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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 626/2019 & CRL.M.As. 10219-10221/2019

SMT. RACHNA SINGH Appellant
Through: Ms. Simran Sadyora, Advocate with
Mr. Sanjeev Bhatia, Advocate.

versus

STATE AND ANR. Respondents
Through: Ms. Aashaa Tiwari, APP for State with
SI Vishvendra, PS Paharganj.

% Date of Decision: 13th May, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present appeal has been filed under Section 372 of the Code of Criminal Procedure 1973 challenging the judgment dated 05th January, 2019 whereby the accused-respondent no. 2 was acquitted of charges under Section 328/376(2)(n)/343/506 Indian Penal Code, 1860 ('IPC'). The relevant portion of the Trial Court judgment is reproduced hereinbelow:-

"... Medical examination of prosecutrix was carried out to which she refused her internal medical examination..."

...The statement made by the prosecutrix in the court that she came into contact with accused through LinkedIn, social networking site for the purpose of her research work has not been mentioned in written complaint made by prosecutrix neither

in the complaint dated 05.01.2017 made to the DCP, Dwarka nor in the complaint dated 17.01.2017 written to the SHO PS Pahar Ganj, therefore, this is major contradiction in the statement of prosecutrix made to the police as well as to the court as to how the prosecutrix came into contact with accused. ...

... but in the cross examination itself, she has admitted that on 15.12.2016, accused took her firstly to Shivaji Stadium Metro Station and from there he took her to Aerocity Metro Station and he went away after dropping her there. He had also returned her aforesaid belongings alongwith her mobile phone. When she reached her home, she checked her mobile phone and found that accused had deleted recording of her chatting through whatsapp and SMS exchanged between them. The prosecutrix being highly educated lady could not make call to anyone during 13.12.2016 to 15.12.2016 because her mobile phone was taken by the accused but as per her own statement and testimony made in the court that on 15.12.2016, accused had returned her belongings along with mobile phone but she could not make any call to the police or any other person in respect of the complaint of the alleged incident of rape is itself unbelievable.

That, the prosecutrix has also stated that the room was booked in the hotel Hari Piorko at Pahar Ganj by the accused himself and at that time she was having suitcase, handbag and laptop bag with her and she was comfortable with the accused and "it is correct that from coming out of the hotel they both took auto and went to Shivaji Stadium Metro Station and from there both took metro and reached Aerocity Metro Station and accused went inside the airport and took his flight and the prosecutrix see off accused and went to her home at Dwarka and she did not make any phone call on 15.12.2016 to any of his friend or relative or to anyone else in respect of alleged incident of rape." ...

... it is very improbable and unbelievable that she is not aware about the completion of the formalities for taking room in any hotel or that room number of that hotel is not remember to her particularly when she stay there from 13.12.2016 to 15.12.2016.

....

54. That, the statement of prosecutrix is highly unreliable and untrustworthy and inspire no confidence on the ground that PW 11 W/SI Veena Sharma, I.O. of this case who had obtained the copy of the entry register from the said hotel where offence of rape alleged to have been committed by accused with the prosecutrix and it reveals that the prosecutrix had also submitted her I.D. proof in that hotel and perusal of the said I.D. proof, which was seized by the I.O. during the investigation reveals that the same reflects the name and address of the prosecutrix and address on the said I.D. is of Aligarh, U.P. Therefore, testimony of the prosecutrix itself is unreliable.

55. That, during the cross examination, prosecutrix has deposed that she had not handed over her mobile phone to the police during the investigation of police as police did not ask her for the same but the I.O. who is PW11, herein has deposed that she had asked prosecutrix to hand over her mobile phone but she refused to handover the same. Therefore, the testimony of the prosecutrix is not of much credence.

56. Prosecutrix has admitted that she is the daughter of retired commandant from CRPF and she did not make any call to the police or to the PCR in respect of alleged offence of rape...

57..... It has also been deposed that "I cannot say if I made 529 calls on his i.e. mobile phone of accused number 9415684928 from her mobile phone number 9690297262 between 16.12.2016 to 29.01.2017."

58. The prosecutrix being highly educated, married and of matured understanding lady and is daughter of retired Commandant of CRPF and by making her statement in respect of non remembering her mobile number as well as landline number installed at her residence is unbelievable and it is not expected from highly educated and prudent person.

59. That, the prosecutrix has alleged that she met with accused when she get the invitation of attending the seminar on

13.12.2016 is also unbelievable as date 13.12.2016 was gazette holiday on the occasion of Milad-Un-Nabi (Birthday of Prophet Mohammad). Moreover, the RTI reply of the IIM, Noida which was filed during arguments on bail by ld. Defence counsel also reflects that no seminar / conference was held on 13.12.2016 at IIM, Noida, U.P. as it was gazette holiday nor any invitation letter issued from IIM, Noida to the prosecutrix has been placed on record nor the same was handed over by the prosecutrix to the I.O. at the time of the investigation of the present case FIR.

60. ... this witness has admitted that the entrance of the hotel is manned by security guard 24 hours and no one can enter in the hotel without permission of the guard and there are guidelines of Delhi Police not to allot any room to local resident of Delhi and they had checked the IDs of the guests before allotting them room and retained their copies and as the prosecutrix has supplied her I.D. proof and as per I.D. proof, she was not resident of Delhi and was allotted Room no.224 for one night and room no.223 was booked for 2 nights and they did not receive any complaint from any guest of the aforesaid rooms during their stay.

.. she could have brought the incident to the notice to the guard of that hotel or could have make a call to the police or to inform the manager or to the waiter or could have easily come out from the hotel room to make a call to the police or raised an alarm but she did not make any call nor bring the notice of hotel staff or to any one of the alleged incident of rape.

.. There is delay of 32 days to report the matter to the police and the prosecutrix is not been able to explain the delay to lodge the complaint to the police for the alleged offence of rape....

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63. That, there is no evidence in respect of intoxicated substance allegedly given by the accused to the prosecutrix in a coffee and there is no medical report in this regard and the prosecution is not able to prove the same against the accused.

64. Therefore, in these facts and circumstances, this court is of the considered view that prosecution has not been able to prove its case as well as the charges of the offence u/s

328/376(2)(n)/343/506 IPC against the accused beyond reasonable doubt and hence, accused Abhijeet Singh is hereby acquitted from the charges punishable u/s 328/376(2)(n)/343/506 IPC.”

(emphasis supplied)

2. Learned counsel for the appellant-prosecutrix submits that the Trial Court had failed to appreciate that there is a presumption under Section 114A of the Indian Evidence Act, 1872, as to absence of consent in a case for prosecution of the offence under Section 376 IPC and consequently the onus to prove that he had not committed the offence under Section 376(2)(n) IPC had shifted to the accused-respondent no. 2.
3. Learned counsel for the appellant-prosecutrix further contends that the Trial Court had erred in not appreciating the fact that the appellant-prosecutrix is a chronic asthmatic patient, cannot do regular activities without medication, has a physical deformity in her left leg and is also suffering from cerebral palsy due to which it is difficult for her to raise her voice even in an emergency situation.
4. Having perused the paper book, this Court is of the view that the presumption under Section 114A of the Indian Evidence Act, 1872 would only be attracted if the factum of sexual intercourse is proved.
5. In the present case, it is noteworthy that the appellant-prosecutrix had refused internal medical examination.
6. Further this Court is in agreement with the view of the Trial Court that testimony of the appellant-prosecutrix is ‘highly unreliable’, ‘untrustworthy’ and ‘inspires no confidence’ for the following reasons:-

- A. The appellant-prosecutrix alleged that she had received an invitation to attend a seminar on 13th December, 2016 at IIM, Noida. However, 13th December, 2016 was a gazetted holiday on the occasion of Milad-Un-Nabi (Birthday of Mohammad). Furthermore, the RTI reply sent by IIM, Noida stated that on account of the gazetted holiday, there was no seminar scheduled for 13th December, 2016 and they had not sent any invitation to the appellant-prosecutrix.
- B. There is a major contradiction in the statement of the appellant-prosecutrix inasmuch as, in the written complaint dated 05th January, 2017 made to the DCP, Dwarka, and the complaint dated 17th January, 2017 to the SHO PS Pahar Ganj, the appellant-prosecutrix had not mentioned that she had come in contact with the accused-respondent no. 2 through LinkedIn for the purpose of research work. However, she has mentioned the aforesaid fact in her statement before the Court.
- C. The appellant-prosecutrix had submitted her I.D. proof to the hotel and in the same she had mentioned her address of Aligarh, UP as Delhi Police Guidelines do not permit the hotel to allot a room to a local Delhi resident.
- D. The entrance of the hotel room is manned by security guards 24 hours and no one can enter the hotel without the permission of the guard. The appellant-prosecutrix could have easily come out of the hotel room to make a call to the police or raise an alarm or could have requested any of the hotel staff to make a call. The appellant-prosecutrix is mobile and does not suffer from such a serious disability that she could not have raised an alarm.

- E. There is no evidence placed on record to suggest that the appellant-prosecutrix was administered intoxicating substance and its effect lasted for three days.
- F. On 15th December, 2016 after the alleged incident, the accused-respondent no. 2 allegedly took the appellant-prosecutrix to Shivaji Stadium Metro Station. There he admittedly returned her belongings, including her mobile phone. It is highly improbable that the appellant-prosecutrix, being a daughter of a retired Commandant of CRPF and herself being a Professor, could not make call to the police or any other person after receiving her mobile phone.
- G. There is a delay of 32 days in filing the FIR, according to the Trial Court or at least 20 days as admitted by the appellant-prosecutrix. According to the appellant-prosecutrix, there was a delay as her brother was abroad. But such an alibi on the part of the appellant-prosecutrix is difficult to accept as appellant-prosecutrix is an educated lady who is gainfully employed as a Professor in a university.
- H. The appellant-prosecutrix also did not hand over her mobile phone to the I.O. The appellant-prosecutrix deposed that the police during investigation did not ask for it. However, the I.O, who deposed as PW11, stated that she had asked the appellant-prosecutrix to hand over her mobile phone but she refused to do so.
- I. Appellant-prosecutrix had made 529 calls to accused-respondent no.2 between 16th December, 2016 (after the date of rape) to 29th January, 2017 (before filing of the complaint). Her act of making so many repeated calls is not consistent with her allegations.

7. Keeping in view the aforesaid cumulative findings, this Court is of the view that the testimony of the appellant-prosecutrix is unreliable and inspires no confidence and there are compelling reasons for rejecting of her testimony. Further, Section 114A of the Indian Evidence Act, 1872, is not attracted as the factum of sexual intercourse is not proved. There are also various lacunae in the case of the prosecution and the benefit of doubt will have to enure to the benefit of the accused-respondent no. 2. Consequently, the present appeal being bereft of merits, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

MAY 13, 2019
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