

Tapas Kumar Vs. State of Nct of Delhi

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Court : Delhi

Decided On : Feb-10-2000

Reported in : 2000IIAD(Delhi)760; 84(2000)DLT208; 2000(53)DRJ414

Judge : M.S.A. Siddiqui, J.

Acts : Indian Penal Code (IPC), 1908 - Sections 376

Appeal No. : Crl.A. No. 378/99

Appellant : Tapas Kumar

Respondent : State of Nct of Delhi

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Naveen Thakur, amices Curia

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. This appeal is directed against the judgment and order of conviction dated 10.3.99 passed by the Additional Sessions Judge in S.C. No. 47/98 convicting the appellant under Section 376 IPC and sentencing him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 1000/- or in default to suffer

further rigorous imprisonment for 6 months.

2. Briefly stated, the prosecution case is that on 18.12.1997 at about 4 P.M. while the prosecutrix Smt. Margeena (PW-3) was alone in her jhuggi, the appellant secured his entry inside the jhuggi and committed rape on the prosecutrix. The prosecutrix raised an alarm which attracted Smt. Maryam (PW-7) to the spot, seeing whom the appellant showed his heels. However, immediately after the alleged occurrence the appellant was apprehended near the railway track. At about 6.30 P.M. Smt. Margeena (PW-3) lodged the FIR (Ex. PW-1/A) at the Police Station Lodhi Colony. Investigation pursuant thereto culminated in submission of a charge-sheet under Section 376 IPC against the appellant.

3. The appellant abjured his guilt and alleged that a false case has been foisted on him. He has not examined any witness in support of his defense. On an analysis of the evidence adduced by the prosecution, the learned Addl. Sessions Judge accepted the prosecution case and convicted and sentenced the appellant as indicated above.

4. The question for consideration is whether the prosecution has succeeded in bringing home the guilt to the appellant beyond reasonable doubt. The main evidence in this case is that of the prosecutrix Smt. Margeena (PW-3). The learned Addl. Sessions Judge, who had the advantage of watching his demeanour in the witness box was believed her evidence. Comment was made by the learned counsel for the appellant that no implicit reliance could be placed upon her testimony as it lacks impress of coherence and certainty. According to him, the prosecutrix (PW-3) has narrated the alleged occurrence in para No. 1 of her deposition, which is conspicuous by the absence of factum of commission of the alleged offence of rape. The relevant portion of the statement made by the prosecutrix in para No. 1 of her statement is as under :-

'I managed to remove the hand of the accused my mouth. I shouted for help. 2-4 persons came to my jhuggi for my help and in the mean time the accused present in the court managed to skipped away from my Jhuggi.'

5. Learned counsel for the appellant further contended that the aforesaid statement of the prosecutrix (PW-3) exonerates the appellant from the alleged offence of rape. In my opinion, the aforesaid submission of the learned counsel for the appellant does not hold much water as the prosecutrix has unequivocally stated in para No. 2 of her deposition that the appellant had committed rape on her. The entire testimony of the prosecutrix is to be viewed in the background that she is an illiterate woman having not much experience in giving evidence in a court of law.

6. Prosecutrix Smt. Margeena (PW-3) further testified that during the course of the alleged sexual assault she had raised an alarm, which had attracted neighbours to the spot seeing whom the appellant showed his heels but he was apprehended near the railway track. On this point, her testimony finds ample corroboration from the testimony of Smt. Maryam (PW-7). Smt. Maryam (PW-7) testified that on hearing the alarm raised by the prosecutrix (PW-3), she came to the spot and saw the appellant running away. She further testified that the appellant was apprehended by 3 to 4 persons near the railway track. It has also come in her statement that the prosecutrix (PW-3) had complained to her about the alleged offence of rape committed by the appellant. The said statement of the prosecutrix (PW-3) made before Smt. Maryam (PW-7) would form part of *res gestae*. That being so, the evidence of the prosecutrix also finds ample corroboration from her subsequent conduct. Nothing has been elicited in the cross examination of the said witnesses namely, Smt. Margeena (PW-3) and Smt. Maryam (PW-7) to show or suggest that they had any axe to grind against the appellant.

7. It has come in the evidence of Constable Devender Kumar (PW-8) that on 18.12.1997, after medical examination of the appellant, the doctor had handed over two parcels i.e. blood sample and sealed underwear of the appellant, which were deposited with the investigating officer Ram Phal (PW-13) vide memo (Ex. PW-8/A). The order sheet dated 4.12.1998 recorded by the trial court reveals that the sealed parcels were sent to the CFSL Calcutta for Chemical examination. However, report of the CFSL is not on the record. Learned counsel for the appellant contended that the report of the CFSL Calcutta could have been useful in corroborating the evidence of the prosecutrix. Alternatively, it was contended

that non-production of the said report gives rise to an adverse inference against the prosecution case. Reliance is placed in *Mehmood v. State of U.P.* 1976 SCC 76. In that case there was no eye witness of the alleged incident and the prosecution case rested solely on circumstantial evidence. In that context it was held that it would be highly unsafe to convict the accused on a capital charge without any independent corroboration, solely on the bald statement and dogmatic opinion of an expert witness. Thus, the ratio decidendi of the authority cited by the learned counsel for the appellant does not govern a case like in hand. That apart, in *State Vs . Gurmeet Singh* : 1996 CriLJ1728 , it was held that corroborative evidence is not an imperative component of judicial credence in every case of rape. The court should not cling to a fossil formula and insist upon corroboration, even if taken as a whole the case spoken of by the victim of rape, strikes the judicial mind as probable. Thus, the testimony of the prosecutrix (PW-3) cannot be rejected on the ground of non-production of the CFSL report.

8. In the instant case, the testimony of the prosecutrix gets ample corroboration from the medical evidence besides the evidence of Smt. Maryam (PW-7) and the subsequent conduct of the appellant in running away from the spot immediately after the occurrence. Dr. Alka Verma (PW-1) testified that on the day in question at about 9.25 P.M. she had examined the prosecutrix (PW-3) and found superficial scratches over her left cheek, thighs and both fore arms. The presence of the said injuries on her person clearly indicates that she voluntarily resisted to the act of sexual intercourse. In addition to this, the FIR (Ex. PW-1/A), which was lodged by the prospectrix without any inordinate delay also supports the evidence of the prosecutrix (PW-3). The evidence of the prosecutrix also gets ample corroboration from the underwear (Ex. PW-1) which was torn down by the appellant at the time of the alleged incident.

9. Learned Counsel for the appellant has highlighted certain discrepancies in the statements of Smt. Margeena (PW-3), Dr. R.K. Dass (PW-2), Smt. Maryam (PW-7), H.C. Subhash Chand (PW-4), Constable Bhikari Singh (PW-6), H.C. Rati Ram (PW-10) and I.O. Ram Phal (PW-13) regarding time of medical examination of the appellant, which according to him have shaken the prosecution case to an irreparable extent. HC Rati Ram (PW-10) deposed that on 18.12.1997, at about

5.15 P.M. he had seen the appellant at the P.S. Lodhi Colony. Constable Bhikari Singh (PW-6) deposed that on that day at about 5.15 P.M. he had taken the appellant to the AIIMS for medical examination. Dr. R.K. Dass (PW-2) testified that on 18.12.1997, at about 5.30 P.M., he had medically examined the appellant vide medical report (Ex PW-2/A). Prosecutrix Smt. Margeena (PW-3) deposed that she along with Smt. Maryam (PW-7) had gone to the Police Station for lodging the report about the alleged incident and after recording her report, police accompanied her to her jhuggi and arrested the appellant there. The report (Ex PW 1/A) was recorded at 6.30 P.M. Investigating Officer Ram Phal (PW-13) stated in his evidence that he got a copy of the FIR (Ex PW-1/A) at 7.00 P.M. and thereafter the prosecutrix (PW-3) took him to her Jhugi. He has nowhere stated that on reaching the jhuggi, he found the appellant and arrested him. On the contrary, his evidence in chief shows that the appellant was already admitted in the AIIMS for medical examination. Thus, the evidence of Dr. R.K. Dass (PW-2), H.C. Subhash Chand (PW-4), Constable Bhikari Singh (PW-6), H.C. Rati Ram (PW-10) and I.O. Ram Phal (PW-13) falsifies the statements of Smt. Margeena (PW-3) and Smt. Maryam (PW-7) that the appellant was arrested and taken for medical examination after her lodging the FIR (Ex. PW-1/A) at the Police Station. In my opinion, the said discrepancy in the evidence of the prosecution witnesses does not affect the substratum of the prosecution case. After going through the evidence of the prosecutrix (PW-3) and Smt. Maryam (PW-7), I find that the same does not contain any such infirmity which would mitigate against the core of the prosecution case.

10. On a careful consideration of the evidence, the probabilities and circumstances of this case, I have no hesitation in finding that the prosecution has proved the case conclusively against the appellant.

11. In the result, the appeal is dismissed.