

Ram Babu Vs. State

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Court : Delhi

Decided On : Apr-23-2013

Judge : S. P. Garg

Appellant : Ram Babu

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

10. h APRIL, 2013 DECIDED ON :

23. d APRIL, 2013 + CRL.A. 655/2001 RAM BABU Through :Appellant Mr.Satya Narayan, Advocate. versus STATE Through : .Respondent Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant- Ram Babu challenges judgment dated 18.08.2001 in Sessions Case No.115/1999 arising out of FIR No. 155/1999, PS Model Town by which he was held guilty for committing offences under Sections 376/506 IPC and sentenced to undergo RI for eight years with fine ` 5,000/- under Section 376 IPC. He was further sentenced to undergo RI for six months under Section 506 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that on the night intervening 22/23.03.1999 at about 03.00 A.M. at jhuggi No.431, School Wali Gali, Derawal Nagar, he committed rape upon prosecutrix X (assumed name) and criminally

intimidated her. The prosecution examined ten witnesses to substantiate the charges. In his 313 Cr.P.C. statement, the appellant pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted and sentenced the appellant. Being aggrieved, he has preferred the present appeal.

3. Prosecution case is solely based upon the statement of the prosecutrix X. She alleged that on the night of 22/23.03.1999, she was sleeping with her son Ajay, aged one year in her jhuggi. At about 03.00 A.M., the accused entered in her jhuggi, put his hand on her neck and threatened to kill if she raised alarm. Thereafter, he forcibly committed sexual intercourse with her without her consent and against her wishes, and fled the spot. When her husband returned, she narrated the entire incident to him. Thereafter, she and her husband went to the Police Station and lodged First Information Report (Ex.PW-6/A). She identified underwear (Ex.P1). PW-7 (Dinesh Singh), Xs husband also corroborated his wifes version that the accused committed rape upon her.

4. It is well-settled law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, the Court should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances.

5. In the instant case, material contradictions and inconsistencies have emerged in the testimonies of prosecution witnesses compelling the Court to seek corroboration. The prosecutrix was a married lady aged twenty years. She was alone with her kid in the jhuggi as her husband PW-7 (Dinesh Singh) had gone to night duty. In her statement (Ex.PW-6/A) lodged with the police at the first instance, she gave detailed account as to how and under what circumstances, the accused who was acquainted with her and lived in the neighbourhood committed

rape upon her. She disclosed that after establishing physical relations, the accused fled the spot. When her husband returned after performing duty, she narrated the entire incident to him. She however, did not mention as to when her husband Dinesh Singh returned to the jhuggi. She also did not mention if she raised hue and cry during the incident or after the crime and before arrival of her husband informed the neighbours or her relatives. It reveals that she remained silent and informed her husband only when he returned to his jhuggi after his duty was over. In her deposition before the Court, she made vital improvements and presented a new version. The accused was apprehended after a week and arrest-memo (Ex.PW-6/B) was prepared which bears her signatures. However, she was unable to disclose as to from where the accused was apprehended. In the cross-examination, she admitted that her other family members resided on the upper portion of the jhuggi and kitchen was common. At the time of occurrence, her uncle was sleeping on the upper portion. She did not raise alarm and did not inform her uncle soon after the occurrence. This conduct of the prosecutrix is highly unnatural and unreasonable. It has come on record that the accused was running a retail shop in the neighbourhood. She admitted that the accused was known to her and he also lived behind their jhuggi. Despite that, she pleaded that at the time of incident she could not recognise the appellant as it was dark in the jhuggi. The neighbours identified the assailant when he was running away from the jhuggi. The version does not appeal to mind. In her statement (Ex.PW-6/A), the accused was named as the rapist. It is not believable that the X would not be in a position to identify and recognise the rapist known to her during alleged physical relationship. She claimed that when the accused left her, she raised alarm and on hearing her noise, her uncle woke up and raised alarm. The neighbours apprehended the accused at the spot. She elaborated that the accused was apprehended by her uncle, one Nepali, her brother-in-law and his wife. However, he succeeded to flee the spot. The prosecution did not examine any such relative or neighbour to lend credence to the prosecutrix's version. The prosecutrix gave entirely inconsistent version that he narrated the occurrence to her husband when he returned to the jhuggi after the duty was over. PW-7 (Dinesh Singh) has introduced an altogether different version. He deposed that at 04.00 A.M., one Raja Ram, his neighbour, came at his workplace and told that his wife

was raped and mohellewale people had taken her to the Police Station. He further deposed that Raja Ram took him to the Police Station where his wife was present. The prosecution did not examine Raja Ram. It failed to reconcile the two versions as to when and where the prosecutrix narrated the incident to her husband. In the cross-examination, PW-7 (Dinesh Singh) stated that his wife was not familiar with the accused earlier.

6. In the MLC (Ex.PW-2/A), no external injuries were found on the prosecutrix's body. It does not reveal if the prosecutrix was forcibly assaulted. Forensic Science Laboratory (FSL) Report (Ex.PA) is of no help to the prosecution. Semen could not be detected on Ex.2 (victim's underwear) and Ex.3 (accused's underwear). Possibility of physical relationship with consent cannot be ruled out.

7. In *Rai Sandeep @ Deepu vs. State of NCT of Delhi*, AIR 201.SC 3157, the Supreme Court observed :

15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of

circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

16. In the anvil of the above principles, when we test the version of PW-4, the prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests mentioned above. There is total variation in her version from what was stated in the complaint and what was deposed before the Court at the time of trial. There are material variations as regards the identification of the accused persons, as well as, the manner in which the occurrence took place. The so-called eye witnesses did not support the story of the prosecution. The recoveries failed to tally with the statements made. The FSL report did not co-relate the version alleged and thus the prosecutrix failed to instill the required confidence of the Court in order to confirm the conviction imposed on the Appellants.

8. In the light of above discussion, appellants conviction and sentence cannot be sustained. The appeal is allowed and the impugned judgment of the Trial Court is set aside. Bail bond and surety bond of the appellant stand discharged.

9. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE APRIL 23 2013 tr

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