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A CASE COMMENTARY ON UBER SCANDAL

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Introduction

On September 10, 2018 the High Court of Delhi at New Delhi dismissed the appeal filed against the conviction and upheld the decision of the trial court in Shiv Kumar Yadav v. State (NCT of Delhi)². In this case was a woman was raped by a uber driver and she was convicted under Section - 323³, 366⁴, 376(2)(m)⁵ and 506⁶ of Indian Penal code 1860 and Section 161⁷ & 164⁸ Criminal Procedure Code, 1973.

Facts of the case

The victim, who was roughly 25 years old at the time, had been working for nearly three years in a financial business in Gurgaon, Haryana. She would take a cab to and from work, which the firm had arranged. She left her workplace about 7 p.m. on December 5, 2014. She had supper with her buddies at a restaurant in Gurgaon. She and her buddy exited the restaurant about 9:30 p.m. After arriving at Vasant Vihar, he used the Uber app on his phone to order a vehicle for her at around 10:15 p.m. A white Maruti Suzuki Swift Dzire taxi arrived near the 24 x 7 store near Priya Cinema in Vasant Vihar after around half an hour. The victim sat in the back seat of the cab at approximately 11 p.m.

She eventually slept off throughout the commute. When she awoke, she saw the cab had been parked in a remote location. The cab driver, who was accurately identified as the Appellant by the victim throughout the trial, was in the back seat and onto her, doing "cherkhani" with her. According to her account, she attempted to push him away as well as open the vehicle's door. However, the doors were locked, and despite her best attempts, she was unable to unlock them.

The Appellant smacked her three or four times and then pressed her neck forcibly, saying, "Agar mujhe nahi karne degi to saria ghusa dunga." The victim was terrified when she heard the threat because it reminded her of the brutal gang rape that horrified the nation on the night of December 16, 2012. The Appellant allegedly assaulted her, biting her lower lip and scratching her neck, breast, shoulder, and

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² 2018 SCC OnLine Del 11214.

³ Section 323 of IPC - Punishment for voluntarily causing hurt.

⁴ Section 366 of IPC - Kidnapping, abducting or inducing woman to compel her marriage, etc.

⁵ Punishment for rape.

⁶ Section 506 of IPC - Punishment for criminal intimidation.

⁷ Section 161 of CrPC - Examination of witnesses by police.

⁸ Section 164 of CrPC - Recording of confessions and statements.

back. The Appellant then "lowered my jeans and my undergarments," she claims. My top and brassiere were also lifted by him. Accused had the upper hand. Accused had sexual relations with me and also attempted to perform unnatural sex on me." The Appellant had taken away the victim's cell phone while she was sleeping. He placed a missed call from her phone to his own after performing the rape. She then begged the Appellant to release her. She told him that she'll never tell anybody about the occurrence. The Appellant then began driving the cab, and as they passed through Inderlok metro station, she realised that the Appellant had transported her to a remote location far away from her home. "I was raped," she texted her fiancé as they drove back to their house. However, because his number was the very last dialled on her phone, the stated text message was unintentionally transmitted to the Appellant's mobile number.

The Appellant then pulled over to the side of her house and got out of the cab. She stepped out of the cab and instantly used her phone to take two photos of the cab's number plate. She then dialled the number '100' from her cellphone.

Action taken against Uber

On Monday, the Delhi Police will question Uber's chief of India operations. Meanwhile, sources claim that Uber has closed its Gurgaon branch. The taxi service might face legal punishment if it failed to do criminal record checks on the driver, according to Delhi police. The business stated that there were no clearly defined laws in India regarding background checks for transportation licences, and that it was working with the government to resolve the issue. Following the alleged rape incident, the Delhi government has immediately suspended all Uber operations in the city. According to PTI, the government is considering a nationwide ban on Uber services.

Judgment

The accused was convicted of all charges filed against him. The statement of the victim is recorded under Section 164 of CrPC. It was proved that the registered owner of the swift car was the accused and he was issued the driving licence which is produced as an exhibit in the case from Delhi, and he was operating with uber-driver partner with Uber India Pvt. Ltd. The phone number registered with the uber by the driver wasn't his number and it was registered in the name of PW-7. The accused never admitted, but the statement of the victim was reliable and there was found consistency in her statement.

According to the FSL Biological Division's findings, the prosecutrix's vaginal swab, cervical mucus, rectum swab, denim pant, and underwear contained the accused's sperm. During his medical examination, the accused declined to offer a sample of his sperm. In any case, his DNA profile was

created using a blood sample collected on gauze. There could be no alternative explanation for the presence of the Appellant's sperm in the prosecutrix's vaginal swab, cervical mucus swab, and rectal swab, and the accused presented no such explanation.

The victim's allegation that the accused violently raped her and even attempted anal intercourse was completely supported by scientific evidence in the form of a DNA Examination Report. The claim that the CFSL report had been tampered with or modified was without merit. The defense's claim that the victim testified about the Appellant aggressively pushing her neck merely to pursue the case under Section 376 (2)(m) IPC when there was no risk to her life had no validity. In any case, the victim had indicated in her evidence under Section 164 Cr PC that the accused had squeezed her neck with significant force. The victim's offering varied stories concerning the accused allegedly removing her phone during the event could not be regarded a meaningful change by the victim. The DNA report, as well as the victim's testimony, were unassailable and corroborated her account of events. There was not a shred of evidence to support the victim's claim that she spoke to her mother for 16 seconds at 12:15 a.m. the night of the event. The mere presence of an incoming call with a length of 16 seconds on the CDR was insufficient to prove that the victim had spoken to her mother at that time. As a result, it was determined that the accused was guilty of the charges levelled against him.

Reliability of witness

The reliability of the statement of the victim is understood and accepted on the basis of the decisions made by the court in earlier cases.

In *State of Maharashtra v. Chandraprakash Kewalchand Jain*⁹, the Supreme Court's explanation of the law relating to the value of a rape victim's evidence is relevant. Is it really necessary for the prosecutrix's testimony to be confirmed in substantial particulars before the Court can find her guilty? Is the rule of prudence such that, save in the most exceptional of circumstances, the Court should seek corroboration before acting on the prosecutrix's evidence?

The above decision was reiterated in *State of Punjab v. Gurmit Singh*.¹⁰ According to the law, judges must keep in mind that no self-respecting woman would come out in court to make a humiliating testimony against her honour, such as is involved in the crime of rape on her, while examining evidence. In cases involving sexual molestation, hypothetical variables that have no bearing on the

⁹ (1990) 1 SCC 550.

¹⁰ (1996) 2 SCC 384.

integrity of the prosecution case, such as contradictions in the prosecutrix's statement, should not be allowed to invalidate an otherwise strong prosecution case unless the discrepancies are fatal.

It was held in *Om Prakash v. State of U.P.*,¹¹ "If the situations appearing on the record of the situation discloses that the prosecutrix does not have a strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in recognising her evidence,"

After Judgment

Following a criminal prosecution in India, Yadav was sentenced to life in jail. In addition to the court action, the lady sued Uber and reached an out-of-court settlement.

Uber has publicly announced the support to the victim during the time of investigation and trial, and after that there was an incident where they try to make rape allegation was a part of a controversy by the rivals of uber. The president of uber Asia Pacific came to India after the attack and obtained the medical record of the victim and shared it with the senior vice-president of Uber and that group was trying to make this incident as a conspiracy against them. It was shocking that the same authorities were offering help to the victim and in the same time they were obtaining medical records and trying to prove a conspiracy theory.

However, once rumours surfaced that Uber had investigated the complaint, got her medical documents, and hypothesised that she made up the accusations to harm the company's business, she launched a new lawsuit in the United States. In her case, she claimed that Uber had invaded her privacy and slandered her reputation. The case, which was resolved in San Francisco, where Uber's headquarters are located, also claimed that Uber maintained a copy of the woman's medical records.

Conclusion

This case was merely not a rape case. It was huge violation of the rights of the victim. The taxi company which she was travelling had that image in the public that they are safe while booking trips with Uber. That believe was misused and now that trust has changes to fear. Even though after the trials and appeal the court found that the accused is guilty and was sentenced to life. The life or the trauma that a rape victim is facing is noting which can be predicted. While facing that the Uber company was trying to clear their fame by defaming the victim. For that reason, only they obtained the medical records of the victim illegally and used that for making evidence in favour of them. They

¹¹ (2006) 9 SCC 787.

were trying to prove that all these rape allegations were made by the women for the sake of other cab companies' growth, and they are the real one behind these allegations.

These allegations that the women have filed the rape case, and obtaining her medical record are pure violation of her privacy and a clear case of defamation. For the same reason the victim filed a suit in U.S court, where the head office of Uber is situated and the same was settled as a out off court settlement.