



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

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+ **CRL.A. 689/2016**

RAM RATTANAppellant
Through: Mr. R.P. Singh, Advocate.

versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Pradeep Gahalot, APP for State
with WSI Neha Tyagi P.S. Harsh
Vihar, Delhi.
Mr. Kunal Sharma Bhargava,
Advocate (*Amicus Curiae, Pro Bono*)
for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal pertains to the challenge made to the judgment of conviction dated 13.05.2016 and order on sentence dated 31.05.2016 rendered by the Sessions Court in the context of trial held in relation to FIR No. 07/2014 registered under Sections 376/354/323/341/34 IPC registered at P.S. Harsh Vihar.

While acquitting the appellant for the offences punishable under Sections 354/354B/341/34 IPC, the Trial Court convicted him for the offence punishable under Section 376 IPC and sentenced him to undergo rigorous imprisonment for a period of 7 years along with payment of fine of



Rs.4000/-, in default of which he would have to further undergo simple imprisonment for 30 days. The benefit of Section 428 Cr.P.C. was also granted. Pertinently, the appellant was tried along with one co-accused/*Udaivir @ Udai Mota*, who was acquitted by the Trial Court.

The appellant's sentence was suspended during pendency of the present appeal vide order dated 02.08.2017.

2. The investigation in the present case pertained to an incident of 31.12.2013 which was reported on 02.01.2014 vide DD No. 21A. The said DD was recorded at 4.43 PM at P.S. Nand Nagri and pertained to an incident of quarrel. As the incident occurred in the jurisdiction of P.S. Harsh Vihar, the said DD was transferred and re-recorded as DD No. 20A at 7.55 A.M.

3. SI *Vinita*, the Investigating Officer, reached the spot and took the prosecutrix (PW-4) for medical examination. Her statement was recorded (later exhibited as Ex. PW-4/A), wherein she alleged that she got married 10-11 years back and has two children; her husband and children had been residing separately for one year as her husband had solemnized second marriage. The prosecutrix claimed to be working as labourer/maid depending on availability of work. On 31.12.2013, while she was on her way back home at about 8.00-9.00 PM and reached near Prem Nagar Chowk, an unknown person came from the back side, pulled her *chunni*, and dragged her inside a godown, where he tore off her clothes. When the prosecutrix raised an alarm, the unknown person ran away. While the prosecutrix was sitting in a corner of the godown as her clothes were torn, one *Udaivir @ Udai Mota* came inside the godown and started misbehaving with her. *Udaivir* also slapped her, pressed her breasts, and further tore her clothes. The prosecutrix again raised an alarm, upon which *Udaivir* ran



away. After *Udaivir* left, another person i.e., the *chowkidar* (name not known) of Prem Nagar factory area came and committed sexual assault upon her, after which she somehow managed to come back home. Next day, i.e., on 02.01.2014, she came to P.S. Nand Nagri to lodge a complaint.

4. At the time of her medical examination, while she stated in the history of assault that 5-6 men had raped her in the night of 31.12.2013, she did not name any of them.

5. During investigation, the MLC of the prosecutrix was collected and her statement under Section 164 Cr.P.C. was recorded. On identification of the prosecutrix, *Udaivir* was arrested, whereafter the present appellant was arrested on 04.01.2014. The appellant refused TIP, stating that he had already been shown to the complainant. The identity of the first assailant remained unknown. On filing of chargesheet, charges under Sections 354/354B/341/376D/34 IPC were framed against *Udaivir* and the appellant herein. *Udaivir* was also additionally charged for commission of the offence punishable under Section 323 IPC. Both the accused persons pleaded not guilty and claimed trial.

6. Learned counsel for the appellant contends that the testimony of the prosecutrix is full of material improvements and contradictions, noting which the co-accused *Udaivir* was acquitted by the Trial Court, however, while relying on the un-creditworthy testimony of the prosecutrix, the Trial Court had convicted the appellant, overlooking the said material improvements and contradictions. It is next contended that the testimony of the prosecutrix does not inspire confidence and there was a delay of two days in lodging of the complaint, which has not been explained. He further states that neither the MLC, nor the FSL, lend support to the case of the



prosecution.

7. On the other hand, learned APP for the State, as well as Mr. Kunal Sharma Bhargava, the learned *Amicus Curiae* appointed to represent the prosecutrix, contend that insofar as the present appellant is concerned, the prosecutrix has stated consistently that he committed rape upon her. Though there was a delay of 44 hours in lodging of the complaint, the same is of no consequence as the Trial Court found the said delay to have been sufficiently explained. It was next contended that the testimony of the prosecutrix regarding the beatings given to her finds support in her MLC, wherein injuries were observed on the right cheek and right leg.

8. The prosecutrix, as noted above, in her complaint stated that on 31.07.2013, initially an unknown person committed assault upon her by dragging her into the godown and on him running away, *Udaivir* came inside, pressed her breasts, and tore her clothes. He also slapped her. On him running away, a *chowkidar*, i.e., the present appellant, came in and committed rape upon her. In her statement recorded under Section 164 Cr.P.C., she stated that the incident occurred on 30.12.2013. She stated that there were five persons in total, out of which, one was the *chowkidar*, one was *Udaivir*, and the identity of the three other persons was not known. Out of them, one tore off her clothes and pushed her inside the godown. Then the *chowkidar*, i.e., the present appellant, came in and committed rape upon her, and when she started crying, the said person ran away. She stayed in the godown where there was no light and only in the morning at 5.00 AM she went back to her home. On the way, some *baba* gave clothes to cover her. She further alleged that the persons who were present along with the *chowkidar* also committed rape upon her. As the godown was dark, she



could not identify them, however, one of them was *Udaivir*. In her Court deposition, she again changed her narration of events. She stated that initially it was an unknown person, who shut her mouth, took her to a godown, and tore off her clothes; and when she cried, the said person gave beatings to her. She stated that there were five persons, out of which one was *Udaivir*. An old person, who was the *chowkidar*, was also present. He called her *beta-beta* and did “*galat kaam*” with her, by which she meant rape. When she started shouting, he ran away. She further stated that *Udaivir* was known to her as he ran a *dhaba* that she used to go to. She further deposed that the other three persons present in the godown raped her. She identified *Udaivir* and the appellant during the course of deposition. In her deposition, she further stated that on account of beatings given to her by the present appellant with *danda*, she had sustained injuries on her right leg. All the five persons, after committing rape, ran away from there. She came out from the godown at about 4.00 A.M. and reached her house. She then reported the incident to the police.

9. The prosecutrix was cross-examined. In cross-examination, by the counsel for *Udaivir*, the prosecutrix turned hostile and stated that though *Udaivir* was present, he did not do any “*galat kaam*”. The three persons, who were not arrested, were young and had done wrong act with her. At that time, one driver was also present. She stated that she did not make a call to the police at 100 number on the day of the incident, however, went to report the incident for the first time after two days. She further stated that she had not given names of the persons who committed rape upon her at the time of her medical examination as she was not asked for the same. Though she admitted that she used to consume liquor, she denied the suggestion that she



was under the influence of liquor on the date of the incident. She stated that when the police had taken her to the spot, *Udaivir* was present and was laughing.

Further cross-examination was carried out on a subsequent date, wherein she admitted that *Udaivir* was not present in the godown at the time of the incident. She further admitted that at the time of her Court deposition on 11.07.2014 and 11.08.2014, she had named the accused at the instance of police officials. She also stated that the allegation of *Udaivir* pressing her breasts was made at the instance of the police.

10. In cross-examination carried out on behalf of the appellant herein, she stated that there was no light in the godown at the time of incident, however, she identified the appellant by his voice and also saw his face. She again changed the narration of events by stating that initially it was three persons who came to the godown, who were working in the hotel of one *Ompal*, however, she did not know their names. It was these workers who had torn her clothes, and the said clothes were later recovered from the godown by the police. She further stated that prior to the incident, she had never seen the appellant. She came to know about his name only after his arrest. She further stated that she was not present at the time of his arrest.

In further cross-examination, she stated that she had identified the appellant at the police station and in Court.

The prosecutrix was re-examined by the learned APP for the State. In the context of her deposition in relation to *Udaivir*, she denied the suggestion that she had taken money from the family members of the accused *Udaivir* in order to depose that he had not committed rape upon her.

11. The MLC of the prosecutrix was proved through the testimony of



Dr. *Shuchi*, Sr. Resident, GTB Hospital, Delhi, who was examined as PW-1. She stated that she had examined the prosecutrix, who was brought to the hospital with an alleged history of gang-rape. The witness deposed that the prosecutrix had taken bath, defecated, urinated and changed clothes after the incident. She further stated that the patient appeared to be distorting facts. She had noticed local injury on her right cheek and right leg. On her local examination, old torn hymen was found. In her cross-examination, she stated that the alleged history was recorded as narrated by the patient; however, the names of the persons were not known and not told by the prosecutrix, despite her asking.

12. Coming to the contention raised by the counsel for the appellant, firstly, on the aspect of material improvements, it is noted that in her initial complaint, the prosecutrix alleged that on the night of the incident only three persons were present and they had come one after the other; all three of them were not present together at the time of the incident. In the history of assault, she stated that 5-6 persons were involved in the alleged gang rape. In her statement recorded under Section 164 Cr.P.C., she stated that there were five accused persons and out of them, two were identified, one as *Udaivir* and another as *chowkidar*, i.e., the present appellant. She did not implicate *Udaivir*; however, she stated that the appellant ("*chowkidar*") and the other three persons had committed rape upon her. In her Court deposition, she claimed that all five accused persons had committed rape. However, later, she again turned hostile and stated that *Udaivir* had not committed any offence.

13. From the above, it is evident that the prosecutrix has been changing her version at every stage. Even at the time of recording of deposition, she



has narrated the incident differently on different dates. Even on the aspect of giving beatings, she first attributed it to unknown persons, then *Udaivir*, and later the appellant. Notably, the aspect of beatings by *danda* was not stated in any of her previous statements.

14. As per FSL report, the DNA profiling performed on the exhibits, including those of the appellant, was sufficient to conclude that the DNA profile generated from the said exhibits did not match with the DNA profile generated from the source of Exhibit '1g1', i.e., the vaginal swab of the prosecutrix.

15. On a holistic reading of the entire evidence, this Court is of the considered view that though the Trial Court acquitted the accused *Udaivir*, it failed to appreciate that the testimony of the prosecutrix is riddled with material improvements and contradictions over her previous statements, does not find any support from the medical or forensic evidence on record, and is not reliable enough to prove the guilt of the appellant herein beyond reasonable doubt.

16. Accordingly, the present appeal is allowed and the impugned judgment as well as order on sentence are set aside.

17. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

18. The Court records its appreciation for the valuable assistance rendered by the learned Amicus Curiae appointed to represent the prosecutrix.

19. A copy of this judgment be sent to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 21, 2025/pmc