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TAMEEZUDDIN @ TAMMU

v.

STATE OF (NCT) OF DELHI

(Criminal Appeal No.1289 of 2004)

B

AUGUST 26, 2009

[HARJIT SINGH BEDI AND AFTAB ALAM, JJ.]

PENAL CODE, 1860

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ss.. 376 and 506 allegations by prosecutrix and her husband of rape on her—Doctor examining the prosecutrix found no evidence of rape or any injury on her person – Conviction by trial court – Affirmed by High Court – Held: It is true that in a case of rape, evidence of prosecutrix must

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be given predominant consideration, but to hold that her evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter – The prosecution story in the instant case is indeed

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improbable – Prosecutrix had narrated the sordid story to her husband on his return from the market and he very gracefully told the accused that everything was forgiven and forgotten, but nevertheless lured him to the police station – If such statement had indeed been made by PW-2, there would have

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been no occasion to even go to the police station – Assuming, however, that the appellant was naïve and unaware that he was being led deceitfully to the police station, once having reached there he could not have failed to realize his predicament as the trappings of a police station are familiar and distinctive – Even otherwise, the evidence shows that the

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accused had been running a kirana shop in the area, and would, thus, have been aware of the location of the police station – In this view of the matter, some supporting evidence was essential for the prosecution case – Medical evidence does not support commission of rape – Moreover, two or three

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persons who were present in the factory premises when rape was stated to have been committed, were not examined in court as witnesses, though their statements had been recorded during the course of investigation – In this background, merely because vaginal swabs and salwar had semen stains thereon would, at best, be evidence of commission of sexual intercourse but not of rape – Significantly also, the semen found was not co-related to accused as his blood samples had not been taken - In this background the evidence of defence witness becomes very relevant – This witness testified that there was no occasion for PW-2 to have come to the factory as no payment was due to him on any account – Courts below were remiss in holding that as no written accounts had been maintained by defence witness and no receipt relating to any earlier payment to PW-2 had been produced by him, his testimony was not acceptable, the more so, as the factory was a small one and he was a petty factory owner – Accused had been sentenced to imprisonment for a term of seven years, he had already exceeded that period before his release on bail – Judgments of trial court and High Court are set aside and the accused is acquitted.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1289 of 2004.

From the Judgment & Order dated 18.12.2001 of the High Court of Judicature at Delhi at New Delhi in Criminal Appeal No. 93 of 1997.

Seeraj Bagga (A.C.) for the Appellant.

Anil Katiyar for the Respondent.

The following Order of the Court was delivered

O R D E R

The appellant herein, Tameezuddin, was convicted under

- A Section 376 of the IPC by the Court of Sessions and sentenced to undergo R.I. for 84 months and a fine of Rs.14,000/- and in default of payment of fine to further undergo R.I. for six months and under Section 506 (ii) of the IPC, to a sentence of 36 months and fine and in default of payment of fine, to undergo
- B R.I. for one month, both the sentences were directed to run concurrently.

C As per the prosecution story PW.1, the prosecutrix, and her husband, PW-2 Dinesh Mishra who was a rickshaw puller by profession, had come to Delhi along with her children two months prior to the occurrence. On 28th September, 1995, PW-1 & PW-2 had gone to the latter's ex-employer, a factory owner DW.1 Mohd. Zaki, to recover some money that was due to him.

D When they reached the factory premises they found that DW-1 was not present but several other persons including the appellant, a shop keeper who was known to PW-2, were present. The appellant sent PW.2 out of the factory on the pretext of buying some meat and after some of the workmen who were present had left, he caught hold of the prosecutrix, took her to the first floor of the factory and then committed rape

E upon her and threatened that in case she reported the matter to anybody she would be dealt with. PW.2 returned a short while later and she narrated the entire story to him. PW. 2, however, told the appellant that whatever had happened was to be forgotten and that bygones were to be bygones but he

F nevertheless took the appellant to the police station accompanied by PW-1 and their children and lodged the FIR against the appellant. The appellant was also arrested in the police station at that very time and in due course was sent up for trial.

G In order to support its case the prosecution examined PW.1 the prosecutrix; PW.2, Dinesh Chand Mishra, her husband; PW.9 Dr. Charu Lata who had examined the prosecutrix but had found no evidence of rape or any injury on her person and

H PW.10 Dr. R. Dyal, who had medically examined the appellant

and opined that there was nothing to suggest that he was incapable of performing sexual intercourse. Dr. Charu Lata also took the vaginal swabs of the prosecutrix and removed the salwar that she was wearing at that time and sent both these articles for examination to the FSL. The report of the Laboratory revealed the presence of semen on the vaginal swabs as well as on the salwar.

The trial Court while commenting on the evidence of PW.1 and PW.2 observed that it would be difficult to believe that any self-respecting woman or her husband would come forward to make a humiliating statement against her honour and that, in such a situation, her statement alleging rape was to be accepted more particularly as there was no discrepancy of the nature that could be fatal to the prosecution's case. Accepting the aforesaid evidence, the trial Court convicted and sentenced the accused as already mentioned above. The judgment of the trial Court was affirmed by the High Court in appeal. The matter is before us at the instance of the accused by way of special leave.

Mr. Bagga, the learned amicus curiae for the appellant has, first and foremost, pointed out that the story projected by the prosecution was on the face unacceptable, in the light of the fact that PW.1 had narrated the entire story to PW.2, her husband, but they had still managed to lure the appellant to the police station and had handed him over to the police. He has submitted that this story did not fit in with normal human conduct so as to inspire confidence in the prosecution story. He has further pointed out that some corroboration for the ocular account could have been found from the medical evidence but this too was uncertain as Dr. Charu Lata PW.9 had deposed that there was no evidence to suggest the commission of rape. He has also submitted that as per the prosecution story itself there were at least two persons present in the factory premises at the time of the commission of the rape and (though as per the statement of the investigating officer) their statements had

A been recorded under Section 161 of the Cr.P.C., they had not been produced in evidence. He has accordingly pointed out that the defence story projected by DW.1 Mohd. Zaki, the owner of the factory premises, that no amount was due towards PW.2, infact knocked out the foundations of the prosecution story.

B The learned counsel for the State has, however, submitted that the courts below had found, on a minute appreciation of the evidence, that the statements of PW.1 and PW2 had to be accepted and merely because the medical examination was indeterminate and did not reveal anything categoric in favour
C of the prosecution, was no reason to disbelieve their statements, more particularly as semen stains had been found on the swabs and the salwar.

D It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed
E improbable. We note from the evidence that PW.1 had narrated the sordid story to PW.2 on his return from the market and he had very gracefully told the appellant that everything was forgiven and forgotten but had nevertheless lured him to the police station. If such statement had indeed been made by the PW.2
F there would have been no occasion to even go to the police station. Assuming, however, that the appellant was naïve and unaware that he was being lead deceitfully to the police station, once having reached there he could not have failed to realize his predicament as the trappings of a police station are familiar and distinctive. Even otherwise, the evidence shows that the
G appellant had been running a kirana shop in this area, and would, thus, have been aware of the location of the Police Station. In this view of the matter, some supporting evidence was essential for the prosecution's case. As already mentioned above the medical evidence does not support the commission
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of rape. Moreover, the two or three persons who were present in the factory premises when the rape had been committed were not examined in Court as witnesses though their statements had been recorded during the course of the investigation. In this background, merely because the vaginal swabs and the salwar had semen stains thereon would, at best, be evidence of the commission of sexual intercourse but not of rape. Significantly also, the semen found was not co-related to the appellant as his blood samples had not been taken. In this background the evidence of the defence witness, Mohd. Zaki becomes very relevant. This witness testified that there was no occasion for PW.2 to have come to the factory as no payment was due to him on any account. The courts below were to our mind remiss in holding that as no written accounts had been maintained by Mohd. Zaki and no receipt relating to any earlier payment to PW.2 had been produced by him, his testimony was not acceptable, the more so, as the factory was a small one and Mohd. Zaki was a petty factory owner.

We also see from the orders passed by this Court from time to time and particularly the Order of 25th October, 2004 that the counsel for the appellant had pointed out that though the appellant had been sentenced to imprisonment for a term of seven years, he had already exceeded that period but was still in custody and he was accordingly bailed out after verifying this fact on 16th November 2004. In normal circumstances we would not have passed a detailed order in this background but as an allegation of rape, is one of the most stigmatic of crimes, it calls for intervention at any stage.

Before ending we must record our appreciation of Mr. Bagga's efforts.

We accordingly allow the appeal, set aside the judgments of the trial Court and the High Court and order the appellant's acquittal.

R.P.

Appeal allowed.