

(2014) 08 DEL CK 0002

Delhi High Court

Case No: Crl. A. 1121/2012

Bhola Adivashi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 21, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 323, 328, 376, 506

Hon'ble Judges: Pradeep Nandrajog, J; Mukta Gupta, J

Bench: Division Bench

Advocate: Ajay Verma, Advocate for the Appellant; Varun Goswami, APP and Anil Sharma, Inspector, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

Bhola stands convicted for the rape of an elderly woman aged 77 years old, the age of his grandmother. He is aggrieved by the judgment dated March 28, 2012 convicting him for offences punishable under Sections 376/506/323/328 IPC and the order on sentence dated March 31, 2012 directing him to undergo imprisonment for life for offence punishable u/s 376; Rigorous Imprisonment for five years for offence punishable u/s 328 IPC; Simple Imprisonment for six months for offence punishable u/s 323 IPC and Rigorous Imprisonment for two years for offence punishable u/s 506 IPC.

2. Bhola assails the judgment on the ground that his test identification parade was not conducted properly. The version of the prosecutrix that she was raped was not corroborated by her MLC or the FSL report. The version that due to media hype the police had to solve the case and hence the appellant has been made a scapegoat was not considered by the learned Trial Court.

3. The police machinery was set into motion after two good Samaritans Mohd.Nazim PW-13 and Mahboob PW-14 while laying the PNG pipeline for the construction company heard voice (Karhana) from behind the bushes of Japanese Park near Gole Chakkar in the morning of March 12, 2011 at about 6.00-6.30 AM. An old lady was found weeping. When asked the reason she replied that she wanted to go to her son who was staying in Sector-7, Rohini. She was in injured condition bleeding from her injuries and unable to move herself. Mohd.Nazim and Mahboob lifted the old lady, stopped a TSR and took her to her son's house. In the meantime, her son Sanjay Prabhakar who was already searching her mother with the police was informed and thus the mother was taken to the hospital in the same auto rickshaw. Statement of prosecutrix Ex.PW1/A was recorded and MLC collected by W/ASI Krishna PW-21 on the basis of which FIR No.105/2011 under Sections 323/328/506/376 IPC was registered on March 12, 2011 at 1.40 PM vide Ex.PW6/B.

4. The prosecutrix stated that she had four sons and was staying with her younger son. On March 11, 2011 at 2.00 PM her son Sanjay Prabhakar had dropped her at the house of her sister at C-10/21, Sector-15, Rohini. At about 6.00/6.30 PM in the evening her sister made her sit in the rickshaw near her house. Her sister gave Rs. 25/- to the rickshaw puller and asked him to drop the prosecutrix at Rohini West Metro Station. The rickshaw puller stated that Rs. 25/- were less on which she stated that she would give additional and hurled twice and thrice in front of prosecutrix's mouth due to which she fell unconscious. When she regained consciousness she found herself lying on the stones. The rickshaw puller dragged her to a lonely place and pressed her mouth and stated that in case she shouted he would stab her. Thereafter rickshaw puller gave her number of slaps and fist blows on both her eyes and then raped her. He continued beating her also. At around 12.30 AM or 1.00 AM the prosecutrix stated that in case he did not leave her, her sons would be looking for her and they would beat him, on which he stated that how they would know in the darkness. She stated that the whole night she was screaming but nobody heard her voice. In the morning a boy heard her cries whom she told the facts. He brought her to her house in a three- wheeler scooter from where her son took her to the hospital. According to her the rickshaw puller was 20-21 years old, dark complexion and medium built.

5. The MLC of the prosecutrix Ex.PW18/A proved by Dr. Prashant Saxena speaks loudly of the ghastly act, noticing injuries on the body of the aged lady all over. PW-18 Dr. Prashant Saxena on local examination found the following injuries:

- "1. Periorbital bruises bilaterally.
2. Bruises over forehead and chin.
3. Nasal tenderness positive.
4. Tenderness lower chest left side."

6. Prosecutrix was also referred to Orthopaedic Department where Dr.Kshitij Srivastav examined her and exhibited the medical documents Ex.PW17/A showing defuse swelling and tenderness on the lower back Dr.Rachna Pathak PW-15 who examined the prosecutrix for her eyes noticed periorbital ecchymosis with sub-conjunctive haemorrhage over temporal bulbar conjunctiva. Dr.Harkesh PW-12 who examined the prosecutrix for ENT noticed the nasal bleeding, nasal pain and nasal tenderness. Dr.Pratima PW-4 exhibited the MLC Ex.PW-2/A prepared by Dr.Shanti. On gynecological examination small cut marks on internal side of labia minora, bruises on vaginal mucosa were noticed. Dr. Shanti also took samples of the clothes, pubic hair, scalp hair, nail clippings, vaginal swabs, vaginal smear, cervical swabs, cervical smear, blood samples of the prosecutrix.

7. The Statement of the prosecutrix was recorded by Ms. Vandana PW- 11, learned Metropolitan Magistrate u/s 164 Cr.P.C. at the hospital after taking opinion of the doctor that the prosecutrix was in a fit state of mind to make the statement. In her statement Ex.PW11/B the prosecutrix reiterated her version made in the FIR.

8. On inspection of the spot one pair of lady slippers make Bata of golden brown and black colour, one spectacles with glass, one glass of spectacles, one lower denture, two patavas of shoes and one brown colour gents underwear of Rupa Frontline were recovered which were all seized vide memo Ex.PW19/A.

9. While search was being made for the accused from amongst the rickshaw pullers at Sector-16, Rohini on seeing the police the appellant tried to run away. Thus on suspicion he was stopped and apprehended. He was interrogated and he disclosed his name as above. A lady's handkerchief was recovered from his pocket which was seized vide memo Ex.PW19/D. Pursuant to the disclosure of the appellant and at his instance from his room bottle of diluter were recovered.

10. Bhola was produced before the Court on March 14, 2011 in muffled face and according to investigating officer he was kept in muffled face since the time of his arrest. An application Ex.PW-21/D for conducting the TIP of the appellant was made. The TIP proceedings were conducted by PW-10 Shri Jagmohan Singh, Metropolitan Magistrate vide Ex.PW-1/C. In the TIP proceedings the prosecutrix had identified the appellant as the rickshaw puller who injured and raped her after making her unconscious. The only cross-examination of PW-10 regarding TIP is that the signatures of other inmates of the jail who were selected by the accused, were obtained after the proceedings were recorded.

11. The prosecutrix having identified Bhola in the TIP and then in the Court clearly nails down the appellant as the person who assaulted her both physically and sexually on the night of March 11, 2011. The injuries on the prosecutrix which includes injuries on the Labia Minora and bruises on vaginal mucosa corroborate the version of the prosecutrix. The semen not having been detected on the clothes or the vaginal smear of the prosecutrix, would have no bearing in the matter as the

case of the prosecution stands proved beyond reasonable doubt by the version of the prosecutrix her identifying the appellant and her medical condition.

12. The act of the appellant in committing physical and sexual assault on a woman more than the age of his grandmother falls for no sentence less than sentence of the imprisonment for life. Thus we find no ground to interfere in the impugned judgment of conviction and order on sentence.

13. The appeal is accordingly dismissed

14. T.C.R. be returned

15. Two copies of the judgment be sent to the Superintendent, Central Jail, Tihar, one for his record and the other to be handed over to the appellant.