

Delhi District Court

State vs . Rajeev Luthra on 6 January, 2012

Author: Dr. Kamini Lau

IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS
JUDGE-II (NORTH-WEST): ROHINI COURTS: DELHI

Session Case No. 148/11

Unique Case ID No.: 02404R0250262011

State	Vs.	Rajeev Luthra S/o Sh. Inderpal R/o BH-319, East Shalimar Bagh, Delhi (Acquitted)
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FIR No.:	190/11
Police Station:	Shalimar Bagh
Under Section:	376 Indian Penal Code

Date of Committal to session Court:	5.10.2011
Date on which orders were fixed:	6.1.2012
Date of which judgment pronounced:	6.1.2012

JUDGMENT:

As per allegations, on 5.5.2011 at about 8:30 AM at BH- 319, Shalimar Bagh, Delhi the accused Rajeev Luthra committed rape upon the prosecutrix 'S' (name of the prosecutrix is withheld as this is a case under Section 376 IPC) while she was working in his house as maid servant.

CASE OF THE PROSECUTION:

The case of the prosecution is that on 23.05.2011 the prosecutrix 'S' went to Police Station Shalimar Bagh along with one boy namely Shyam and informed SI Durga Kapri that the husband of her employer Jyoti Gupta whose name was Rajeev Luthra had St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 1 of 16 committed rape upon her on 05.05.2011 at his residence BH-319, East Shalimar Bagh. SI Durga Kapri recorded the statement of the prosecution after which the case was got registered and the prosecutrix was medically examined at BJRM Hospital. Thereafter the accused was arrested and after completion of investigations charge sheet was filed in the Court against the accused.

CHARGE:

Charge under Section 376 Indian Penal Code has been settled against the accused to which he pleaded not guilty and claimed trial.

EVIDENCE:

In order to prove its case the prosecution has examined twelve witnesses as under:

Complainant/ victim/ public witnesses:

PW7 Shyam Lal Lohar has deposed that he is working in New Star placement agency which is situated at B-72, Third Floor, Shakurpur, Delhi and he knew prosecutrix 'S' being the resident of his village. According to him, she had come at Delhi about ten months prior to this incident for job and he got her employed at BH-319, East Shalimar Bagh as maid for a monthly salary of Rs.18,00/-. He has testified that on 23-24.05.2011 she made a call from PCO to him while weeping and informed him that she wanted to come to his office to which he asked her to come to his office in auto. According to the witness, the prosecutrix came to his office and informed him St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 2 of 16 that she wanted to go to her village as she was not being given the salary on which he tried to make her understand but she told him to go to police station with her on which he and prosecutrix went to the police station Shalimar Bagh where the prosecutrix was interrogated. He has further deposed that he is not aware as to what she had stated in her statement to the police and states that where ever the prosecutrix was taken by the police he had accompanied them. He has also deposed that they had gone to the hospital, but he is not aware as to why she was taken to the hospital. He has further deposed that he did not go anywhere except the hospital nor he was never interrogated by the police.

With the permission of the Court, Ld. Addl. PP for the State put leading questions to the witness wherein he has deposed that the prosecutrix had not informed him on telephone that the husband of Jyoti madam had committed wrong act with her and has deposed that the prosecutrix had come to their office and had disclosed this fact to others that husband of Jyoti madam had committed wrong act with her.

Since the witness was found resiling from his earlier statement he was cross-examined by the Ld. Addl. PP for the State wherein the witness has deposed that the prosecutrix had not informed him that she had come out along with her clothes. The statement of the witness under Section 161 Cr.P.C. which is Ex.PW7/1 was read over to him which he has denied. He has denied the suggestion that in the morning at about 7 AM he along with police official and prosecutrix went to BH-319, East Shalimar Bagh where on ringing the bell Jyoti Madam opened the gate who informed the St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 3 of 16 police that her husband was not available in the house and had gone some where. He has further denied the suggestion that he and the police officials made efforts to trace the accused and he did not meet them or that IO prepared site plan at the instance of prosecutrix in his presence. The witness has also denied that on 09.06.2011 his supplementary statement was recorded on receipt of the information regarding bail of accused Rajeev Luthra when he, prosecutrix and his counsel appeared in the court. The witness has further denied the suggestion that he had given the mobile number 9818503096 as the number on which prosecutrix had given the information or that he has been won over by accused or his wife Smt. Jyoti. He however stated that the aforesaid placement agency was being run by his elder brother Sh. Kajal Lohar but has denied that his brother Kajal Lohar was also approached by the accused persons and on the asking of his brother Kajal Lohar he had not given the complete facts in order to save the accused and has voluntarily added that his brother Kajal Lohar was not present at

Delhi and was in the village at West Bengal.

In his cross-examination by the Ld. Defence Counsel the witness has admitted that Ex.PW7/DX1 is in his handwriting and it bears thumb impression of the prosecutrix at point B. He has also admitted that the said application was given by the prosecutrix on 24.05.2011 to SHO for not taking any action against the accused for the reasons mentioned in the application and that whatever was stated by the prosecutrix, he had written in Ex.PW7/DX1. The witness has further admitted that she had put her thumb impression after hearing and understanding the same.

St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 4 of 16 The witness was re-examined by the Ld. Addl. PP for the State wherein he has admitted that the aforesaid application was written by him and that the prosecutrix is illiterate. He has denied the suggestion that the aforesaid letter was written by him of his own and in order to save the accused he took the thumb impression of the prosecutrix at point B on the aforesaid application. He has denied the suggestion that the said application was not dictated by the prosecutrix or that he himself recorded her statement without her will and dictation and took the benefit of her illiteracy.

PW9 Ms. Sitamani who is the complainant and the prosecutrix in this case has been declared hostile by the prosecution as she has taken a somersault and has not supported the earlier version given to the police including her complaint.

In her deposition before the court she has stated that she had come from West Bengal to Delhi for employment after leaving her children in the village and was employed with Jyoti Luthra and Rajiv Luthra through Kajal Agency, at Rs.1800/- per month. She has further deposed that since her children were in the village she felt isolated and wanted to go back to them and therefore she made a telephone call to the agency from the house of the accused as she did not want to stay there. According to her, prior to this on two occasions she had tried to run away but the mother of Jyoti Luthra had seen her and therefore on the next day she made a telephone call and ran away from the house of the accused and came back to the office of agency. She has deposed that she told Shyam that she wanted to go back and did not want to work there and that she should be given payment for the period she worked in that house but St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 5 of 16 thereafter Shyam took her to the police station where her statement was recorded. She has deposed that it was Shyam who got recorded her statement and she does not know what was written in the same. According to the witness, an application was also given by Shyam to the police which was not accepted by them. Further, according to the prosecutrix, she had told the police in her statement that she wanted to go back to her village since her children are there. She has deposed that she did not know what exactly was written in her statement Ex.PW9/A but has admitted her thumb impression at point A on the same and is also not able to give the details of other places where she had been taken.

Leading question were put to the prosecutrix by the Addl. PP with due permission of the Court, wherein she has denied that she had told the police that she had come from her village and was employed with Rajeev Luthra and Jyoti Luthra at BH 319, Shalimar Bagh on 4.3.2011 at Rs.1800/- per month and that Jyoti Luthra was working as a teacher in the school and used leave in the early

morning and Rajeev Luthra used to leave at 9 AM. She has also denied having told the police that after the Jyoti Luthra had gone, her husband Rajeev Luthra had attempted to molest her on two occasions (do baar cherkhani ki koshis ki) but she did not inform Jyoti Luthra about the same because she felt that Jyoti Luthra would not believe her. She has further denied having told the police that after two days of the above molestation incident, on 5th May at about 8 :30 AM the accused Rajeev Luthra asked her to get water and thereafter when she went to his room with water he committed rape upon her and thereafter went to his office. The prosecutrix has also denied having told the police St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 6 of 16 that she did not tell this incident to anybody because she was kept locked in the house and she did not know how to make a telephone call. She has also denied having told the police that on 23.5.2011 when she found the gate opened and when there was nobody in the house, she picked up her articles and ran away and made a call from a PCO to the Placement Agency and told Shyam about the entire incident after which Shyam called her to the Agency at Shakurpur and took her to the police station where her statement was recorded. In fact according to the prosecutrix she had made the telephone call from the house itself.

She has further denied that she was taken to the BJRM hospital by the police where she was medically examined by the doctor and that she told the doctor that she was ready and willing to get her medical examination conducted. She has also denied that on 24.5.2011 she had gone to BH 319, Shalimar Bagh along with the IO and pointed out the place of incident but at that time the accused was not at home. The prosecutrix has further denied that she had told the police that on the same day she again went to the house of the accused at BH 319, Shalimar Bagh and it was on her pointing out that the accused Rajeev Luthra was arrested and his personal search was conducted. She has however admitted her thumb impression on the arrest and personal search of the accused which is Ex.PW9/B and Ex.PW9/B.

Further in her examination by the Court she has informed that the placement agency from where she was employed was being run by Suresh and his elder brother Kajal. Further, on a specific court question as to why this case was got registered against the accused if St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 7 of 16 nothing transpired, she replied that she wanted to go back home as she was missing her children and she was not permitted to go for which reason she got this case registered. Thereafter again on a specific court question whether it was correct if she had made false allegations against the accused Rajeev Luthra regarding his having committed rape upon her, the prosecutrix admitted that same stating that she only wanted the payment for the period she had worked. (mai sirf apne paise lene ke liye kai thi, mujhe sirf mera paisa chahiye tha). According to the witness, she had told Shyam about the same and it was Shyam who took her to the police station. She has denied that she has been won over by the accused and it was for this reason she has deposed falsely.

In her cross examination by Ld. Defence Counsel, the witness has admitted that she does not know what was written in her statement Ex.PW9/A and stated that she had only put her thumb impression without reading what was written in the same. She has admitted that Ex.PW7/DX1 bears her thumb impression at point B. On a specific court question the witness has admitted that Ex.PW7/DX1 does not bear any stamp of the police station. She has denied the suggestion that

Ex.PW7/DX1 has been created in connivance of Shyam. On a court question the witness has admitted that she has received Rs.1800/- for two months and states that since she has now got the money she has deliberately gone back on the earlier statement made by her before the police.
Medical witnesses:

PW8 Dr. V.K. Jha has deposed that on 24.05.2011 he was working as CMO at BJRM hospital and on that day Dr. Praveen St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 8 of 16 was also working as JR casualty, examined the patient Rajeev Luthra, S/o Late Sh. Inderpal, aged about 41 years male, brought by the police official vide MLC Ex.PW8/A. According to him, the patient was referred for SR Surgery where Dr. Rahul was working as SR surgery who examined the patient and has given his opinion that as per physical examination the aforesaid patient was not incapable of sexual assault. He has not been cross-examined by the Ld. Defence Counsel.

PW11 Dr. Sanjay Kumar has proved the MLC of the prosecutrix which is Ex.PW10/A bearing the signatures of Dr. Sanesh N. Garde at point A and the signatures of Dr. Rajesh Satija CMO, whose signatures are present on MLC at point B.

In his cross-examination on a specific court question the witness has admitted that the prosecutrix had voluntarily consented to get her internally examination conducted.

PW12 Dr. Shakuntla has also proved the MLC of the prosecutrix which is Ex.PW10/A prepared by Dr. Ekta Kale. She has not been cross-examined by the Ld. Defence Counsel. Police/ official witnesses:

PW1 Ct Amit has in his examination in chief by way of affidavit which is Ex.PW1/1 proved that on 24.5.2011 on the instructions of SHO he along with IO SI Durga Kapri, prosecutrix and other staff went to BJRM Hospital where medical examination of the prosecutrix was conducted. He has not been cross-examined by the Ld. Defence Counsel.

PW2 W/Ct Rekha has in his examination in chief by way of affidavit which is Ex.PW2/1 proved that she along with the IO and St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 9 of 16 the prosecutrix went to BJRM Hospital where the medical examination of the prosecutrix was conducted. She has deposed that she received the MLC of the prosecutrix along with the sealed pullanda which she handed over to the IO who seized the same vide memo Ex.PW2/A. She has not been cross-examined by the Ld. Defence Counsel.

PW3 Ct Bal Kishan has in his examination in chief by way of affidavit which is Ex.PW3/1 proved that on 17.6.2011 he took three sealed exhibits from the MHCM vide RC No. 47/21/11 and deposited the said exhibits in FSL Rohini and handed over the RC as well as FSL acknowledgment to the MHCM. He has proved that the exhibits remained intact during his custody. He has not been cross-examined by the Ld. Defence Counsel.

PW4 HC Ram Avtar has in his examination in chief in chief by way of affidavit which is Ex.PW4/1 proved that on 24.5.2011 while posted as Duty Officer at about 5:00 am SI Durga Kapri handed over

to him a rukka on the basis of which he recorded the FIR of the present case copy of which is Ex.PW4/A. He has also proved having made an endorsement on the rukka which is Ex.PW4/B.

In his cross-examination the witness has deposed that he is not aware if prosecutrix had moved another application in the police station. He has denied the suggestion that he did not receive any rukka in this case or that he recorded the aforesaid FIR anti- datedly on at the instance of IO.

PW5 HC Mukesh Chand has in his examination in chief by way of affidavit which is Ex.PW5/1 proved the various entries St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 10 of 16 made by him in Register no. 19 and 21 being the MHCM. He has placed on record the copy of the entries no. 3671 & 3672 in register no.19 which are Ex.PW5/A (running into five pages) and Ex.PW5/B respectively. He has also proved the entries in register no. 21 vide RC No. 47/21/11 dated 17.06.2011 copy of which is Ex.PW5/C and the acknowledgment issued by FSL copy of which is Ex.PW5/D. He has not been cross-examined by the Ld. Defence Counsel.

PW6 W/Ct. Sunita has in her examination in chief by way of affidavit which is Ex.PW6/1 deposed that on 25.5.2011 on the instructions of IO SI Durga Kapri she took the prosecutrix to BJRM Hospital for conducting her remaining tests. She has proved that the doctor concerned handed over one sealed pullanda and one sample seal and two slips which she handed over to the IO who seized the same vide memo Ex.PW6/A. She has not been cross-examined by the Ld. Defence Counsel.

PW10 SI Durga Kapri is the Investigating Officer of the present case who has proved the various investigations conducted by her. She has proved the statement of the prosecutrix which is Ex.PW9/A; MLC of the prosecutrix which is Ex.PW10/A; seizure memo of sealed pullanda and one sample seal which is Ex.PW2/A; her endorsement on the rukka which is Ex.PW4/B; site plan which is Ex.PW10/B; arrest memo of accused which is Ex.PW9/B; his personal search memo which is Ex.PW9/C; disclosure statement of the accused which is Ex.PW10/C and MLC of accused which is Ex.PW8/A. She has also proved having recorded the statement of the various witnesses and prepared the charge sheet and filled the same in the court.

St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 11 of 16 In her cross-examination she has admitted that the name of Rajeev Luthra is not mentioned in Ex.PW9/A and that the complainant did not give the name of Rajeev Luthra. She has been cross-examined by the Ld. Defence Counsel at length but nothing much has come out of her cross-examination.

Statement of the accused:

The star witnesses of the prosecution namely Shyam Lal Lohar and the prosecutrix 'S' have not supported the case of the prosecution and have turned totally hostile on the allegations. In fact the prosecutrix 'S' has specifically deposed that she only wanted the payment for the work she had done due to which reason she had gone to the Police Station Shalimar Bagh along with Shyam. Hence under these circumstances since there was no incriminating material forthcoming against the accused, the statement of the accused under Section 313 Cr.P.C. has been dispensed with.

FINDINGS:

It is evident from the record that as many as twelve witnesses have been examined by the prosecution. The star witness of the prosecution that is the prosecutrix 'S' (PW9) herself has not supported the prosecution case and has turned hostile on the allegations of rape made by her against the accused. Rather, she has told the Court that nothing had happened and she only wanted to go back home because she was missing her children and her payment was not being released to her. Similarly, Shyam Lal Lohar (PW7) who is the brother of the owner of the placement agency has also not supported the prosecution in so far as the allegations against the accused are concerned and has stated that the prosecutrix had never St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 12 of 16 told her about the incident of rape and only wanted her payment. This on the face of it, is a false statement. It is not the job of the police to get the arrears of salary/ payments released and for this they would have not gone to the Police Station nor would have been entertained. It is writ large that by abusing the penal provisions relating to sexual offences (Section 375/376 IPC) the present case was registered. It is evident that both these witnesses have got the present case registered on furnishing false information to Public Servant with an intent to cause such public servant to use his lawful powers to cause injury to the accused Rajeev Luthra. It is further established that the false charge of the offence of rape has been made with an intent to cause injury to Rajeev Luthra as a result of which he (Rajeev Luthra) suffered incarceration for almost 52 days. Further, the medical evidence does not support the allegations made by the prosecutrix, her examination being after almost 18 days of the incident. The FSL report has not been filed till date but even otherwise it will serve no useful purpose, the exhibits having been taken after 18 days of the incident. Hence, under these circumstances, the accused Rajeev Luthra is hereby acquitted of the charge under Section 376 IPC. His surety be discharged as per rules.

Before ending, I may observe that there are increasing incidents of gross misuse and abuse of the laws relating to rape and sexual abuse and exploitation of uneducated, ignorant and uninformed domestic workers by unscrupulous persons/ placement agencies etc. for their personal gains. Large scale instances of trafficking of women and children by the placement agencies has come to light where these workers are separated from their family and St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 13 of 16 subject to all kind of ill-treatment and exploitation in the hands of either by the placement agencies or by their employers. Recently, there has also been a spurt of cases relating to rape and sexual abuse being registered on the allegations made by the migrant domestic workers regarding rape and sexual abuse either by the persons of the placement agency or by the employers as in the present case. In many cases these young girls from backward areas are being rampantly exploited by those running the placement agencies who use them (the girls) as pawns to settle their personal scores with their professional rivals and customers who seek employment of such domestic workers from their agencies. Currently there is no regulation controlling or regulating these placement agencies and hence the necessity of putting in place some control and regulatory mechanism for these placement agencies by way of a legislation so that the migrant domestic workers are not exposed to any kind of exploitation as are being observed by the Court. However, till such time it is actually done, the task of both the investigating agency and the Courts becomes onerous so as to ensure on the one hand that the existing penal provisions are not being abused to implicate an innocent and on the other hand that no guilty is left scot free.

This being the background, the prosecutrix 'S' and the witness Shyam Lal Lohar an employee and brother of the owner of the placement agency had both furnished false information and allegations against the accused Rajeev Luthra of having committed rape upon Sita Mani to the SHO Police Station Shalimar Bagh with an intent to cause the said SHO a Public Servant to use his lawful powers with an intent to cause injury to Rajeev Luthra. On the basis St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 14 of 16 of the above false complaint filed by Sita Mani the FIR in the present case was registered and these witnesses (Sita Mani being the complainant and Shyam Lal Lohar being the witness) got instituted false criminal proceedings against the accused namely Rajeev Luthra on which he was falsely charge sheeted of having committed an offence, knowing that there was no just or lawful ground for such proceedings or charge against the said accused namely Rajeev Luthra who also suffered incarceration for almost 52 days. Therefore, under these circumstances it has become necessary to ensure that both Shyam Lal and Sita Mani who have committed offences relating to contempt of lawful authority of public servant, false evidence and against Public Justice (punishable under Chapter X and XI IPC) are prosecuted and tried for these offences effecting Administration of Justice so that it is deterrence for others attempting to indulge into such adventurism.

This being the background a separate complaint under Section 195 Cr.P.C. is being sent for the Ld. ACMM for proceeding against Shyam Lal Lohar and the prosecutrix 'S' in accordance with law. I may observe that the Hon'ble Apex Court in the case of Pritish Vs. State of Maharastra reported in 2001 (IX) AD (SC) 501 has observed that there is no statutory requirement to offer an opportunity of hearing to the person against whom the court might file a complaint before the Magistrate for initiating prosecution proceedings. The court is under no obligation to offer an opportunity (to the person against whom a complaint would be made) to be heard prior to making a complainant and the principles of natural justice would not be hampered by not hearing the person concerned at the St. Vs. Rajeev Luthra, FIR No. 190/11, PS shalimar Bagh Page No. 15 of 16 stage of deciding whether such a person should be proceeded against or not. Accordingly there is no need to issue any show cause notice either to Shyam Lal or the prosecutrix 'S' who are directed to be produced before the Ld. ACMM concerned immediately along with the complaint.

File be consigned to Record Room.

Announced in the open court
Dated: 6.1.2012

(Dr. KAMINI LAU)
ASJ-II(NW)/ ROHINI