

Delhi District Court

State vs Mr. Sunil Sharma, S/O Mr. Shyam ... on 12 February, 2013

Author: Ms. Nivedita Sharma

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IN THE COURT OF MS. NIVEDITA ANIL SHARMA,  
ADDITIONAL SESSIONS JUDGE  
(SPECIAL FAST TRACK COURT)-01,  
WEST, TIS HAZARI COURTS, DELHI

Sessions Case Number : 44 of 2013.  
Unique Case ID Number : 02401R0547372012.

State versus Mr. Sunil Sharma, S/o Mr. Shyam Sunder Sharma,  
Resident of B-153, Fateh Nagar, Delhi.

First Information Report Number : 186/2012.  
Police Station Hari Nagar,  
Under section 376/506 of the Indian Penal Code.

Date of filing of the charge sheet before : 21.11.2012.  
the Court of the Metropolitan Magistrate  
Date of receipt of file after committal : 09.01.2013.  
Arguments concluded on : 12.02.2013.  
Date of judgment : 12.02.2013.

Appearances: Mr.Anil Kumar, Additional Public Prosecutor for the State.  
Accused on bail with counsel Mr. M.M. Khan.  
Ms.Sadhna Singh, Counsel for Delhi Commission for Women.

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JUDGMENT

"To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then

woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If nonviolence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?"----Mahatma Gandhi.

1. Mr.Sunil Sharma, the accused, has been charge sheeted by Police Station Hari Nagar, Delhi for the offence under section 376/506 of the Indian Penal Code (hereinafter referred to as the IPC) on the allegations that on 29.04.2012 to 19.05.2012 at house no. 153, B-Block, Fateh Nagar, Hari Nagar, New Delhi, within the jurisdiction of Police Station Hari Nagar he committed rape on the prosecutrix (name withheld to protect her identity).

2. After completion of the investigation, the charge sheet was filed before the Court of the learned Metropolitan Magistrate on 21.11.2012 and after its committal, the case has been assigned to the Court of the Additional Sessions Judge, Special Judge (NDPS), West, Delhi for 09.01.2013.

3. After hearing arguments, charge for offence under sections 376 and 506 of the IPC was framed against the accused to which he pleaded not guilty and claimed trial.

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4. In order to prove its case, the prosecution has examined the prosecutrix as PW1.

5. All the safeguards as per the directions of the Hon'ble Delhi High Court and Hon'ble Supreme Court while recording the statement of the prosecutrix have been taken and the proceedings have been conducted in camera. Guidelines for recording of evidence of vulnerable witness in criminal matters, as approved by the "Committee to monitor proper implementation of several guidelines laid down by the Supreme Court as well as High Court of Delhi for dealing with matters pertaining to sexual offences and child witnesses" have been followed.

6. The prosecutrix, as PW1, has deposed that on 09.04.2012, she started doing work at the house of Mr.Sunil Sharma, accused present in the court today (witness has correctly identified the accused ) as a maid servant at H. No. B-153, Fateh Nagar, New Delhi. She had got this job through one Mr. Rohit who runs the placement agency by the name of Nizam in Swam Sidha Colony, Punjabi Bagh, New Delhi. Her salary was fixed at Rs.4000/- per month. She started residing in the house of the accused w.e.f. 09.04.2012. Both the accused and his wife were not satisfied with her work and they used to abuse and beat her. She had complained to Mr. Rohit but he had told her to continue with

the work as there was no replacement available with him at that time. She continued to work for a period of one month and thirteen days. The accused had paid her salary. As she used to be beaten, she telephoned the police at 100 number on 22.05.2012 probably. The police came to the house of the accused. She told the police that she Sessions Case Number : 44 of 2013.

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used to be beaten and abused by the accused and his wife and the police recorded her statement on which she had signed and she has proved her statement as Ex.PW1/A and her signature on the same. She had not told the police anything else. The police had called the officials of some NGO to counsel her. She had told the same facts that she used to be beaten and abused by the accused and his wife to the officials of the NGO. The police took me to DDU Hospital after two days of her statement where she was medically examined. She had not told the doctor about anything which had happened with her. The doctor had not taken her clothes but had taken my blood sample and other samples. Thereafter, she went to the placement agency run by Mr. Rohit.

7. As the prosecutrix was hostile and had resiled from her earlier statement, the Additional Public Prosecutor has cross-examined her.

8. In her cross examination by the Additional Public Prosecutor for State, she has admitted that she can read and write Hindi Language. She had read her statement to the police before signing it. She was made to sign on some blank papers by the police. She has denied all the contents of Ex.PW1/A regarding all the allegations of four incidents of rape on 29.04.2012, 05.05.2012, 13.05.2012 and 19.05.2012. She has admitted that she had telephoned the police from her mobile phone no. 8750950169 on 22.05.2012. She has denied the suggestions given to her that she has compromised with the accused, has been won over by him etc.

9. In her cross examination by the accused, she has admitted that Sessions Case Number : 44 of 2013.

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she had informed the officials of the NGO that the accused has not paid her my entire salary and that her statement was recorded by the officials of the NGO which is Ex.PW1/D1 and it bears my thumb impression at point A. She has also admitted that she had stated to the SHO, PS Hari Nagar that the accused has not committed any offence and she did not wish to get her medical examination conducted and her statement to the same effect is Ex.PW1/D2 and it bears my signature at point A. She has admitted that she had signed on Ex.PW1/A when nothing had been written on it and it is one of the blank papers on which the police had taken her signatures. She has admitted to be correct that the accused is innocent and has not committed any offence and has not raped her on any occasion.

10. The prosecutrix, has not deposed an iota of evidence of her being raped at all. She has not even mentioned the word "rape" in her evidence nor has deposed anything incriminating against the accused Mr.Sunil Sharma.

11. In the circumstances, as PW1, the prosecutrix, who is the star witness has turned hostile and has not supported the prosecution case and more importantly has not assigned any criminal role to the accused, the prosecution evidence is closed, declining the request of the Additional Public Prosecutor for leading further evidence, as it shall be futile to record the testimonies of other witnesses, who are official in nature. The precious Court time should not be wasted in recording the evidence of formal or official witnesses when the prosecutrix herself has not supported the prosecution case and is hostile.

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12. Statement of the accused is dispensed with as there is nothing incriminating against him when the prosecutrix is hostile and nothing material has come forth in her cross examination by the prosecution.

13. I have heard arguments at length. I have also given my conscious thought and prolonged consideration to the material on record, relevant provisions of law and the precedents on the point.

14. In the light of the aforesaid nature of deposition of the prosecutrix, PW1, who happens to be the material witnesses, I am of the considered view that her deposition cannot be treated as trustworthy and reliable. Reliance can also be placed upon the judgment reported as Suraj Mal versus The State (Delhi Admn.), AIR 1979 S.C. 1408, wherein it has been observed by the Supreme Court as:

"Where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness."

15. Similar view was also taken in the judgment reported as Madari @ Dhiraj & Ors. v. State of Chhattisgarh, 2004(1) C.C. Cases 487.

16. Consequently, no inference can be drawn that the accused is guilty of raping the prosecutrix. There is no material on record to suggest that the prosecutrix was ever raped by the accused. No case is made out Sessions Case Number : 44 of 2013.

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against the accused as there is no incriminating evidence against him.

17. Crucially, the materials and evident on the record do not bridge the gap between "may be true" and must be true" so essential for a Court to cross, while finding the guilty of an accused, particularly in cases where once the prosecutrix has herself claimed that the accused is innocent and has not committed any offence. Even otherwise, no useful purpose would be served by adopting any hyper technical approach in the issue.

18. Consequently, no inference can be drawn that the accused is guilty of the charged offence under sections 376 and 506 of the IPC. There is no material on record to show that the accused on 29.04.2012 to 19.05.2012 at house no. 153, B-Block, Fateh Nagar, Hari Nagar, New Delhi, he committed rape on the prosecutrix.

19. From the above discussion, it is clear that the evidence of the prosecution is neither reliable nor believable and is not trustworthy and the prosecution has failed to establish rape. The evidence of the prosecutrix makes it highly improbable that such an incident ever took place.

20. Therefore, in view of above discussion, the conscience of this Court is completely satisfied that the prosecution has failed to bring home the charge against the accused, Mr.Sunil Sharma, for the offence under sections 376 and 506 of the IPC.

21. Consequently, the accused, Sunil Sharma, is hereby Sessions Case Number : 44 of 2013.

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acquitted of the charge for the offence under sections 376 and 506 of the IPC.

22. Compliance of section 437-A Cr.P.C. is made in the order sheet.

23. Case property be destroyed after expiry of period of limitation of appeal.

24. It would not be out of place to mention here that today there is a public outrage and a hue and cry is being raised everywhere that Courts are not convicting the rape accused. However, no man, accused of rape, can be convicted if the witnesses do not support the prosecution case or give quality evidence, as in the present case where the prosecutrix is hostile, as already discussed above. It should not be ignored that the Court has to confine itself to the ambit of law and the contents of the file as well as the testimonies of the witnesses and is not to be swayed by emotions or reporting in the media.

25. It would be also pertinent to observe here that a recent trend is surfacing where either a domestic worker is being underpaid or where she has been detained by the employer for an unusually long period or where her work is unsatisfactory that such a domestic worker has unfortunately resorted to invoke the laws relating to sexual abuse for achieving their goal, may be due to ill advice, as is clear in the present case. A spurt of cases are being registered on the false allegations made by domestic workers, migrant as well as local, regarding rape and physical abuse by the employers. This Sessions Case Number : 44 of 2013.

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trend requires to be nipped in the bud itself and the precious time of the government agencies i.e. the police, the judiciary etc. should not be wasted.

26. One copy of the judgment be given to the Additional Public Prosecutor, as requested.

27. After the completion of formalities and expiry of the period of limitation for appeal, the file be consigned to the record room.

Announced in the open Court on (NIVEDITA ANIL SHARMA) this 12th day of February, 2013. Additional Sessions Judge, (Special Fast Track Court)-01, West, Tis Hazari Courts, Delhi.

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