate say- it is. He advances two reasons. First, the victim states in her earlier version that Ajay Singh had raped her in a building in Darya Ganj but later changes the location to Bazar Sita Ram and secondly, she did not rush to the police at the very first

chance.

(6) Of course, the victim does change the scenario from Darya Ganj to Bazar S:ta Ram. Does it, in itself, without providing her an opportunity of Explanationn, make the whole version incredible? I am sorry, I am not willing to accept. Not at this stage, at least.

(7) True she did not rush to the police station on January 1, 1994 or on subsequent occasions. The reasons are not far to seek. She had been photographed and there were threats to publish the same. There were threats to kill her brother and to drag in her sisters too. Elaines carry in her remarkable book called 'The Body in Pain' (1985) tells of the use of language by torturers that can become part of the pain and the ritual unleashing pain (pp 27-38). This injury and helplessness is the Explanationn in the present case too. For the present, it suffices.

(8) As per Mr.Anand, the petitioner being not known to the victim from before, the prosecution ought to have applied for holding of a test identification parade and as neither any such application was moved nor any Identification parade held, it must be taken as fatal to the case of the prosecution, in support he placed reliance on Tahir Mohammad v. State of M.P. : 1993 CriLJ193 : Jagdish v. The State of M.P. li (1993) Ccr 1024, Rampal Pithwar Rahindass v. State of Maharashtra : 1994 CriLJ2320 and Meham mad Saleem v. State 1992 Jcc 5. Let me have a closer look at them.

(9) In Tahir Mohammad v. State of M.P. the occurrence had taken place at about 11 pm in a hilly terrain area and as soon as one of the dacoits had got into the driver's scat the driver first of all switched off all the lights. Admittedly it was not a moonlit night and even if it had been so, there would not have been sufficient light inside the bus after the switching off of the lights. Surely thus it was a case based on its own peculiar facts making identification for the first time in court as totally unreliable.

(10) In Jagdish v. The State of M.P. the First Information Report mentioned the covering of faces by the dacoits and made no mention to any source of light at the

time of the incident. It is this what makes the case clearly distinguishable.

(11) Rampal Pithwar Rahidas v. State of Maharashtra : 1994 CriLJ2320 was a case of dacoity with murder. The incident had taken place at night and by masked persons. It was in this context that it was held that identification in court only, in the absence of earlier test identification parade, would be 'hardly of any significance.'

(12) In Mohammad Saleem v. State the courts below held the identification not necessary because the accused was arrested in the presence of the witnesses including the prosecutrix. However, a learned single Judge of this court found that the accused had neither been arrested in the presence of any witness nor the prosecutrix. It was under these circumstances that identification of the accused in an identification parade was held to be necessary.

(13) In the case before me, the prosecutrix was allegedly raped by the petitioner in his office in broad day-light. She saw him violating her body and playing the game of flesh. She was pounded and battered. It must have been an excruciatingly painful experience leaving a lasting impression on her mind. And, the petitioner himself was identified by and arrested at the instance of the prosecutrix.

(14) Unfortunately the learned State Counsel referred to no judgment on the point. I wish he had done so.

(15) In Kamta Prasad v. Delhi Administration 0043/1958 : 1958 CriLJ698 a point was made regarding non-holdings of test identification parade by the police and the Apex Court observed:

'IT would no doubt have been prudent to hold a test-identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in court.'

(16) In Jadunath Singh v. State of U.P. : 1971 CriLJ305 and Harbhajan Singh v. State of J & K, : 1975 CriLJ1553 also the Supreme Court took the view that absence of test identification is not necessarily fatal.

(17) I need say no more. Except, of course this that the petitioner having been allegedly arrested on the identification of the victim herself, any application in such a situation for holding a test identification parade would have been a futile exercise.

(18) As already noticed above, the victim has clearly implicated the petitioner of having committed rape. Let us listen to what the Supreme Court says:

'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 just the charge of male chauvinism in a male dominated society. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that only 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 by her 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. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.'

(Bhoginbhai Hirjibhai v. State of Gujarat, : 1983 CriLJ1096

(19) I have been obliged to refer to the above observations as it was remarked by Mr.Anand that barring the statement of the victim there was nothing in corroboration.

(20) The petitioner is asking for bail. The allegations against him and the others with him unfold a sordid tale of extreme brutality and raw unleashed sexuality. My reaction is summed up in the words of that great philosopher Lucretius (though

said in different context): 'il modo ancor m' offende, - 'I shudder at the way of it'.

(21) The petition is dismissed.

(22) However, nothing said in this order shall be read as an expression of opinion on the merits of the case.

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