

R-2

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

+ **CRL.A. 1030/2006**

RAI SINGH Appellant
Through Mr.D.S.Rathore, Advocate.

versus

STATE Respondent
Through Mr.Amit Sharma, APP for the State.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

V.K.JAIN,J (ORAL)

1. This is an appeal against the judgment dated 9.10.2006 and Order on Sentence dated 12.10.2006 whereby the appellant was convicted under Section 376 of IPC and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- or to undergo simple imprisonment for two months in default.

2. On 21.1.2005, information was given to Police Control Room about quarrel between landlord and tenant in House No.1094, Gali No.25, L-Ist Block, Sangam Vihar, New Delhi. The information was recorded vide DD No.10-B and was marked to ASI Attar Singh for enquiry. When he reached the spot, the prosecutrix gave her statement, which was recorded by the

Investigating Officer. It was alleged by the prosecutrix that on 18.1.2005, at about 7:30 pm, when she had gone to the toilet, Mohit, son of the landlord, aged about 7/8 years informed her that his mother was calling her upstairs. When she reached there, the appellant who was present there covered her mouth from his hand and took her to a room where he committed rape on her, after removing her clothes. While committing rape, the appellant also threatened to kill her family in case she disclosed the incident to her parents. In the meantime, the mother of the prosecutrix came there and opened the door. The appellant pushed her and ran away. The matter was disclosed to her father but was not reported to Police since they were afraid of her defamation. On 21.1.2005, when her condition deteriorated, the Police was informed.

3. The prosecutrix came in the witness box as PW-3 and stated that on 18.1.2005, they were residing in House No.1094, Gali No.25, L-Ist Block, Sangam Vihar, New Delhi, as tenants of the brother-in-law of the appellant. At about 7:30 p.m., when she went to toilet, the son of the landlord informed her that she was called upstairs by his mother to collect woods. When she went upstairs, the appellant covered her mouth and took her inside the room. After bolting the door, the appellant made her lie down on the floor and raped her after removing her clothes and opening the zipper of his pant. He also threatened to kill her family in case she disclosed the incident to her parents. At this point of time, her mother came there calling her and opened the door. Thereupon the appellant pushed her mother and

ran away. She disclosed the incident firstly to her mother and then to her father. Being afraid of her defamation in the society, they did not report the matter to the Police. However, on 21.1.2005, her condition deteriorated and, therefore, Police was informed, which recorded her statement as Ex.PW-3/A.

4. PW-4 Meera Devi is the mother of the prosecutrix. She has stated that on the incident, the prosecutrix was aged about 13 years. She has further stated that they were residing as tenant in House No. 1094, Gali No.25, L-Ist Block, Sangam Vihar, New Delhi. On that date, the prosecutrix who had gone to toilet, did not return. She searched for her and also made enquiry from her sister-in-law, who advised her to search for the prosecutrix on the roof. The prosecutrix was not found on the roof but the room constructed on the roof was found bolted from inside. She knocked on the door, but, it did not open. She thereupon gave forcible push with her leg as a result of which, the door of the room opened. She saw the appellant having gagged the mouth of her daughter. Her daughter was naked at that time whereas the chain of the pant of the appellant was open. The appellant got up on seeing her, threatened her and fled away after pushing her. She disclosed the incident to her husband. The efforts were made to trace the accused. The landlord, however, threatened them that if they informed the Police they would be defamed and won't be able to get some other accommodation on rent.

5. PW-5 is the father of the prosecutrix. He has stated that on 18.1.2005, the prosecutrix had gone to the bathroom. She did not return from the bathroom. After some time, his wife informed him about the commission of rape with her daughter. When his wife intended to report to the Police, she was threatened not to lodge the complaint to the Police. On 21.1.2005, when the condition of the daughter worsened, she was taken to the Hospital and got medically examined. The Police also reached there and recorded her statement.

6. PW-7 Ct. Ishwar Singh, had stated that on 26.1.2005, the appellant was arrested near the Asthal Mandir pursuant to a secret information received by them. PW-11 S.I. K.P.Shah has corroborated the deposition of PW-7 regarding arrest of the appellant.

7. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and stated that there was dispute between his brother-in-law and the parents of the prosecutrix regarding arrears of rent and vacation of house. There was a hot exchange of words on the day of this incident and he being brother-in-law of the landlord intervened in the dispute. Thereupon the parents of the prosecutrix reported the matter to the Police.

8. DW-1 Parshadi Singh is the brother-in-law of the appellant and is the owner of House No.1094, Gali No.25, L-First, Sangam Vihar, New Delhi. He has stated that his house has two rooms on the ground floor and two rooms,

one bathroom and kitchen on the first floor. On second floor, there is small store. There were two tenants on the first floor, one of them being the father of the prosecutrix. He has further stated that Hem Narayan Thakur, father of the prosecutrix was not paying the rent for the last 5-6 months prior to this incident and on this issue, there was hot exchange of words between them. On 21.1.2005, he again asked the father of the prosecutrix to pay the arrears of rent or vacate the house, whereupon the parents of the prosecutrix started quarreling with him. The appellant came there, in the meanwhile, and intervened. The father of the prosecutrix did not pay his arrears and informed the Police. On seeing the Police, the appellant ran away from the House.

9. It is an admitted case that the family of the prosecutrix was residing as a tenant on the first floor of House No.1094, Gali No.25, L-First, Sangam Vihar, New Delhi, which was owned by DW-1 Parshadi Singh, brother-in-law of the appellant. It is also an admitted case that there is a small room/store on the second floor of that house. It is also an admitted case that the appellant who is brother-in-law of DW-1 was present in the house of DW-1 on the date of this incident.

10. The defence taken by the appellant is that since father of the prosecutrix had not paid rent for 5 to 6 months, DW-1 asked him either to pay the arrears of rent or to vacate the house, which led to exchange of hot words between them, inviting intervention from the appellant and for this

reason, he has been falsely implicated in this case. There is no convincing evidence of the father of the prosecutrix being in arrears of rent. No notice has ever been given by DW-1 to father of the prosecutrix demanding arrears of rent. No documentary evidence has been produced by him to prove that the father of the prosecutrix was in arrears of rent. Thus there is no reliable evidence of the father of the prosecutrix being in arrears of rent. Even otherwise, it is highly improbable that the parents of the prosecutrix would allege rape with their daughter merely for the purpose of implicating the brother-in-law of the landlord, on account of their inability to pay the rent for 5 to 6 months. Assuming that the father of the prosecutrix was in arrears of rent for 5 to 6 months, no legal proceedings were pending against him for recovery of arrears of rent or for eviction of the premises occupied by him, when this incident took place. Therefore, there was no such compulsion upon him as would motivate him to go to the extent of implicating the brother-in-law of the landlord in a false case of rape and in that too at the cost of bringing their own daughter into disrepute. In a tradition bound society like ours, no father is likely to use his own daughter merely for the purpose of implicating a relative of the landlord on account of his inability to pay arrears of rent for a few months. In any case, even if there was any dispute as regards arrears of rent, that being between the landlord and the father of the prosecutrix, If he had to implicate anyone in a false case, he would have implicated the landlord himself and not his brother-in-law. More importantly, if the prosecutrix or her parents were to

implicate the appellant in a false case, they would have alleged an incident of the same date and would not have stated that the rape was committed 3 days ago. A person making a false allegation of rape, would not claim it to be a 3 days old incident, as he/she would know that he/she will have to explain the delay in reporting the matter, to avoid this, he would claim it to be a fresh incident. Therefore, in my view, the defence taken by the appellant is highly improbable.

11. The deposition of the prosecutrix and her parents shows that the appellant fled away from the house in which he was residing, after committing this incident. The deposition of PW-7 Constable Ishwar Singh and PW-11 SI K.P.Shah shows that the appellant was arrested from near Asthal Mandir near Sangam Vihar on 26.1.2005. This is not the case of the appellant that he was not arrested from near Asthal Mandir on 26.1.2005. This is also not his case that he was very much present in that house between 18.1.2005 to 26.1.2005. There is no explanation from the appellant as to why he was absconding from his house after 28.1.2005. The very fact that the appellant was found absconding from his house and has not been able to render any satisfactory explanation is yet another circumstance which corroborate the fact attributed to the appellant and indicates that he was absconding because he was not seen by the mother of the prosecutrix while he was raping her.

12. I see no reason to disbelieve the testimony of the prosecutrix and her mother. The prosecutrix being a young girl stated to be aged about 13 years at the time of this incident, it is highly unlikely that she or her parents would implicate anyone in a false case of rape at her cost. As observed by Hon'ble Supreme Court in *Bhogin Bhai Hirji Bhai v. State of Gujarat*, AIR 1983 SC 753, a girl or a woman in the tradition bound society of India would be extremely reluctant to even admit that an incident, which is likely to reflect on her chastity, had ever occurred. She would be conscious of danger of being looked down not only by relatives, friends and neighbours, but, also by her own family members. In our tradition bound society, a loss of reputation is involved in reporting such incidents to the Police. Barring an extreme case no parent would go to the extent of involving anyone in a false case of rape with their daughter as they would be conscious of the fact that making such allegations would require taking their daughter firstly to the Police then to the Hospital and then in the Court. Unless, they are genuinely aggrieved, they are not likely to adopt such a course of action.

13. It was pointed out by learned counsel for the appellant that no injury was found on the person of the prosecutrix when she was examined in the Hospital on 21.1.2005. It has come in the deposition of the prosecutrix that the appellant had forcibly covered her mouth with his right hand. It has come in evidence that the prosecutrix was called upstairs, on a false pretext. Obviously, the appellant had pre-planned to commit rape with her. That is why he covered her mouth, as soon as she came upstairs. The

prosecutrix being a young girl aged about 13 years and the appellant being an able bodied young man, it was not physically possible for her to release herself from the clutches of the appellant. This is more so, when it was already dark at that time and no one else was present on the roof. The prosecutrix was all along with the appellant in the room where she was subjected to rape and the door had been bolted by the appellant. Therefore, it would be unrealistic to expect her to put up a tough resistance to the advances made by the appellant. Moreover, the incident having taken place on 18.1.2005 and the prosecutrix having been examined on 21.1.2005, the marks of external injury unless they were of serious nature, would not be visible on that day.

14. It is true that there was delay in lodging the report to the Police. But it has to be kept in mind that reporting such a matter to the Police is always preceded by a lot of thoughtful consideration, since honor and prestige of the family is involved. As stated by the parents of the prosecutrix, they were apprehensive that if the matter was reported to the Police, it would bring disrepute to the family and they might not be able to get another accommodation on rent in the same locality, if the family was defamed on account of this incident. That explains the reason behind their reluctance to report the matter to the Police. In fact, had the prosecutrix had not bled on 21.01.2005, her parents might not have reported the matter at all to the Police. Obviously, when they found the prosecutrix bleeding on 21.12.005, they got scared and reported to the Police. It was pointed out by learned

counsel for the appellant that vide DD No.10-B, Ex.PW-8A, the information given to the Police was not of rape but of a quarrel between the landlord and the tenant. This, in my view, does not indicate that no incident of rape took place on 18.1.2005. Obviously, when the parents of the prosecutrix saw her bleeding on 21.1.2005, they took up the matter with the landlord who was none other than brother-in-law of the culprit and that would naturally have led to some kind of quarrel between the parents of the prosecutrix on the one hand and brother-in-law of the appellant and on the other hand, leading to reporting of the matter to the Police.

15. It is, by now, well settled by a catena of decisions of the Hon'ble Supreme Court including *Rafiq vs. State of Uttar Pradesh*, 1980 CrL J. 1344 and in the case of *Bhogin Bhai Hirji Bhai vs. State of Gujarat*, (*supra*) that *there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration*. If the testimony of the victim does not suffer from any basic infirmity and is not inherently improbable, there can be no justification for discarding the same. Having regard to the increase in the number of sex violence cases in the recent past, it would be adding insult to injury to tell a woman that her story cannot be believed unless it is corroborated in material particulars as in the case of an accomplice of a crime. The standard of proof to be accepted by a 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 prosecutrix can be available.

When the prosecutrix was examined in the Hospital, she informed the Doctor that on 18.1.2005, that she was called by Mohit at about 7 p.m. to collect woods from a room in the House and on entering the room, she found it to be pitch dark and a relative aged about 25 years had covered her mouth with one hand and successfully assaulted her after removing her clothes. She further informed the Doctor that he had also bitten her on the cheeks. The mother of the prosecutrix who herself found her being raped by the appellant has also stated that she found bite marks on the cheeks of the prosecutrix. The statement made by the prosecutrix to the Doctor on 21.1.2005 corroborates her statement given during trial. The deposition of the prosecutrix also finds corroboration from the deposition of her own mother, who stated that the appellant was lying on her and that she had found her daughter naked at that time. These previous statements of the prosecutrix are admissible in evidence under Section 157 of Evidence Act. In *Madan Lal vs. State of Jammu and Kashmir*, AIR 1998 sc 386, the statement made by the prosecutrix to her mother immediately after the incident was accepted to be a corroborative piece of evidence.

As regards delay in reporting the matter to the police, as noted by Hon'ble Supreme Court in the decision reported in *Ravinder Kumar vs. State of Punjab, 2001 (VII) AD (SC) 209*, the law has not fixed any time limit for lodging FIR and delayed FIR is not illegal. If there is delay, the court has to look for the reasons which could be many. But the FIR is not vitiated on account of delay alone. As regards delay in lodging of FIR in rape cases

one cannot be oblivious to the fact that such cases involve honour of family and therefore a cool thought may precede lodging of FIR in such cases.

16. It was pointed out by learned counsel for the appellant that as per ossification test, the age of the prosecutrix was between 14.5 years to 15.8 years as stated by PW-8 Dr.Puja and since there could be a variation upto two years, in the age determined by ossification test, the prosecutrix could be more than 16 years of age at the time of this incident. In my view, in the facts and circumstances of this case, the age of the prosecutrix would not be material. This is not the case of the appellant that he had sexual intercourse with the prosecutrix with her consent. The plea taken by him is that he did not at all have any physical intercourse with the prosecutrix and has been falsely implicated on account of quarrel between his brother-in-law and the father of the prosecutrix on account of non-payment of arrears of rent and vacation of premises. Therefore, I need not to go into her age though she has stated that she was aged about 13 years and according to the mother of the prosecutrix, she got married in the year 1987 and the prosecutrix was born after two or two and a half years of marriage.

17. For the reasons given in the preceding paragraphs, I find no ground to interfere with the conviction of the appellant under Section 376 of IPC. The appellant has been given minimum prescribed sentence of seven years. There are no special circumstances which would warrant giving less than the minimum prescribed sentence to the appellant, who has destroyed the

life of a young girl stated to be aged about 13 years at the time of this incident. Any sympathy with such a person, in the absence of any extenuating circumstances, would be totally misplaced. I, therefore, see no valid reason to reduce the sentence awarded to the appellant. The appeal has no merit and is, hereby dismissed.

V.K. JAIN,J

NOVEMBER 24, 2009
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