

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

+ Criminal Appeal Number 244/2007

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Date of reserve : 10.09.2009
Date of decision: 24.09.2009

ALLAH NOOR ...APPELLANT
Through: Mr.M.Mohsin Israili, Advocate

Versus

NCT OF DELHI ...RESPONDENT
Through: Mr.Navin Sharma, APP

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. This order shall dispose of an appeal filed on behalf of the appellant under Section 374(2) Cr.P.C. against the judgment and order dated 7/12.9.2006 passed by Dr.R.K.Yadav, Additional Sessions Judge in Sessions Case No. 156 of 2006 arising out of FIR No.284/2005 under Section 376 IPC registered at Police Station Gokal Puri, whereby the learned Additional Sessions Judge held the appellant guilty under Section 376 IPC and sentenced him to undergo RI for a period of ten years and to pay a fine of Rs. 50,000/- and in default of payment of fine to further undergo RI for one

year.

2. Briefly stated, the case of the prosecution is that the appellant was sent for trial before the Additional Sessions Judge for commission of offence under Section 376 IPC on the basis of the statement of Razia, the daughter in law of the appellant, Ex.PW2/A made to the Duty Officer Police Station Gokal Puri alleging commission of rape by her father in law i.e. appellant on her person on 22.5.2005 at about 4 pm. In her statement made to the Police Ex.PW2/A, she stated as under:

Bayan kiya ki mein pata uprokt par mein parivar ke rehti hoon aur ghar ka kaam kaaj karti hoon. Dinank 22.5.2005 ko samay kareeb 4 baje din meri saas sabji lene chali gayee thi aur mera pati dayal pur gaya than jo lakdi ka kaam karta hain. Us samay ghar par mein aur mera sasur Allah Noor hi they. Mein apne kamre mei leti hui thi to mera sasur mere kamre mei aaya aur kamre ka darwaja band karke andar se kundi laga di aur mere upar let gaya aur jabardasti meri salwar nikal di. Mene dar ki wajah se shor nahi machaya tatha mere sasur ne mere saath balatkar kiya uske baad ghar se chala gaya. Jab mera pati sham ko ghar aaya to mene use yeh baat ishara karke batlayee lekin veh samajh nahi paya kyunki mera pati goonga behra hain. Dinank 23.5.2005 ko mein upne maa baap ke ghar gayee aur ye saari batein upne gharwalo ko batlayee. Mere sasur Allah Noor ke khilaf kaagji karyawahi ki jaye. Aaj meine aapko bayan diya hain. Jo sun liya thik hain.

3. On the basis of the above statement, FIR No. 284/2005 under Section 376 IPC was registered at Police Station Gokal Puri against the appellant, who was later on taken into custody in this case. After the completion of investigation, the challan was filed by the Police, which was committed to the court of the Additional Sessions Judge, who framed charge against the

appellant under Section 376 IPC, to which the appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case has examined eight witnesses. The totality of the evidence, on the basis of which the prosecution rests its case consists of three categories – (i) the oral testimony of PW2 Mst. Razia, who is the complainant/prosecutrix; (ii) The medical evidence i.e. the evidence of PW-7 Dr.Seema, PW-5 Dr. Anubhav Sarikval and PW-6 Dr.Banarasi; and (iii) the evidence of three link witnesses including the evidence of the investigating officer. In his statement under Section 313 Cr.P.C. the appellant pleads that the prosecutrix is not mentally sound. Her brother wanted that he should transfer his house in the name of the prosecutrix. To grind his axe, he moved a complaint before CAW Cell, Nanak Pura, New Delhi and to weild pressure on him, the present case has been lodged against him. In support of his defence, the appellant examined DW-1 Jaffaruddin, DW-2 ASI Raghuraj Singh, DW-3 H.C. Sunita, DW 4 SI Avtar Singh, DW-5 Bhagan and examined himself as DW-6. After completion of trial and after hearing both the parties, the learned Additional Sessions Judge vide impugned judgment and order on sentence convicted the appellant under Section 376 IPC and sentenced him as aforesaid.

5. It is submitted on behalf of the appellant that the impugned judgment is bad in law and is liable to be set aside as the court below has failed to appreciate that apart from the wavering statement of the prosecutrix, there is no medical corroboration. It is further submitted that the trial court has

ignored the complete deposition of PW-2 which is contrary to the prosecution story and has also ignored the FSL report Ex.PW8/D and E which has exposed the fabrication of the evidence by the prosecution. It is also submitted that Dr. Anjali had prepared only one slide of vaginal smear seized vide undated memo Ex.PW1/A but as per record, the prosecution sent four slides for determining the semen and the FSL report dated 12.1.2006 is negative on all the four slides. However, the learned court below did not consider the FSL report at all. It is also submitted that the learned court below has failed to consider the admission of the Investigating Officer that he has not prepared the site plan of the alleged actual place of incident. It is stated that the site plan Ex.PW8/B is an important piece of evidence which was prepared by the Investigating Officer at the police station along with the fabrication of other evidence. The fabrication of site plan is a material irregularity in the prosecution case. It is further submitted that it is the case of the prosecution that on 22.5.2005 the prosecutrix came to her in-laws house from the Mahila Cell, Seelampur at 4 pm. Her husband was not at home, her father-in-law, her mother-in-law, her two minor children were present in the house and at that time the appellant raped her. To falsify the allegation of the prosecutrix, the appellant examined H.C.Sunita as DW-3 to prove that the prosecutrix went from the Mahila Cell to her matrimonial home on 20.5.2005 and not on 22.5.2005. It is also submitted that the prosecutrix had admitted in her cross-examination that at that time a number of persons accompanied her including her brothers and they were sitting in

the house upto 6 pm. It was also admitted by the prosecutrix that during that period her brothers insisted for the transfer of the house of the appellant in her name otherwise they threatened that they would send the appellant to jail. It is further submitted that the trial court very conveniently used the defence evidence for twisting the prosecution story and held that the prosecutrix went to her matrimonial home on 20.5.2005. Regarding the date, the trial court observed, “The incident of rape occurred on some other date than the date when her complaint was dropped by the authorities.”

6. Learned APP for the State, however, has supported the impugned judgment by submitting that the statement made by the Prosecutrix makes out a case against the appellant under Section 376 IPC and the defence produced by the appellant is of no consequence. In fact, even appearing as a witness under Section 315 Cr.P.C. , the appellant has not denied the factum of committing rape upon the prosecutrix. It is also submitted by the learned APP that finding of no injury on the private parts of the prosecutrix in the medical examination, which, of course, has been done by an inexperienced doctor or there being no corroboration to her statement are of no consequence. Conviction in such case can always be based on the sole testimony of the prosecution. Reliance in this regard has been placed upon the judgment delivered by the Apex Court in the case of *State of Maharashtra Vs. Chanderprakash Kewal Chand Jain*, 1990 Cri.L.J. 889. On the point of sentence, it is submitted by the learned APP that the punishment awarded to the appellant is adequate for his ghastly act of

committing rape upon the person of her daughter in law, who is of unsound mind and had no security even from her husband, who is deaf and dumb.

7. I have considered the submissions made by learned counsel for the appellant and the learned APP for the State and have also scrutinized the evidence available on record and I fully agree with the opinion formed by the Additional Sessions Judge that she was subjected to rape. In this regard, the Additional Sessions Judge further observed that the testimony of the prosecutrix is wholly reliable and minor discrepancies are of no consequence and thus, convicted the appellant under Section 376 IPC. In her deposition the prosecutrix has stated;

“On 22.5.2005 when I had gone to my house from the Mahila Cell at about 4.00 pm. My husband was not present at the house at that time. My father-in-law, the accused present in court today, my mother-in-law as also myself along with my two minor children were present in the house at that time. At that time I was lying down in my room. The accused, present in court today, who is my father-in-law had come inside my room. He had bolted the door of my room from inside. He had then caught hold of me while I was lying down on my bed. He had threatened me not to raise any alarm otherwise he would kill me. He had then opened my salwar and then he had committed sexual intercourse with me against my consent. My mother in law had come there but due to the threats extended to me by the accused I had not told her of the incident. Accused had also caught hold of me by my breast and pressed me. I had not been able to tell my husband also of the commission of rape upon me by the accused.

On 23.5.05 I had returned back to my parent home to take medicines. I had told my mother about the incident of rape upon me by the accused at my husband's house. On 24.5.05 I had gone to the Mahila Cell and told them of the incident. They directed me to lodge my report at the concerned P.S. I had then lodged report with the P.S. which is Ex.PW2/A bearing my signatures at point – X, thereon. Police had my medical done on 24.5.05 in the hospital. Thereafter, I returned to my parents home where I am staying since the incident. My two children are also with me. Nobody from

my in laws had come to take me to look after me.”

8. It would also be appropriate to take note of some of the judgments delivered by the Apex Court which are applicable to the facts of the present case also. In the case of Rajoo and Ors. Vs. State of M.P. 2008(15) SCALE 375, it has been held:

8. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act 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. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

9. In another case of S. Ramakrishna Vs. The State 2008(11) JT 635, the Apex Court while delivering this judgment also observed:

10. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short "the Evidence Act") nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section [118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence.....

10. Some of the relevant observations made in the case of Om Prakash Vs. State of U.P. AIR 2006 SC 2214 are reproduced hereunder:

13. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section [118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section [114](#) which requires it to look for corroboration. If for some

reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. This position was highlighted in State of Maharashtra vs Kewalchand Jain AIR 1990 SC 658.

11. As regards there being no injuries found on the private parts of the prosecutrix, reference can be made to the judgment delivered in the case of B.C.Deva Vs. State of Karnataka 2007 12 SCC 122, where it has been held that merely because no injury was found on the private parts of the prosecutrix would not negate her testimony about the rape committed on her.

“18. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though the report of the gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

12. In the case of State of Maharashtra Vs. Chanderprakash Kewal Chand Jain (supra), it was held:

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must received the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the

evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness.

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviors. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to

eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Court must also realise that ordinarily as woman, more so a young girl, will not stake her reputation by leveling a false charge concerning her chastity.

13.. Having gone through the record of the case and the settled law on the subject and also taking into consideration the judgment delivered by the trial court who has dealt with the issues such as the treatment of the prosecutrix for a period of ten years, about her being of unsound mind, the circumstances in which she had to undergo for the second marriage and her husband being deaf and dumb and the condition in which she was kept in her matrimonial house which led to filing of criminal complaint by her which was later withdrawn by her because she wanted to live in her matrimonial home and the fact that immediately after withdrawal of the complaint by her she was subjected to inhuman act of rape, I am of the view that the trial court has rightly appreciated the statement of the prosecutrix who appeared as PW-2 and held that the said statement is reliable and consistent.

14. Insofar as the infirmities pointed out in the case of prosecution are concerned, I find that the way in which the IO has treated the case of the prosecutrix by delaying recording her statement till medical examination of the appellant was conducted explains the lacuna in the case of the prosecution. In any event, the prosecutrix was a married woman. Even if her medical examination was done after two days and her clothes were not

taken into possession, her sole testimony cannot be brushed aside for the reasons stated above.

15. As regards the defence evidence led by the appellant, the trial court has dealt with the same in paragraphs 22 and 23 of the impugned judgment, which does not call for any interference inasmuch as the defence evidence led by the appellant is of no consequence. The relevant paragraphs of the impugned judgment are reproduced hereunder :-

“22. Zafruddin, previous husband of Mst. Razia, entered the witness box to prove that he had divorced her, since her behavior towards him was not good. This testimony of Zafruddin has no bearing on the incident of rape. Consequently, it is clear that Zafruddin cannot tilt the scale of evidence in favour of the accused. Raghu Raj ASI was brought in the witness box, who proved DD No.7A, copy of which is Ex.DW2/A. In the said DD entry, accused raised an accusing finger on brother of prosecutrix, detailing therein that he has an eye on his property. As detailed above, Mst. Razia was not at all moved by the said consideration, when she detailed incident of sexual assault on her person. Therefore, lodging of DD No. 7A on 13.03.03 nowhere proves innocence of the accused.

23. Lady HC Sunita speaks that on 20.05.05 proceedings on the complaint of Mst.Razia were dropped. The defence wants to assert that when proceedings on her complaint were dropped on 20.05.05, her testimony suffers from infirmities when she testified that it were dropped on 22.05.05. This aspect has already been considered, which have no bearing on the case. Avtar Singh SI, Bhagwan and Allah Noor (the accused himself) entered the witness box to prove that there were feeling of discord between the parties and on one point of time Mst. Razia was missing from her matrimonial home. As detailed above, Mst.Razia has explained that when she was harassed and tortured by her in-laws, including the accused and no food was provided to her, she left her matrimonial home. Consequently, it is evidence that depositions of Avtar Singh SI, Bhagwan and Allah Noor (the accused) nowhere espouse the case of defence. Their depositions are of no avail.

16. In view of the above, I have no hesitation but to hold that in the

present case the sole testimony of the prosecutrix was sufficient to bring home the guilt of the appellant and to prove the charges of rape against him. Thus, I uphold the conviction of the appellant under Section 376 IPC. However, taking into consideration the age of the appellant, the sentence imposed upon the appellant is reduced from 10 years RI to 7 years RI while maintaining the fine as imposed by the trial court.

17. The appeal stands disposed of. Pending application, if any, also stands disposed of. Trial court record along with a copy of this judgment be sent to the trial court forthwith.

MOOL CHAND GARG, J.

September 24, 2009
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