

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

RESERVED ON : 21st JULY, 2016
DECIDED ON : 28th JULY, 2016

+ **CRL.A.874/2005**

DINESH KUMAR SINGH Appellant

Through : Mr.Dinesh Parashar, Advocate with
Mr.N.P.Mangla, Advocate.

VERSUS

THE STATE Respondent

Through : Mr.Amit Gupta, APP for State

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant appeal has been preferred by the appellant – Dinesh Kumar Singh to challenge the legality and correctness of a judgment dated 25.04.2005 of learned Addl. Sessions Judge in Sessions Case No.21/2003 arising out of FIR No.710/02 PS Lajpat Nagar by which he was held guilty for committing offences punishable under Sections 376/323 IPC. By an order dated 09.05.2005, he was sentenced to undergo RI for seven years with fine ₹1,000/- under Section 376 IPC and RI for one month under Section 323 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on the night intervening 30/31.10.2002 at around 01.00 a.m. in the

bathroom on second floor of House No.85, Parkash Mohalla, Garhi, the appellant committed rape upon the prosecutrix 'X' (assumed name) and also inflicted injuries to her. DD No.34 (Ex.PW-8/A) came into existence at around 01.30 a.m. at Police Post Garhi, Police Station Lajpat Nagar on receipt of information given by X's husband disclosing commission of rape upon his wife. The Investigating Officer after recording victim's statement (Ex.PW-2/A) lodged First Information Report. 'X' was medically examined. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent for examination. Upon completion of investigation, a charge-sheet was filed against the appellant. In order to establish its case, the prosecution examined fifteen witnesses. In 313 Cr.P.C. statement, the appellant pleaded false implication and claimed innocence. He examined himself as DW-1. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material discrepancies and inconsistencies emerging in the prosecution case were ignored without any valid reasons. It was highly unbelievable that in a bathroom measuring 2'5" X 2'5" such an incident of commission of rape could happen. The prosecutrix did not furnish true facts and has falsely implicated the appellant to avoid payment of ₹50,000/- taken by her husband as loan. Learned Addl. Public Prosecutor urged that the prosecutrix has attributed specific role to the accused and no sound reasons exist to

disbelieve her. The FIR was lodged promptly without any delay and the appellant was named therein.

4. At the outset, it may be mentioned that appellant's conviction is primarily based upon the sole testimony of the prosecutrix. Needless to say, conviction can be based upon the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration. To examine the case of the prosecution, the trustworthiness of testimony of the prosecutrix is to be analysed threadbare; it should be of sterling quality.

5. Admitted position is that the prosecutrix used to live on the second floor at House No.85, Parkash Mohalla, Garhi, along with her husband and three children. The accused along with his brother-in-law also lived on the same floor in the adjacent room. It is also admitted that there was a common 'bathroom' adjoining to X's rented accommodation which was used by all the inmates occupying nine rooms on the second floor. There was no light in the bathroom.

6. The occurrence took place on the night intervening 30/31.10.2002 when the prosecutrix allegedly had gone to answer call of nature at around 01.00 a.m. (night). It is to be noted that there was no previous history of inimical relations between the appellant and the prosecutrix or her family members. 'X' and her family members had never lodged any complaint whatsoever regarding appellant's conduct or behaviour. They all were well-acquainted with each other. It is mystery as to how the appellant had inkling about the sudden arrival of the prosecutrix in the 'bathroom' at that odd hour of night (01.00 a.m.) to plan commission

of rape. X's husband (PW-3 Suryanarayan) and the children were available in the house at that time. Admittedly, when 'X' had gone to ease in the bathroom, she had kept the light of her room 'on' to reach it to the bathroom. In such a scenario, it was highly difficult to forcibly establish physical relation with the prosecutrix against her wishes and consent as there was every possibility of X's husband and children to wake-up on hearing commotion. The prosecutrix aged 32 years during her stay in the bathroom did not raise any alarm. She did not suffer any injury on her private parts. No violent marks were found on her person to infer if she offered any resistance. It seems that after X's husband caught them together in objectionable position, to save her skin, the accused was implicated. Possibility of the prosecutrix and the appellant to have physical relation with consent can't be ruled out. No independent public witness was associated during investigation. PW-6 (Om Parkash), the landlord, merely deposed that both the prosecutrix and the appellant lived as tenants in their respective rooms on the same floor. He did not state if he was approached by the victim after the alleged rape incident.

7. Material discrepancies / contradictions have emerged in the statements of the prosecutrix and her husband (PW-3 Suryanarayan) as to the place where her statement was recorded by the police; whether the physical relationship took place between the two while 'standing' or when she was lying on the ground after push; who bolted the door of the room from outside; who came subsequently to open it etc. Evidence further reveals that the prosecutrix did not bleed due to injuries suffered by her; her clothes were not torn. The accused was not armed with any weapon. After the occurrence, the accused had left the spot. X's husband had seen him

going to his room but no attempt was made by him to apprehend him. Both PW-3 (Suryanarayan) and PW-2 'X' have given inconsistent version as to where the accused had gone after the occurrence.

8. True, during trial, the accused did not take the specific plea to have physical relationship with the prosecutrix with consent. It has, however, come on record that at the time of moving application for bail initially it was the specific case of the appellant that the physical relationship were with consent and when X's husband came to know about it, he gave beatings to the prosecutrix and he was falsely implicated in this case. It appears that subsequently due to some advice the appellant did not strict to that defence and erroneously pleaded that his false implication was due to non-payment of ₹40,000/- by X's husband taken as loan from him. This defence deserves outright rejection as nothing has come on record if the accused had given any amount as loan to X's husband, and if so, when and where. Moreover, to avoid such payment (if any) the husband is not expected to 'use' his wife to settle the score. For petty amount of ₹40,000/- or ₹50,000/- prosecutrix's husband would not put honour of her wife and children at stake. Nevertheless, the prosecution is under legal obligation to prove its case beyond reasonable doubt and it cannot take the benefit of the weakness of the case of the appellant.

9. Considering the facts and circumstances of the case, I am of the view that the prosecution has failed to prove its case beyond reasonable doubt. The appellant deserves benefit of doubt.

10. Resultantly, appellant's appeal is accepted. The conviction and sentence are set aside. Bail bond(s) and surety bond(s) stand discharged.

Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

**(S.P.GARG)
JUDGE**

JULY 28, 2016 / tr

