

*

HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : January 16, 2009

Judgment delivered on : January 23, 2009

+

**Crl. A. No. 1009/2006 &
Crl.M.(B).No. 1703/2007**

% Amar Sarkar ... Appellant
Through: Mr. Asit Kumar Roy with Mr. Sandeep
Sharma, Advocate

versus

State ... Respondent
Through: Mr. Amit Sharma, learned Additional
Public Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. In this appeal, appellant assails his conviction for the offence of rape awarded by the trial court vide impugned judgment of 10th October, 2006, and the sentence of rigorous imprisonment of seven years with fine of Rs.10,000/- imposed upon him for the offence under Section 376 of the IPC, vide impugned order of 18th October, 2006.

2. The factual scenario emerging from the record of this case is, that the appellant/accused was a astrologer by profession and he knew the family of the prosecutrix (PW-1) and on 6th June, 2005, at about noon

time, prosecutrix (PW-1) aged about eighteen and a half years along with her mother PW-3 came to the house of the accused for astrological consultation and the appellant/accused purportedly told prosecutrix's mother to bring tulsi leaves and had told her that he would first take bath and thereafter, he would give a ring (of precious stone) to the prosecutrix. It is the prosecution case that on that day at about 2.00 p.m. appellant/accused gave the aforesaid ring to the prosecutrix (PW-1) and, thereafter, bolted the door of his room from inside and had forcibly raped the prosecutrix (PW-1). After this incident, prosecutrix went back to her house and had informed her mother about it and, thereafter, a complaint Ex.PW-1/A was lodged with the police and thereafter, the prosecutrix was got medically examined and the appellant/accused was arrested and he was also got medically examined. After completion of investigation, charge-sheet was filed for the offence under Section 376 of the IPC against the appellant/accused, who had pleaded not guilty to the aforesaid charge, before the trial court and thus, he was put on trial.

3. In all, eight witnesses had deposed at trial. The star witnesses of this cases are the prosecutrix (PW-1), her mother (PW-3), Dr. Swati, (PW-6), who has proved the MLC Ex.PW-6 of the prosecutrix and the Investigating Officer (PW-8).

4. The stand taken by the Appellant/ accused before the trial court was of denial. However, Appellant/accused had admitted in his statement under Section 313 of Cr.P.C. that on the date of incident, he

had told the prosecutrix that the astrological remedy was to wear 'Ruby', a precious stone and he had told the mother of the prosecutrix to bring 'tulsi' leaves but he did not tell her to leave the prosecutrix at his house and the mother of the prosecutrix had brought 'tulsi' leaves and had given Rs.500/- to him as advance, i.e., for the aforesaid precious stone and had left the house of the Appellant/accused on the pretext of arranging the balance amount of Rs.18,000/- of the stone by the evening time. Appellant/accused has also admitted that he had given the aforesaid precious stone 'Ruby' to the prosecutrix. Rest of the prosecution case stands denied by the Appellant/accused. The reason for false implication given by the Appellant/accused in his aforesaid statement, reads as under:-

"Parents of the prosecutrix were not ready to pay my balance amount of the consideration amount of Ruby i.e. Rs.18,000/-. It was 3 Ratis @ Rs.6,000/- alongwith manufacturing cost of Rs.500/-. One maternal uncle of the prosecutrix are known person to Head Const. Varinder. Hence they in collusion with Head Const. Varinder falsely implicated me in this case in a pre-planned way. I know the family of prosecutrix for the last seven years. Prosecutrix was just like my daughter in my faith. Parents of the prosecutrix do not want to return my money and that is why they falsely implicated me in this case with the help of police. No such incident had taken place as alleged. Mr. Biplab Dey and Monika Bhattacharya were present on that day at my home and in the time of alleged occurrence. I am innocent and falsely implicated in this case."

5. In his defence, Appellant/accused had got examined Ms. Monika, DW-1, to show that she was present at the spot from 1 PM to 3 PM, to rule out the alleged offence of rape, with which the Appellant/accused has been charged. After trial, Appellant/accused stands convicted and sentenced, as already noticed above.

6. Learned counsel for appellant contends that it has come in the evidence that the window of the room of the Appellant/accused was open and was thus, visible from outside, which negates the allegation of rape against the Appellant/accused. It is pointed out that the prosecutrix did not raise any alarm and in the FIR, she has stated that she was wearing a salwar on the day of incident, whereas in her evidence, she has stated that she was wearing a pant. According to learned counsel for the Appellant/accused, he was known to the family of the prosecutrix and had treated the prosecutrix as his daughter and he has been falsely implicated in this case as the parents of the prosecutrix did not want to pay the balance amount, i.e., Rs.18,000/- of the precious stone which was given by him to the prosecutrix on the date of the incident. Lastly, it is submitted that the medical evidence does not support the prosecution case as no semen was detected on the exhibits sent for chemical analysis and the presence of Ms. Monika, DW-1, at the spot during the time of alleged incident, demolishes the prosecution case and the Appellant/accused has been illegally convicted by the trial court and he deserves to be acquitted. Nothing else is urged on behalf of the Appellant/accused.

7. Learned Additional Public Prosecutor for the State submits that the testimony of the prosecutrix (PW-1) is reliable and it needs no corroboration from the medical evidence. However, it is stated that the evidence of mother of the prosecutrix sufficiently corroborates the prosecution version and the evidence of Ms. Monika, DW-1 has been procured later on and is after thought as it has not been suggested to the prosecution witnesses that DW-1 was present at the spot and at the time of incident. It has also been submitted that there is no illegality in the impugned judgment and the conviction and the sentence awarded to the Appellant/accused is just and proper.

8. Prosecutrix (PW-1) was aged about eighteen and half years on the day of this incident. It has come in her evidence that Appellant was known to the family of the prosecutrix and she used to call the Appellant as 'dadaji' as the relations between the Appellant and family of the prosecutrix were cordial one. In this background, it is quite natural for the mother of the prosecutrix to have left the prosecutrix at the house of the Appellant as he was to give a ring of 'mukta', (a precious stone) to the prosecutrix, by telling that "*Mukta Pehnane SeTheek Ho Jaiya Ga, to Mukta Pehnene Gaye The.*" Appellant had told the mother of the prosecutrix to bring 'tulsi' leaves for this purpose and accordingly, she brought it and thereafter, Appellant told mother of the prosecutrix that he would take bath and would then put the ring of 'mukta' on the finger of the prosecutrix and had told her that she can leave the prosecutrix there and since the family of the prosecutrix was living nearby, therefore, it was quite natural for mother of the prosecutrix, to have left

the prosecutrix at the house of Appellant, in the background of cordial relations being there between the families.

9. It emerges from the testimony of the prosecutrix (PW-1) that the Appellant had put the 'mukta' ring on the finger of the prosecutrix and thereafter had caught hold of her hand and took her in the inner room and bolted it from inside and threw her on the floor and had removed her salwar and when she objected, he rebuked her and switched off the light and when the prosecutrix tried to raise alarm, he closed her mouth with his hand and had raped her. Thereafter, Appellant had warned the prosecutrix not to disclose about this incident to anyone. However, prosecutrix came back to her house and narrated this incident to her mother and this matter was reported to the police.

10. To test the veracity of the testimony of the prosecutrix, her evidence has been scanned and it has been found that although it has come in her evidence that the window of the room was open and house of other tenants were visible from the said window, but it would not mean that from outside the window person lying on the floor would be visible from the outside. Since the electric light was switched off by the Appellant, therefore, it can be safely said that there was not enough natural light at the spot. It has come in the evidence of the prosecutrix that she had cried loudly at the time of incident but nobody came. She has also stated in her evidence that there was nobody in the adjoining house. It cannot be lost sight of, that prosecutrix (PW-1) surely must have been taken aback at the happening of this incident.

11. This incident is of June, 2005 and the evidence of the prosecutrix has been recorded in January, 2006 and so, even if it is said by the prosecutrix in cross-examination by the defence that the zip of her pant was broken while the Appellant was forcibly removing her clothes, it will not make any difference, because she has stated in her examination in chief that she was wearing salwar on the day of incident and the said salwar, Ex.P-2 was seized in this case and the prosecutrix in her evidence has duly identified it to be the one, which she was wearing on the day of the incident.

12. The so-called infirmities pointed out by the defence in the evidence of the prosecutrix are not at all sufficient to discard her testimony, which has been found by the trial court to be reliable and even this court, after going through her testimony, finds no reason to take a different view than the one taken by the trial court.

13. The evidence of the prosecutrix (PW-1) cannot be demolished by relying upon the evidence of Monika, DW-1, as the version of Monika, DW-1 is an afterthought, because it has not been suggested to the prosecutrix (PW-1) in her cross-examination. The version of Monika, DW-1, is otherwise also, not worthy of consideration because she did not make a complaint to anyone, when she came to know that the Appellant/accused has been arrested in this case. It appears from the evidence of Monika, DW-1, that she was the friend of the son of appellant/accused and she was in constant touch with the son of the Appellant and it appears that just to save the Appellant, she has

deposed about her presence at the spot, which cannot be cross-checked. In any case, when the evidence of the prosecutrix (PW-1) vis-à-vis, the evidence of Monika, DW-1, is tested on the touchstone of probability factor, testimony of the prosecutrix (PW-1) inspires utmost confidence and that of Monika, DW-1, fails the test as it does not sound to be probable one.

14. In the case of *“Ranjit Hazarika vs. State of Assam”*, **(1998) 8 SCC 635**, Apex Court had upheld the conviction of accused for the offence of rape by relying upon the evidence of the prosecutrix as medical evidence did not belie testimony of prosecutrix and her parents and it was held that lack of corroboration does not vitiate such a conviction.

15. Trial court has rightly relied upon the two decisions of the Apex Court reported in **(1998) 8 SCC 635 and AIR 2004 SC 2884**, to hold that no woman would stake her honour and reputation to falsely implicate any person by levelling the charge of rape and absence of injuries on the person of the prosecutrix, or lack of corroboration from medical evidence, would not be sufficient to discard the prosecution case.

16. Appellant wants this court to believe that the prosecutrix (PW-1), who is a young girl of just eighteen and half years, and her parents would falsely implicate him in a rape case by staking the reputation of the family, to avoid payment of Rs.18,000/- towards the precious stone given by the Appellant in a ring to the prosecutrix on the day of the incident.

17. Aforesaid plea of the Appellant lacks plausibility and is highly incredible and has been rightly discarded by the trial court, as the same is unacceptable on the face of it. The testimony of prosecutrix (PW-1) has been found to be of sterling character and is sufficient to incriminate the appellant and it needs no corroboration from medical evidence. However, evidence of mother of prosecutrix provides ample corroboration to her version which has a ring of truth in it.

18. Viewed from any angle, I find that the conviction and the sentence imposed upon the Appellant are very well justified, in the face of the evidence on record. There is no illegality in the impugned judgment or the order on sentence. There is no merit in this appeal and it alongwith pending application stands dismissed accordingly.

SUNIL GAUR, J

January 23, 2009

pkb