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IN THE HIGH COURT OF DELHI

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Date of Decision : January 16, 2009

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CRL. APPEAL No.443/2006

RAJENDER SINGH Appellant
Through: Mr.Bharat Bhushan, Advocate.

Versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG
HON'BLE MS.JUSTICE ARUNA SURESH

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. On 3.12.2002 at about 12.05 A.M. DD Entry No.29, Ex.PW-3/A, was recorded by PW-3 Const. Sanjay Kumar to the effect that a wireless message has been received informing that a lady is sitting at the Dogra Taxi Stand near Gurudwara Rakab Ganj and her luggage is missing.
2. This swung the police into action. SI Mohan Singh PW-19, accompanied by Const. Veerpal Singh PW-11, reached the spot. Simultaneously, other police officers ASI James Kujur PW-12,

Inspector Surender-jeet Kaur PW-14, HC Virender Singh PW-9 and Lady Const. Asrita PW-8, who had received the information also reached the spot.

3. A lady in a distressed condition (the prosecutrix) was found standing on the spot. SI Mohan Singh PW-19, recorded her statement, Ex.PW-2/DA, and made an endorsement Ex.PW-19/B thereon, and at 1.40 A.M. handed over the same to Const. Veerpal Singh PW-11, for registration of a FIR. Veerpal Singh took Ex.PW-2/DA to the police station and handed over the same to HC Ashwani Kumar PW-1, who recorded the FIR No.336/2002 Ex.PW-1/A at 1.50 A.M. on 3.12.2002.

4. In her statement Ex.PW-2/DA, the prosecutrix stated that she was a resident of Ghaziabad and used to regularly visit Gurudwara Bangla Sahib for offering prayers. That on 2.12.2002 she had reached Gurudwara Bangla Sahib at 6.00 P.M. and as usual offered prayers. She stated that around 10.30 P.M. while she was standing at the bus stand waiting to board a bus to New Delhi Railway Station, a white coloured Maruti Esteem car bearing registration no. HR-01-L-4952 took three rounds of the bus stand. That on the fourth round the said car stopped in front of her and the driver of the said car named Rajender Singh s/o Kushal Singh r/o village Chaltha PS Lohaghat, District Pithoragarh, Uttar Pradesh (the accused), offered her a lift. That she refused to sit in the car. The accused forcibly dragged her inside the car and locked all the doors of the car. That

when she tried to raise an alarm he slapped her twice and gave her two fist blows. That thereafter he threw her on the rear seat of the car and drove the car to look for a lonely place. That when she was shouting for help he took out a bottle containing yellow coloured liquid and threatened that if she would make noise he will throw acid on her face. That he kept driving the car for a long time and after some time stopped the car near a footpath and came to the rear seat. That after removing her clothes he committed rape on her. She stated that thereafter she wore her clothes, came out of the car and screamed for help at which some people gathered and apprehended the accused and soon thereafter the police reached the spot.

5. Since in her statement Ex.PW-2/DA, made to PW-19, the prosecutrix informed that the appellant was the accused, the police apprehended the accused who was present on the spot.

6. PW-19 prepared the site plan, Ex.PW-19/A, recording therein the place at point marked 'A' where the prosecutrix stated to have been raped by the accused. The car in which the offence of rape was stated to have been committed by the appellant was seized vide seizure memo Ex.PW-4/B. Hair was lifted from the rear seat of the car and portion of the rear seat containing dirty stains were seized vide seizure memo Ex.PW-11/A. That thereafter the prosecutrix was taken to Lady Hardigne hospital where her medical examination was conducted and her vaginal swabs as also the

clothes which she was wearing at the time of the alleged commission of the offence of rape were seized vide seizure memo Ex.PW-8/A. The accused was taken to Ram Manohar Lohia hospital for medical examination and his semen sample was seized vide seizure memo Ex.PW-19/D. The underwear and the blood sample of the accused were seized vide seizure memo Ex.PW-9/A.

7. The MLCs of the accused, Ex.PW-15/A and Ex.PW-17/A, dated 3.12.2002 and 4.12.2002 respectively, record that no external injury was found on the person of the accused and that there is no reason to suspect that the accused was not capable of performing sexual act. The MLC of the prosecutrix, Ex.PW-16/A records that no external injury was found on the person of the prosecutrix.

8. The seized materials were sent to the Forensic Science Laboratory for scientific examination. Vide FSL reports Ex.PW-19/E, PW-19/F and PW-19/G it was opined that the sample of the blood of the accused contained alcohol; the hair found on the rear seat of the car and the hair taken from the person of the prosecutrix were similar in most of their morphological and microscopical characteristics and that the underwear of the accused and vaginal swabs and clothes of the prosecutrix contained semen of human having blood group 'B'.

9. On the same date i.e. 3.12.2002 the statement under Section 164 Cr.P.C., Ex.PW-4/D, of the prosecutrix was recorded before a Metropolitan Magistrate wherein also, she indicted the accused.

10. Armed with the aforesaid material the challan was filed accusing the appellant of having raped the prosecutrix. Charges were framed against the appellant for having committed offences punishable under Sections 323/342/365/366/376/506 IPC.

11. At the trial, apart from examining afore-noted police officers who proved the receipt of initial information, the police visiting the site of occurrence, the registration of FIR, recording of statement of the prosecutrix during investigation, seizure memos, preparation of the plan of the site, the prosecutrix, the doctors who conducted the medical examination of the prosecutrix and the appellant namely Dr.Shivani Singh, Dr.Pradeep Saxena and Dr.S.Saxena, the owner of the car Mr.S.S.Sandhu, a volunteer from NGO Ms.Alaknanda Das and an official from FSL were examined as PW-4, PW-16, PW-15, PW-17, PW-5, PW-7 and PW-18 respectively. The prosecutrix in her testimony as PW-4 again indicted the appellant. The owner of the car Mr.S.S.Sandhu in his testimony as PW-5 deposed that the appellant was employed by him as a driver.

12. In his examination under Section 313 Cr.P.C. the appellant denied the allegations made against him by the prosecutrix and stated that he does not know the prosecutrix and that while he was

sleeping in the rear portion of his car the police officers suddenly came, apprehended him, and accused him of committing rape of the prosecutrix.

13. At the trial, the defence of the appellant was predicated upon the stated inconsistencies in the version stated by the prosecutrix about the happening of the incident at various stages. (The alleged inconsistencies in the versions of the prosecutrix shall be dealt by us shortly herein after).

14. Believing the testimony of the prosecutrix and in view of the FSL reports Ex.PW-19/E, PW-19/F and PW-19/G; holding that the alleged inconsistencies pointed out by the defence in the version of the prosecutrix are minor discrepancies and hence are of no consequence, vide judgment dated 03.03.2006, the learned Trial Judge has convicted the appellant and vide order dated 06.03.2006 has sentenced him to undergo imprisonment for life and pay a fine of Rs.1000/-, in default to undergo SI for 3 months for offence punishable under Section 376 IPC; RI for five years and pay a fine of Rs.500/-, in default to undergo SI for 2 months for offence punishable under Section 366 IPC; RI for three years and pay a fine of Rs.500/-, in default SI for two months for offence punishable under Section 365 IPC; SI for one year for offence punishable under Section 506 IPC; SI for six months for offence punishable under Section 323 IPC; SI for six months for offence punishable under

Section 342 IPC. All the sentences awarded to the appellant were directed to run concurrently.

15. At the hearing before us today, the learned counsel appearing for the appellant drew our attention to various alleged inconsistencies in the versions stated by the prosecutrix about the happening of the commission of the offence at various stages and has contended that the said inconsistencies entitle the appellant to get benefit of doubt and thus he be acquitted of the charges framed against him. The alleged inconsistencies pointed out by the learned counsel appearing for the appellant are being capitulated as under:-

S.No	Statement of prosecutrix under Section 161 CrPC	Statement of prosecutrix under Section 164 CrPC	Statement of prosecutrix in exam-in-chief	Statement of prosecutrix in cross examination	Other Circumstances
1.	Records that the prosecutrix is wife of Late Sh.Narender Prakash	----	----	Testifies that her husband is alive and is living in Tehran since last 5 - 6 years	---
2.	Testifies that the appellant had taken three rounds of the bus stand before stopping the car in front of her.	Does not state that the appellant had taken three rounds of the bus stand before stopping the car in front of her.	Does not state that the appellant had taken three rounds of the bus stand before stopping the car in front of her.	----	----
3.	States that the appellant opened the front side door of the car and dragged her inside the car	States that the appellant opened the front side door of the car and dragged her inside the car	States that the appellant opened the front side door of the car and dragged her inside the car	States that the appellant first moved from driver seat to front side seat of the car and then dragged	----

				her inside	
4.	----	----	----	States that she received scratches on her elbows	MLC of the prosecutrix records that no external injury was found on person of prosecutrix
5.	The appellant gave beatings to the prosecutrix	The appellant gave beatings to the prosecutrix	The appellant gave beatings to the prosecutrix	----	MLC of the prosecutrix records that no external injury was found on person of prosecutrix
6.	States that appellant gave 2 slaps and 2 fist blows to her when she screamed for help after he dragged her inside the car.	States that the appellant threatened to kill her and kept his hand on her mouth when she screamed for help after he dragged her inside the car.	States that appellant gave 2 slaps and 2 fist blows to her when she screamed for help after he dragged her inside the car.	-----	----
7.	States nothing about the said fact	States that appellant told her to view India Gate on which she told him to let her go out of the car and then he slapped her twice	States nothing about the said fact	----	-----
8.	States that appellant threw her on the back seat of the car	States that she was sitting on the back seat of the car but does not say as to how she reached there	States that appellant asked her to lay down on the back seat of the car	States that appellant threw her on the back seat of the car	----
9.	States that appellant threatened her by a bottle containing yellow coloured liquid	States nothing about the said bottle	States that appellant threatened her by a bottle containing yellow coloured liquid	States that cannot say whether said bottle was recovered but later says said bottle was recovered by police	No such bottle was recovered by the police

10.	States that appellant came to back seat of the car from inside the car	States that appellant came to back seat of the car after getting out of the car	----	----	----
11.	States that when appellant was removing her clothes she tried to stop him by saying that he was like her child on which he hit her twice	States nothing about the said fact	States nothing about the said fact	----	----
12.	States that she got out of the car after wearing her clothes	----	States that she got out of the car without wearing her clothes	----	----
13.	States nothing about the said fact	States nothing about the said fact	States that appellant after committing rape said that she is his mother	----	----
14.	----	----	----	States that her hand bag containing one steel mug, a packet of biscuits and a prayer book was recovered from the car.	No police official talks about the recovery of the hand bag from the car

16. Every variation, departure or a discrepancy by a witness vis-à-vis a previous statement recorded before the police does not amount to a contradiction. Where a person discloses the same version at two points of time, it is natural for slight variations to be made. A contradiction means to state an incident, at two different points of time, with such variations on material particulars that it

becomes impossible to reconcile the second statement with the first. In the case of an alleged rape, the mental condition of the victim immediately after the incident has to be kept in mind. The victim of a rape undergoes trauma not only afterwards but even when being raped. It is natural for such a victim to omit certain vital facts pertaining to the incident and hence merely because a particular fact is disclosed subsequently would not mean that the victim is a liar. In the instant case the report of the FSL pertaining to the seizures effected vide Ex.PW-4/B, Ex.PW-8/A and Ex.PW-11/A establish that the appellant had sex with the prosecutrix on the rear seat of the car from where the hair of the prosecutrix as also semen was recovered. The semen matches the blood group of the appellant.

17. At this stage, learned counsel urges that the evidence probablizes: sex by consent. Counsel urges that the version of the prosecutrix that after forcibly dragging her in the car, the appellant threw her on to the rear seat of the car; drove around, looking for a lonely spot and after some time parking the car near a pavement; coming out of the car and forcing himself on the prosecutrix when she was lying on the rear seat is unbelievable because if this had happened, obviously, the appellant would be driving the car from the driver's seat till it was stopped near the pavement giving ample opportunity to the prosecutrix to shout and scream and attract the attention of the people in the vicinity. Counsel urges that as per the

prosecutrix she was lifted from the bus stand near Gurudwara Bangla Sahib at 10.30 PM and that around said time many people are on the streets around Gurudwara Bangla Sahib.

18. The submission made by learned counsel does not appeal to us for the reason the incident has taken place on the intervening night of second and third December 2002. It is winter time in Delhi in the month of December. Not many people are on the street at 10.30 PM. As regards the victim not shouting for help, she has categorically stated to the police and in the Court that the appellant was carrying acid in a bottle and threatened to pour the same on her if she raised a hue and cry.

19. The question that remains to be adjudicated is whether the sentence of life imprisonment awarded to the appellant by the learned Trial Judge for the offence under Section 376 IPC is just and proper in the facts and circumstances of the case. It may be noted that the appellant has already undergone the duration of detention pertaining to the other offences and since all sentences have to run concurrently, qua the other offences the issue of sentence has become redundant.

20. The old age of the victim who appears to be nearly 60 years of age when she was raped has weighed with the learned Trial Judge for awarding the maximum punishment prescribed by law for the offence of rape. The learned Trial Judge has noted that the

prosecutrix was old enough to be treated as a mother by the appellant. In other words, the conduct of the appellant has been held to be morally depraving akin to a son raping his mother.

21. Law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It has to be achieved through instrumentality of criminal law. Undoubtedly, where there is a cross cultural conflict, law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. Protection of society and stamping out criminal proclivity must be the object of law which has to be achieved by imposing appropriate sentence. Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence, based on factual matrix. By deft modulation sentencing process should be made stern when required and tempered with mercy, where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances

in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances, in a dispassionate manner by the Court.

22. In the decision reported as **Raju v State** 109 (2004) DLT 953 the appellant therein was awarded RI for seven years for offence punishable under Section 376 IPC and was lodged in prison for a period of one year and six months. While holding that the circumstances of the case do cast a shadow of doubt on the version of the prosecution but not sufficient to give benefit of doubt, this Court reduced the sentence to period of imprisonment already undergone.

23. Having noted the approach to be adopted, let us examine the present case. The appellant was a young man of 28 years (as recorded in MLCs Ex.PW-15/A and Ex.PW-17/A) at the time of the incident. He had clean antecedents. The offence committed by the appellant was not a pre-meditated one. No injuries were caused by the appellant on the person of the prosecutrix. It has to be noted that the prosecutrix knew the appellant evidenced by the fact that in her statement Ex.PW-2/DA recorded soon after she was raped she not only named the appellant but even disclosed his parentage. She named his village, the district in which the village was situated and also the police station within jurisdiction whereof the village was situated. The possibility of the prosecutrix voluntarily sitting inside the car on being offered a lift cannot be ruled out. It appears

to be case where the prosecutrix boarded the car driven by the appellant with consent and moved in the car with consent, of course not consenting to have sex, but the accused who was intoxicated misunderstood the same as an act of consent and thereafter doing what he did. From the nominal roll received from the prison we note that the appellant has suffered incarceration for a period of six years and eight months. A considerable period of the youth of the appellant has been withered away in prison. The antecedents of the appellant are otherwise clean.

24. Considering the afore-noted circumstances, we are of the view, that it would meet the ends of justice, while maintaining the conviction, to sentence the appellant to undergo imprisonment for the period already undergone by him and to pay the fine as imposed by the learned Trial Judge and in the alternative to undergo the imprisonment as directed by the learned Trial Judge.

25. The appeal is disposed of in terms of para 24 above.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 16, 2009
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