

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : March 25, 2009
Judgment delivered on : April 06, 2009

+ **(1) Crl. Appeal No. 328 of 2006**

Jai Narain ... Appellant
Through: Mr. R.K. Sonkiya,
Advocate

versus

The State ... Respondent
Through: Mr. R.N. Vats, Additional
Public Prosecutor for
State

(2) Crl. Appeal No. 541 of 2006

Jamshed ... Appellant
Through: Mr. R.K. Sonkiya,
Advocate

versus

The State ... Respondent
Through: Mr. R.N. Vats, 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. The two appellants i.e. Jai Narain S/o Sh. Janak Pawan and Jamshed S/o Shri Mehtab in the above titled two

appeals assail their conviction for the offence of rape recorded by the learned Additional Sessions Judge, New Delhi, in the impugned judgment of 30th March, 2006.

2. Since these two appeals arise out of one common impugned judgment based on one FIR, therefore, these two appeals have been heard and are being decided together by this common judgment.

3. The background of this case, in brief, is that:-

On 10th February, 2004, Smt. Lilawati (PW-6), mother of the prosecutrix (PW-1), lodged a complaint that her daughter-Suresh, a minor had gone to purchase washing soap from the market on the previous day and had not returned and she suspected that both the appellants/accused had kidnapped her. While pursuing the complaint, police investigated and recovered the prosecutrix, recorded her statement under Section 164 of the Cr.P.C., got her medically examined, sent the samples to CFSL, collected the CFSL Report and after completion of the investigation, Challan under Sections 363/376/34 of the Indian Penal Code, against both the appellants/accused was filed in the court of Metropolitan Magistrate, who committed the case to the court of Sessions and the trial court, after hearing the arguments of Counsel for both the appellants/accused and Additional Public Prosecutor for the State, framed charges under Sections 363/34, 366/34 and 376(2) (g) of the IPC against both appellants/ accused.

4. Trial in this case commenced because accused/

appellants did not plead guilty to the charges framed against them under the aforesaid provisions of law.

5. Twelve prosecution witnesses had deposed at trial. The prosecution evidence mainly consists of the testimony of prosecutrix (PW-1) and of her mother (PW-6). Kailash Chand Yadav (PW-9) has proved School Leaving Certificate of the prosecutrix, giving her age about 12 years. ASI Brahm Prakash (PW-12) is the Investigating Officer of this case.

6. These two appellants in their statements under Section 313 Cr.PC before the trial court have alleged false implication and have stated that they have been falsely implicated in this case. However, they did not lead any evidence in their defence.

7. After the trial, these two appellants/accused stood convicted under Sections 363/376/34 of the IPC vide impugned order dated 30th March, 2006, and the trial court sentenced them to RI for seven years with fine of Rs.500/- each and in default of payment of fine, to undergo SI for 15 days for the commission of offence of rape under Section 376 of the IPC. Both the appellants/accused were further sentenced to undergo RI for one year with fine of Rs.500/- each and in default of payment of fine, to further undergo SI for 15 days for the commission of offence punishable under Section 363 of the IPC. Both the substantive sentences were ordered to run concurrently.

8. Submissions have been advanced by both the sides and learned counsel for the parties have assisted this court in evaluating the evidence on record.

9. In the afternoon of 9th February, 2004, Prosecutrix (PW-1) aged twelve years was sent by her mother – Lilawati, (PW-6) to the market for buying soap for washing clothes and she did not return and so mother of the Prosecutrix (PW-1) lodged a missing report with the police, wherein she had expressed suspicion upon the two Appellants/accused herein being instrumental in missing of her daughter/Prosecutrix (PW-1), as these two accused were often visiting her house. On 11th February, 2004, the Prosecutrix (PW-1) was recovered from a house and these two Appellants/accused were apprehended from there and the statements of the Prosecutrix (PW-1) under section 164 of the Cr. P.C. was recorded, wherein she had stated that she was kidnapped and raped.

10. Learned counsel for the Appellants contends that no description of the Appellants/accused was given by the Prosecutrix (PW-1) in her statement under section 164 of Cr. P.C. and nor she had named Appellants/accused as the culprits.

11. To appreciate this contention, evidence of the Prosecutrix (PW-1) has been scrutinised and it is found that she has stated in her evidence before the court that these

two Appellants/accused present in the court alongwith their co-accused had kidnapped her and had raped her. Prosecutrix (PW-1) has stated in her evidence that she had not taken any name of culprits under section 164 Cr. P.C. but it has not been elicited from her as to whether she knew their names and therefore, the evidence of the Prosecutrix (PW-1) cannot be faulted with because she has identified the Appellants/accused present in the court as the culprits. In the cases like present one, identification by face is good enough, until and unless it is shown as to why the Prosecutrix (PW-1) and that too a child of twelve years would falsely implicate the accused and would spare the real culprits.

12. The testimony of the prosecutrix is sought to be discredited by the defence by pointing out that after this incident, she was raped by one Kesu Dili and a rape case is pending against him. It may be so, but it does not show that the Prosecutrix (PW-1) was having a loose character. Moreover, it has not been so suggested to her by the defence in cross-examination.

13. The testimony of the Prosecutrix (PW-1) is consistent and reliable and it receives corroboration from the CFSL Report, Ex. PX, which indicates that semen was detected on the vaginal swabs of the prosecutrix. The apprehension of the Appellants/accused from the place of

recovery of the prosecutrix clearly incriminates the Appellants/accused whose stand is a bald denial of the prosecution case and they have not taken any plea of any *alibi*.

14. The testimony of the prosecutrix (PW-1) has been evaluated in the light of the pertinent observations made by the Apex Court in the case of “*State of Himachal Pradesh Vs. Asha Ram*” **AIR 2006 SC 381**, which reads as under:-

“It is now well settled principle of law that conviction can be founded 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 worthy of reliance. 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. 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.”

15. After meticulous examination of the testimony of Prosecutrix (PW-1), I find that her evidence inspires confidence and the same has been rightly relied upon by the trial court. It is pertinent to note that the suggestion given to her by the defence is of someone else raping her and of Appellants/accused being falsely implicated by her. No reason is forthcoming as to why the prosecutrix or her

mother (PW-6) would falsely implicate the Appellants/accused for commission of the heinous offence like the present one.

16. The two decisions reported in **2009 (1) Crimes 110 and 123** relied upon by the Appellants/accused are of no assistance as the decision reported in **2009 (1) Crimes 123** was of gang rape and was not of a child victim, whereas, in the decision reported in **2009 (1) Crimes 110**, it was found that the child victim was tutored. It is not found to be so, in the instant case.

17. In the present case, the conviction and sentence imposed upon these two Appellants/accused, by the trial court, is very well justified in the face of the evidence on record. There is no illegality in the impugned judgment.

18. These two appeals are bereft of merit and are accordingly dismissed.

SUNIL GAUR, J

April 06, 2009

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