

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State

Vs.

Pankaj Kumar
S/o Late Sh. K. K. Jha,
H-16, 1st Floor Karampura,
Ramesh Nagar.
New Delhi

FIR No. : 274/11
PS. : Moti Nagar
U/S : 376/506 IPC
SC No. : 67/2013

Date of receipt of File After Committal : 28.05.2012
Date of reserving Judgement : 27.07.2020
Date of Judgment : 07.08.2020
Final Decision : Acquittal

JUDGMENT

1. The brief facts of the case are that a complaint was made by the prosecutrix Ms. 'R' to the effect that accused has spoiled her life as he had exploited the prosecutrix on the pretext of false promise of marriage. It is alleged that in the year 2006 accused was working as a tutor and was teaching 5 students, among them prosecutrix was also there. In February 2006, the accused asked her to take extra classes to complete course as she was lagging behind. It is further stated that when other students left the class accused taught her for a while and thereafter started touching her inappropriately. On seeing the conduct and intentions of the accused prosecutrix tried to escape but accused caught hold of her and pulled her, hue and cry was made. The accused immediately put a cloth on her mouth and threatened for life. Accused raped her on that day. The prosecutrix



made hue and cry thereafter but accused apologized and persuaded her to believe that he loves her and gave assurance of marriage. The incident was not disclosed by the prosecutrix to anybody. Accused regularly on the excuse of marriage started raping her and whenever she used to ask about marriage, he used to tell her that in the eyes of god they are husband and wife. It is further stated that accused arranged a different accommodation in Shakarpur area for this very purpose. It is alleged that in the month of July 2009 she was shocked to know that accused was already married. It is stated that on 28.07.2009 the prosecutrix was under stress, depression and in the fit of rage caught hold of accused from collar and asked him about the truth whereupon accused misled her and told her that he wants to get rid of his wife. The wife was called to the office and was confronted with the statement made by the accused which of course was denied by the wife. Accused was made to sign a confession letter wherein he admitted his guilt and sought apology and also promised to pay Rs. 2 Lacs which were taken by him on several occasions. It is further alleged that accused started transmitting emails, dirty and abusive messages as a result of which life of the prosecutrix was completely destroyed. Hence the present complaint was made which culminated in the present FIR. After completion of investigation charge sheet was filed in the present case and was duly committed for 28.05.2012. On 30.11.2012 charge U/s 376/506 IPC was framed to which accused pleaded not guilty and claimed trial.

2. In order to prove its case prosecution examined as many as 9 witnesses.
3. PW1, SI Rameshwar is the Duty Officer in the case. The attested copy of the FIR bearing no. 274/11 dated 30.10.11 was exhibited as Ex. PW1/A.

4. PW2 is the prosecutrix who has deposed about the complaint made by her and has supported the case of the prosecution. The confession letter n was exhibited as Ex. PW2/A, legal notice dated 06.05.2011 issued on her behalf was exhibited as Ex. PW2/B. Complaint dated 13.06.2011 was exhibited as Ex. PW2/C. Complaint dated 04.08.2011 against the IO of the case was exhibited as Ex. PW2/D. Another complaint dated 23.08.2011 against the accused was Ex. PW2/E. Another complaint dated 31.08.2011 was marked as Mark Y. Statement dated 01.07.2011 was already exhibited as Ex. PW5/A. Copies of email were marked as Mark Z. Accused was arrested in her presence, the arrest and personal search memos are Ex. PW4/A and Ex. PW4/B were bearing her signature at point 'A'.
5. PW3, Ms. Shashi is the Mami (Maternal Aunt) of the prosecutrix and has deposed that on 28.07.2009 she received a telephonic call from the prosecutrix who informed that the boy whom she wanted to marry had told her that he is unmarried, however, on checking his email ID she came to know that he is married and thus the prosecutrix wanted her to reach the office. She further deposed that the accused and prosecutrix were in physical relations and wife of the accused was having some psychic problem. She further deposed that a letter was written by the accused which was exhibited as Ex. 2/A and he has also given an undertaking that he would return the money. But despite that the money was not returned. She identified her signature on Ex. PW2/A.
6. PW4, Ct. Nand Ram joined the investigation of the case on 30.10.2011 and was with the IO when the accused was arrested. The arrest and personal search memo is Ex. PW4/A & Ex. PW4/B. IO also seized samples which were exhibited as PW 4/C.



7. PW5 SI Rajender Singh conducted inquiry with respect to the complaint made by the prosecutrix and submitted his report which is Mark PW5/B.
8. PW6, Dr. Manoj Kumar examined the accused vide MLC no. 22688 and the same was exhibited as Ex. PW6/A and opined that there is nothing which could suggest that he is incapable of performing sexual act.
9. PW7 HC Payare Lal was the then MHC(M), SI Vipnesh deposited sealed pullanda along with sample seal, entry in the register no. 19 was made at serial No. 3316/11. The photocopy of the same was exhibited as Ex. PW7/A.
10. PW8, Mr. Anoop Grover is the employer of the accused as well as of the prosecutrix and has deposed that in the year 2010, prosecutrix called him and told him that she wanted to discuss some personal matter. She told him that when she had brought accused Pankaj to him, he had written in his CV that he is unmarried but now she has come to know that he was married. She also told him that she was in relation with accused Pankaj Kumar. On the same evening she came to the office with her aunt. Since accused was not present, he called him and accused along with his wife came to the office. When prosecutrix was talking to wife of accused, he was asked to leave the room and whatever conversation took place, it was in his absence. When he came back to the room, he came to know that they had reached some settlement. As per his knowledge, the matter was settled for a sum of Rs. 2,00,000/-, the terms of settlement were reduced into writing.
11. PW9 is the IO of the case who has deposed about the investigation carried out by her.

12. Statement of accused was recorded on 04.12.2018. Accused examined his wife Kumud Jha as DW1 who has stated that on 28.07.2009 two ladies had created a scene in the office and her husband was forced to sign Ex. PW2/A. DE was closed on 28.01.2019.
13. Sh. Ajay Burman, Ld. Senior Counsel along with Ms. Sadhvi Gaur and Ms. Tanya Harnal have argued that the testimony of the prosecutrix is not reliable, the case is of consent, no ingredient of offence punishable under Section 376 IPC are made out. It is argued that in July 2009 the prosecutrix came to know the fact that accused was married but even thereafter prosecutrix took 2 years to make the complaint. It is argued that girl is of mature age and there is no occasion that rape could have been committed. Ld. Senior Counsel for the accused has stated that the prosecutrix for the first time has spoken about the use of knife and this fact was never stated in her previous statements made to the police.
14. It is further argued that the extra judicial confession which the prosecution seeks to rely upon cannot be used in any capacity either as a corroborative piece of evidence or as an independent piece of evidence. It is argued that from the testimony of the prosecution witnesses it is clear that the same was obtained under duress. Alternatively, it is argued that even if for the sake of arguments it is presumed that the extra judicial confession was obtained voluntarily it cannot be relied upon as it is a very weak piece of evidence. It is submitted that PW8 who was an independent witness has categorically stated that the said confession was not prepared in his presence. It is submitted that the testimony of the prosecutrix cannot be relied upon to convict the accused as in every breath she has



changed her statement which creates doubt and the benefit of the same should go to the accused.

15. On the other hand, Sh. Subhash Chauhan, Ld. Addl. PP for State submits that some improvements and contradictions, if occurred are natural and they do not go to root of the case. It is argued that extra judicial confession was signed by the wife and was never retracted. It is submitted that the earlier complaint was marked to SI Satender who did not carry out fair investigation and in fact had changed the first page of Mark PW 5/A. As such after vigilance inquiry and prosecution opinion, the present FIR was registered, therefore, the delay has been explained. It is submitted that PW 2, 3, 8 & 9 who are the material witnesses have fully supported the case of the prosecution.

16. In rebuttal it is argued that no question was put to PW5 with respect to change of page or the inquiry not being proper. In support of his arguments Ld. Counsel for accused has relied upon the following judgments, **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharastra & Ors. 2019 (4) JJ 324; K. P. Thimmappa Govda Vs. State of Karnataka 2011 (4) SCC 675; Kuldeep Tyagi Vs. State of NCT of Delhi 2013 (2) JCC 840 ; Dalip Singh @ Dalip Kumar Vs. State of Bihar 2005 (1) SCC 88; Uday Vs. State of Karnataka AIR 2003 SC 1639; Raghunath Dhondhu Vani Vs. Ilahi Babulal Mujavar; Saha Devan & Anr. Vs. State of Tamil Nadu 2012 (6) SCC 403; Rohit Tiwari Vs. State 2016 VIII A. D. (Delhi) 219; State of Rajasthan Vs. Raja Ram 2003 SCC (Cri) 1965; State Vs. Nitin Kumar 2017 (3) JCC 1781.**

17. I have heard Ld. Senior Counsel for accused and Ld. Addl. PP for state and perused the record.

18. In view of the submissions made before this Court, broadly they can be summarized into three categories they are :-

- a. Delay in registration of FIR.
- b. Extra Judicial confession is a weak piece of evidence and in any case it was obtained under duress and coercion.
- c. The testimony of prosecutrix is unreliable to convict the accused.
- d. There was no false promise of marriage.

19. In **Ram Dass and Anr. Vs. State of Maharashtra 2007 (3) SCC 170** it has been held that :

“what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence and the court must consider the delay in the background of the facts and circumstances of each case.”

20. Therefore, delay would be a question of fact and no straight jacket formula can be laid down and each case has to be examined on the basis of its facts.

21. In the present case PW2 has deposed that she came in contact with the accused in February, 2006 and wherein for the first time she was raped but since the accused made promise that he would marry her she continued with the relationship. It is again deposed by her that in July, 2009 she came to know through the email ID of the accused that he was married and she thereafter made inquiry. Even thereafter prosecutrix continued relations with the accused. The same can be deciphered from the testimony of PW2 and PW8. The relevant portion of testimony of PW2 is reproduced as under :

“We decided not to report the matter to the police as it would effect my reputation and it was agreed

that he would return the money which he had taken from me”.

22. PW2 in her cross examination has admitted that after 28.07.2009 till 06.05.2011 she remained quite, but denied that she was in relation with the accused. However Ex. PW2/DA is her previous statement recorded by SI Rajender wherein she had categorically stated that she had physical relations with the accused during this period. When this portion was confronted with, she denied making any statement and in fact stated that IO had wrongly recorded her statement. SI Rajender had stepped into the witness box and no question was put to him that he had manipulated the statement of the prosecutrix. In fact, Vigilance report is on record, which does not find any fault with SI Rajender.

23. Moreover, PW8 who is an independent witness has categorically deposed that he came to know after one or two months from July, 2009, that prosecutrix was again going around with the accused and he tried to make prosecutrix understand that it was not good on her part. The relevant portion of the testimony is reproduced as under:

“After a month or two I again came to know that prosecutrix was going around with the accused and I tried to make prosecutrix understand that it was not good at her part. The prosecutrix told me that the accused was trying for getting the divorce from his wife. I asked the prosecutrix whether the accused had filed any divorce case, it was denied by the prosecutrix and I again told her not to get involved into this and better to leave the accused as the divorce proceedings will take many years.

None of them paid any heed to my piece of advice..."

24 The first part of the statement can be termed as hearsay, since PW8 had derived the knowledge from somebody but in so far as the later part is concerned, he had clearly confronted the prosecutrix who did not listen and continued with the relation.

25 Thus from the evidence it is clearly established that prosecutrix continued with her relationship even after 2009 and filed her complaint in the year 2011. This delay of about 2 years is fatal to the case of the prosecution and has not been explained by the prosecution. the benefit of the same has to be granted to the accused. The delay which has been explained is from the date of making the complaint and registration of the FIR.

Extra Judicial Confession.

26 In **Saha Devan and Anr. (Supra)** the Hon'ble Supreme Court has laid down the principle in respect of the evidentiary value and reliability of an extra judicial confession. They are

- (i) The extra judicial confession is a weak piece by itself. It has to be examined by the Court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statements evidentially has to be proved like any other fact in accordance with law.

27 Ex. PW2/A, the alleged confession letter is to be read keeping in mind these broader principles of law. PW2 in her cross examination has categorically stated that her Mami i.e. PW3 caught accused Pankaj from his hair, but did not slap accused Pankaj. PW3 has also deposed on similar lines. PW-8, has stated that a settlement was arrived at between them. Although PW-2 has categorically stated that Ex. PW2/A, was signed by PW-8, but neither PW8 was shown the document neither he has deposed about the same. Rather in his cross examination he has stated that PW-3 had given good beatings to the accused and pulled his hair. So from the testimony of PW2 it stands established that before this confession was written by the accused he was humiliated and beaten. The accused did not confess on his own accord but was made to confess, and therefore, it cannot be voluntarily. PW2/B is the legal notice got issued by PW2, wherein she demanded that accused should fulfill his promise as made in Ex. PW2/A, where in para 7, it is alleged that confession was obtained with due intervention of some respectable person. Thus, from the backdrop of the above discussion it can be easily inferred that Ex. PW2/A was involuntarily obtained from accused and is liable to be discarded.

28 Even if for the sake of argument, Ex. PW2/A is to be read in evidence it would only prove that false assurance of marriage was given by the accused and nowhere has the accused admitted that he had forcibly raped the prosecutrix in February 2006. The relevant part of Ex. PW 2/A is reproduced as under:-

***"I Pankaj Kumar, S/o Late Sh. K. K. Jha, R/o A-51,
Civil Lines, Allahabad or H-16, Karampura, New***

Delhi (existing) confirm that I have committed a girl name 'R' (name is being withheld) for marriage, where I am already married & gave her wrong statement that I am unmarried. I have made a mistake, & I have tortured her mentally & physically ..."

29 There are no details. This confession letter does not mention that in February, 2006, she was raped and then assurance was given by the accused, that he would marry her. Thus, the said confession letter even if it is assumed to be voluntarily cannot lead to conviction of the accused as it cannot be used as a corroborative piece of evidence.

30 In **Raghu Nath Dhondhuwani** it was held that the confessional statement obtained under threat of police action cannot be relied upon and the benefit was given to the accused.

Material contradictions in the testimony of PW2 and false assurance of marriage.

31 It was next argued that there are material contradictions in the statement of the prosecutrix. In so far as rape cases are concerned conviction can be based on the sole testimony of the prosecution witness provided the testimony of the witness is of sterling quality and does not require corroboration.

32 The Hon'ble supreme Court in rights **Rai Sandeep @ Deepu vs. State (2012) 8SCC 21** has laid down the essentials of sterling witness which are as under:

" In our considered opinion, the "sterling witness" should be of a very high quality and caliber whose version of should, therefore, be unassailable. The court considering the version of such witness should be in 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 howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of it. Such a version should have correlation with each other and every one of other supporting material such as the recovery is made, the weapon used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently matched 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 such similar tests to be applied, can it 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 material for holding the offender guilty of the charge alleged.”

33 In the light of the above judgment it has to be seen whether the testimony of PW2 is of sterling quality or not and the contradictions pointed out by the the Ld. Senior Counsel goes to the root of the case.

34 PW2 has deposed that in February, 2006 accused Pankaj Kumar, who was her tutor and teaching her English, had asked her to take extra classes as she was lagging behind. One day during those extra classes, while she was alone accused raped her, and thereafter gave a false assurance of marriage. She further deposed that on 28.07.2009, she came to know that accused was already married and she confronted the accused, who not only confessed but also assured that he would give divorce to his wife. Ld. Counsel for the accused argued that for the first time in her deposition PW2 has

stated that knife was shown to her and this fact in itself makes her testimony unreliable. Reliance has been placed on the judgment of **Nitin Kumar**(Supra).

35 The Hon'ble Delhi High Court in **State Vs. Nitin Kumar 2017 (3) JCC 1481**, disbelieved the statement of the prosecutrix and one of the ground was that she failed to state in her previous statement that knife was used by the accused before abducting her. The relevant portion is reproduced as under:-

“Even otherwise the testimony of the prosecutrix is questionable or unbelievable as the place where the prosecutrix was allegedly abducted is a market place and a busy thoroughfare. The prosecutrix did not raise any alarm until she was confined in the room. It was only in her cross examination before the Trial Court that she deposed that Nitin/respondent had a knife and pointed it to keep the prosecutrix silent. This fact was neither recorded in her statements under Section 161 Cr.P.C or Section 164 Cr.P.C. or before the Juvenile Board and the only reason for such omission was that she was never asked. Hence, it is unlikely that there was any weapon as no witness can forget or omit to state such a vital fact in her statement, not once but three times. It is settled law that when the testimony of the prosecution is improbable, supporting evidence is called for and there was none in the present case”.

36. In the cross examination conducted on 15.09.2018, PW2 has admitted that, the factum of knife being shown to her was not mentioned either in the legal notice Ex. PW2/B nor in the statement dated 30.10.2011. However, she stated that this fact was stated by her in the statement dated 01.07.2011, she was confronted with the said statement and nowhere the said fact was recorded. In terms of the above said judgment the testimony of PW2 is liable to be discarded. The prosecutrix could not have forgotten that when she was raped, accused had used knife to threaten her. This is a clear improvement and is fatal to the case of the prosecution. PW-2 is a matured lady graduated from Laxmi College and further did a course from ITI. She fully knew the consequences of the act. In her statement Ex. PW2/DA, she has categorically stated that she had sexual relations with the accused with her consent but in deposition she takes a complete U turn and denies having made such statement. In the cross examination, she admits that after a gap of 10-12 days accused used to establish physical relations with her. Certainly, they could not be under any threat, as that would mean every time relations were established, PW2 was threatened but that is not her case. According to the version of PW2, the first act was forceful and thereafter she consented as false assurance of marriage was given and it is in this context she admitted during her cross examination that they are residing as husband and wife. In Rohit Tiwari (Supra) the Hon'ble High Court held as under :-

“where was the compulsion for the prosecutrix to have physical relationship repeatedly without ensuring that the appellant and his family member were willing to perform marriage with her? She was mature enough to fully understand as to what

was happening between the two. There is nothing in her evidence to demonstrate that she was incapable of understanding the nature and implication of the act which she consented to. Her consent for physical relationship (if any) was an act of conscious reason. If a fully grown up lady consents to the act of sexual intercourse on a promise to marry and continues to indulge in such activity for long, it is an act of promiscuity on her part and not an act induced by misconception of fact. 'X' is not believed to allow the appellant to have physical relations repeatedly without first ensuring authenticity of the alleged promise to marriage particularly when they both were married."

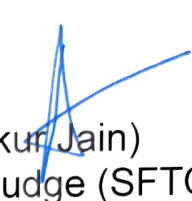
37 PW2 was fully aware of the acts. They continued to be in relation for over a period of 3 years, but not once PW2 has stated that how many times, she asked the accused to marry, and it was refused. In fact in her cross examination she admitted that they had taken a different house in the same locality where they were living and during they would go back to their respective houses as there family members were not aware of the relation. PW-2 had come to know in July 2009, that accused was married even thereafter the relationship continued. She issued a legal notice and demanded that the promise made in Ex.P.W. 2/A should be fulfilled , which was payment of Rs 2,00,000/-. The present FIR was used as a tool to recover the said amount. Thus under no circumstances it can be said that a false promise was made by the accused as defined in the judgement of Dr. Dhruvaran

Murlidhar Sonar (Supra). Therefore, in facts and circumstances the accused cannot be convicted of the offences charged with and as such the benefit of doubt has to go to the accused. accordingly, the accused is acquitted of the offences charged with.

38 Considering the circumstances prevailing in the country and the fact that physical hearing have been suspended the bail bond of the accused which were submitted by him earlier are extended for another period of 6 months.

File be consigned to record room after due compliance.

Announced through CISCO WEB EX.



(Ankur Jain)

Addl. Sessions Judge (SFTC-01) West
Delhi/07.08.2020