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Court : Delhi

Decided On : Jul-11-1997

Reported in : 1997IVAD(Delhi)469; 68(1997)DLT280; 1997(42)DRJ522

Judge : Jaspal Singh, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 366

Appeal No. : Criminal Appeal No. 16 of 1993

Appellant : Ajit Kumar

Respondent : State

Advocate for Pet/Ap. : Seema Gulati and; P.K. Bahl, Advs

Judgement :

Jaspal Singh, J.

(1) The very first month of the year 1993 saw the appellant convicted and sentenced under Sections 366 and 376 of the Indian Penal Code. Though no time was lost by him in filing the appeal, we let years slip by. The long and dreary, wait within the high walls and iron gates of prison, in the meanwhile, must have made his life grow insipid and lose its relish. Was it not Oscar Wilde who said in The Ballad of Reading Gaol:

(2) I know not whether laws be right, Or whether laws be wrong; All that we know who lie in gaol Is that each day is like a year, A year whose days are long. And what if now I acquit? And if I do so, and that is what I do propose to do, what about his withered years and shattered dreams

(3) Let me introduce the main character, the prosecutrix for she occupies the centre-stage. The lady, let us call her Meena Devi for that is the name by which she is known, is not only married but a mother too. On February 9, 1992, after having weathered more than eighteen summers, she left her native village in Bihar, came to Muzaffarpur and boarded a train for Delhi where lives her husband. She was not alone. We are told that someone did accompany her. Who was he? Her husband? Perhaps!. Her own brother? Possibly! Or was he her husband's elder brother? May be! How can one be sure, when the lady herself is not certain about the identity of her companion? She thrice changes the nature of her relationship with him. Husband's brother first, husband thereafter and then brother. The mystery of the companion apart, the journey to Delhi was not destined to be smooth. It so happened that her companion, whosoever he was, got down at a wayside railway station either to quench his thirst or to answer the call of nature, and before he could return, the train steamed off. To add to the lady's discomfiture, her companion by his misadventure even deprived her of her railway ticket, for it was he who was possessed of the same. No, she did not pull the chain. She did not even share her grief with anyone. She kept sitting in the compartment and then finally got down. Where? Hapur. Perhaps. And, I use the adverb 'perhaps' because at another place she says it was the Delhi Railway Station where she had actually got down. But then, let us take it was Hapur. She comes out of the Railway Station, meets a truck-driver, and narrates her story of woe. The truck-driver takes her to a room, deprives her not only of her worldly possessions but her honour too. He then brings her to Delhi. No, not in his truck but in a crowded bus and in Delhi while she was having a cycle rickshaw ride, she, for the first time, spoke to the police. It so happened that while they were in the rickshaw a police van passed by. Our ever vigilant policemen (Do they not almost always manage to come from nowhere but at the right time?) made enquiries about the man sitting by her side and when she told them that she knew not who he was, her statement (Ex. Public Witness 5/A) was recorded. This was followed by her statement

recorded under Section 164 of the Code of Criminal Procedure where in she did not even name the appellant.

(4) I have provided above only a rough sketch of what is brought out by the prosecutrix. The finer edges have been left out and purposely too for I will be delineating them a little later. However, what needs to be mentioned at this stage, is that the learned Additional Sessions Judge found in her a person worthy of reliance. This sealed the fate of the appellant.

(5) I know even an uncorroborated testimony of a prosecutrix may be enough to incarcerate a person. But then we must not forget that such a testimony must be worthy of reliance. It must inspire the confidence of the Court. Does Meena Devi's statement in Court come up to that standard? It is this question which must make us pause and ponder.

(6) Let us, have yet another look at the scenario. And, let it this time be a little more penetrating and critical.

(7) Meena Devi states in her examination-in-chief that she had boarded the train from Muzaffarpur accompanied by her brother Nawal Patel and that it was at Moradabad that her said brother had got down and missed the train. The word 'brother' appears four times in the very first seven lines of her examination-in-chief. But then, in the very first sentence in her cross-examination she describes Nawal Patel as her 'Jeth' (her husband's elder brother). She may be a rustic unlettered belle from a village but then which lady, married or yearning to be married, lettered or illiterate, well-versed in the ways of the world or not, from a far flung village or a metropolitan city, has not known that a 'Jeth' is never a brother? But then this is not all. In her very first statement before the police (Ex. Public Witness 5/A) which led to the registration of the First Information Report she neither talked of her brother nor of her `Jeth' Her story was that the person accompanying her on the train was none other but her own husband. And pray, why that brother, or that `Jeth' has not been examined? And if it was her own husband, why has he been kept back? At least there would have been some confirmation, some lending of assurance, some removal of confusion. As if the mystery with regard to her companion was not enough, she further confounds us by asserting (as Public

Witness 5) that it was at Moradabad that her companion (Whosoever he was) had missed the train. And imagine, in her statement under Section 164 of the Criminal Procedure Code (Public Witness 5/B) the railway station mentioned was Gorakhpur. Moradabad does not even rhyme with Gorakhpur.

(8) Let us, for a moment, ignore the lady's companion. Let us also, for the present, forget as to where he had got down and why. (I say `why' because two versions appear on that too. One that he wanted to quench his thirst and the other that he wanted to answer the call of nature, as if he could not answer it in the toilet attached to the compartment itself). Let us travel with the lady beyond Moradabad or Gorakhpur or whatever be the name of that railway station. She says (as Public Witness 5) that she had got down at Hapur where the truck driver had robbed her of her ornaments and her shame. However, in her statement before the police (Ex. Public Witness 5/A) she had said that she had reached Delhi and it was only outside the Delhi Railway Station that the appellant had met her. She does not talk of Hapur at all or of her subsequent sojourn to Delhi in a crowded or a deserted bus. How do we believe this lady

(9) Let us take it that she really got down at Hapur and met the appellant. He first robbed her of her ornaments, then took her to a room and violated her body. If it was so, it was too bad. But then why did she not protest? Why did she make no effort to escape? From Hapur she came to Delhi with the appellant and that too in a crowded bus and yet neither protested nor wailed, neither escaped nor made an effort to escape. In Delhi too she accompanied him mutely. What does one make out of it? And what about the second version that it was outside the Delhi Railway Station that she had met the accused and that thereafter for 6 to 7 days she had remained with him? How does one reconcile it with her Hapur story

(10) THAT'S all with the Hapur story? Surely not. During that month of February in the year 1992 the train coming to Delhi from Muzaffarpur never stopped at Hapur. The Railway chart brought on the record by the learned counsel the appellant leaves no doubt about it. And, if that be so what do we make of that Hapur Chapter

(11) One thing more. In her statement in the witness box and so also in her statement before the Police (Ex. Public Witness 5/A the prosecutrix says that the appellant was apprehended while he was traveling with her in a rickshaw. However, in her statement under Section 164 of the Criminal Procedure Code (Ex. Public Witness 5/B) she told the Magistrate that she had gone to the police after escaping from a room. How do we reconcile these versions totally repugnant to each other

(12) Let us have a look at the investigation too. Why was her companion neither cited nor produced as a witness? Why was no attempt made to get hold of her railway ticket? Excepting the solitary bald statement of the prosecutrix, where, is the evidence that she actually undertook the journey? Why no effort was made to locate her jewellery and so also the room where she was allegedly kept? Why no effort was made to locate and examine someone from the neighbourhood

(13) And, let us also not ignore the conduct of the companion of the lady. After all he must have, in due course, found out that she had not reached home. Why no report regarding her was lodged either by him or by her husband? And look at the lady herself. She knew her husband's address in Delhi. Why did she then get down at Hapur

(14) To be fair to the learned counsel for the State, he did admit the gaps and holes in the prosecution version. But then he wondered as to why she implicated the appellant. I wish we could find the answer. A thorough investigation could have done the trick. Even a more searching cross-examination of the prosecutrix could perhaps have thrown some light. What did she want? The appellant's version is that the prosecutrix had demanded a sum of Rs. 2000.00 which he had refused to pay and this had made her implicate him. John Barrymore says that the way to fight a woman is with your hat. Grab it and run Probably the appellant could not do it. To be honest, the Explanationn leaves me unconvinced. But then, the question remains unanswered, and perhaps, will remain so. And if I sound like Sigmund Freud, I just cannot help. However, on one thing I am certain and it is that I cannot place reliance on the statement of the prosecutrix and I will surely not quit a certainty for an uncertainty.

(15) The appeal is accepted and with it thus goes the conviction and sentence. Let the appellant be released forthwith unless wanted in any other case. Fine, if deposited, be refunded.

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