

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

% *Date of Judgment: 06<sup>th</sup> August, 2009.*

+ **CRL.A.102/2007**

MOHD. ISHA ..... Appellant  
Through: Mr. Bhupesh Narula, Advocate.

versus

STATE ..... Respondent  
Through: Mr. Pawan Sharma, APP.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.** (ORAL)

1. On 17.10.2005 at 10.13 PM, D.D. No.82B had been recorded on the information of HC Manmohan from the Police Control Room that at B-Block of Old Palam Chowk, Arya Nagar, after quarreling with her family a girl had come to report the matter. This DD was marked to SI Surjit Singh PW-11, who was then posted at police station Dwarka. On receipt of the same he along with Const.Bhupender reached

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the place of occurrence where the prosecutrix PW-10 met them. Two ladies were also present with her. PW-10 disclosed that she had been raped by her father on that day as also on earlier occasions.

2. The police party i.e. Const.Bhupender subsequently joined by WSI Sunil Kumari PW-12 reached jhuggi of Mohd.Isha, the father of PW-10; he was not present there. The prosecutrix was taken for medical examination to the DDU hospital. Her MLC was prepared by Dr.Shakun PW-5, Senior Resident of the hospital who vide Ex.PW-5/A had opined that her vagina admits two fingers; hymen was torn; the victim was habitual to sexual intercourse.

3. The statement of the prosecutrix Ex.PW-10/A was recorded; endorsement on the same Ex.PW-12/A was made and the FIR Ex.PW-1/B was formally registered by PW-1 SI Sajjan Singh. Mohd.Isha, the accused and the father of the prosecutrix was arrested by SI Surjit Singh PW-11 vide memo Ex.PW-10/B at 6 AM on the following day from his jhuggi; his personal search Ex.PW-10/C was taken.

4. Prosecutrix was opined to be a minor. Dr.A.Bhasin PW-9 was the Member of the Medical Board comprising of himself i.e. Dr.A.Bhasin, Dr.Raj Dental Surgeon, Dr.Sumit and Dr.Ritu Saxena. As per their report

Ex.PW-9/A Sahana Praveen was more than nine years and less than ten years as on 28.10.2005.

5. Her statement under Section 164 Cr.PC was recorded by the Magistrate V.K.Khanna PW-7 vide proceedings Ex.PW-7/B and Ex.PW-7/C. On oath, the prosecutrix was examined as PW-10.

6. The accused was medically examined by Dr. Devesh PW-8 who had vide his report Ex.PW-8/A opined that there was nothing to suggest that Mohd. Isha was not capable of performing sexual intercourse.

7. The trial judge, relying upon the testimony of the prosecutrix as also the medical evidence which was her MLC Ex.PW-5/A, held the accused guilty of the offence of committing rape on his minor daughter. He had been sentenced to undergo life imprisonment.

8. On behalf of the accused, it has been urged that the statement of the prosecutrix suffers from infirmity; the trial judge has not taken into account that no injuries had been noted on her MLC and had she been a victim of the forceful lust of her father the same could not have been absent; the prosecutrix has implicated the accused falsely for the reason that she had a grudge against her father for having got married for the second time and for leaving her mother. It is stated that the appellant often used to scold his

daughter for her bad habits and the bad company that she used to keep which was the reason why this false complaint has been foisted upon him. Testimony of the prosecutrix is clearly suspect and could not have been the sole basis for the conviction of the appellant. In the alternate, leniency has been prayed for the sentence imposed upon him.

9. The victim of the crime is a minor aged between nine to ten years. She has been examined as PW-10; a preliminary round of questions had been put to her to test her competence to comprehend and understand the questions put to her. After being satisfied, the court had permitted PW-10 to enter the witness box. She had deposed that her father i.e. Mohd.Isha had two wives; first was her mother and the second whose name she does not know. Her mother had been divorced from her father and she i.e. PW-10 was residing with her grand-parents since childhood; her father was residing in Delhi. Since about two months she had been residing with her father in Delhi. She has deposed that two months prior to the date of her complaint i.e. two months before 17.10.2005 the accused had made forcible relations with her 'Usne Mere Saath Zabardasti Galat Kaam Kiya'; at night time her father had removed her salwar. She had fled away and related the incident to her neighbour. Police was called; her statement

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Ex.PW-10/A was recorded which was thumb-marked by her, pursuant to which investigation of this case was set in motion.

10. In her cross-examination, PW-10 had reiterated her version; she had admitted that her mother had got married for the second time but she does not know her address. Her second mother who is residing with her father used to beat her; her “walid” (father) never beat her. She i.e. PW-10 had never attended school and does not know how to read or write. Her neighbour to whom she had related the incident, had informed the police. She admitted that her father had on one occasion abused her when she lost her chappal. She denied the suggestion that she had been tutored by the investigating officer or that she had falsely implicated her father.

11. It would be relevant to note that no suggestion has been given to this witness that she had falsely implicated her father for the reason that she had a grudge against him for having got married a second time and having left her mother or for the reason that she was in bad company having bad habits and since her father used to scold her she was nursing a grievance against him which was yet the other reason for his false implication.

12. The medical examination of the prosecutrix was conducted by PW-5. Her MLC speaks volumes. There is no dispute about the fact that the prosecutrix is a minor and aged between nine to ten years. The MLC shows that her hymen had been torn; she is a victim of habitual sexual intercourse and her vagina admits two fingers easily. Someone is responsible for the physical state of this child. It is not the defence of the accused that the hymen of his baby daughter has been torn for any other reason except the hard fact that she has been subjected to sexual intercourse; the medical evidence has also established that she is a victim of continuous sexual abuse.

13. In this context the following observations of the Supreme Court in the judgment reported as State of Himachal Pradesh v. Asha Ram VIII (2005) SLT 574 are useful:

“It is now a well settled principle of law that conviction can be found on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital; unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony

inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.”

14. In the instant case, testimony of PW-10 is fully reliable; her version is cogent and coherent and is corroborative of her first version recorded under Section 164 of the Cr.P.C. Ex.PW-7/A. Learned defence counsel has been unable to point out any contradiction or infirmity in this version. This ocular testimony of PW-10 is further fortified by the medical evidence i.e. her MLC Ex.PW-5/A.

15. Dr. Shakun PW-5 had on oath deposed that she had examined the prosecutrix on 18.10.2005 at 3 AM; as per the history of the patient, she was a victim of rape committed upon her by her father 4-5 times since the last 11 to 12 days and she had disclosed this fact to her neighbour last night. This history as disclosed by PW-10 to the doctor PW-5 corroborates the medical opinion as stated in the report Ex.PW-5/A; this MLC had opined that on PU

examination, the vagina admitted two fingers easily, hymen was torn and the victim was habitual to sexual intercourse. No cross-examination had been effected of PW-5 that the hymen could have been torn for any other reason but the reason as given by her.

16. The defence propounded by the accused is clearly sham; it has been argued that a false case had been planted by the daughter upon her father for the reason that she was annoyed with him because of his second marriage; neither has this suggestion been given to PW-10 in her cross-examination and nor does it find mention in the statement of the accused recorded under Section 313 Cr.PC. PW-10, after the separation of her parents i.e. right from her childhood was living with her grand-parents. It was only in the last winter that she had come to reside with her father in Delhi. She was an illiterate child coming from a low socio-economic background and tolerating the shifting moods of her step mother and with no other choice but to live under their roof.

17. In our view, from the evidence gathered it has clearly been established that PW-10 was a hapless victim of her father's lust; he had been committing rape upon her i.e. since the time when she had come to reside with him in Delhi; she was in a dilemma and did not right away expose

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her father; may be in the hope that he would mend himself. It is unthinkable and unimaginable to suggest that a girl of such tender years would falsely invent a story of sexual assault upon her by her father and implicate him for an unforeseen reason i.e. her father having got married for the second time when this event had occurred more than nine to ten years ago as admittedly she was living with her grandparents since her childhood. There appears to be no plausible reason as to why she would expose her honour and dignity as also of the whole family to the society risking an outcasting and ostracization from the family circle as also from the society at large. In this bargain she would most certainly be causing a mental torture and suffering to herself; natural tendency being to avoid giving publicity to such a shameful incident. Yet PW-10 had picked up the courage to relate her woes to her neighbour who in turn had passed on this information to the police.

18. Testimony of PW-10 being creditworthy and suffering from no infirmity, non-examination of this neighbor is immaterial and casts no doubt on the otherwise well established version of the prosecution.

19. The judgment of the trial judge suffers from no infirmity and calls for no interference. Even on the quantum of punishment, we are not inclined to review it. This is a

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case where the crime committed by the appellant not only delicts the law but it has a deleterious effect on civilized society. The gravity of the crime has to be assessed from the nature of the crime; in this case, the offender is the father against his own daughter and the offence cries for a deterrent punishment. Father is a fortress, refugee and the trustee of his daughter; by betraying the trust he has not only ravished the chastity of his daughter but also jeopardized her future prospects of getting married and enjoying a harmonious conjugal life; her future has been devastated. The sentence imposed upon the appellant also calls for no interference.

20. Appeal being without any merit; it is dismissed.

**(INDERMEET KAUR)  
JUDGE**

**(PRADEEP NANDRAJOG)  
JUDGE**

August 06, 2009  
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