

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

Judgment reserved on: April 29, 2009
Judgment delivered on: May 13, 2009

+ **Crl. Appeal No. 573 of 2006**

% Atma Ram ... Appellant
Through: Mr. Bhupesh Narula, Advocate

versus

The State of NCT of Delhi ... Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for the 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 victim in this case is a minor girl child of eleven years, who fell prey to the lust of her father and his friend, about a week prior to 26th September, 2002. Appellant herein is the friend of father of the prosecutrix / victim (PW-2) and father of the prosecutrix is the co-accused of the Appellant. Regarding this incident, on 27th September, 2002, FIR No. 670/2002, under Section 376/34 of Indian Penal Code was registered at Police Station Dabri, Delhi, at the instance of mother of the prosecutrix (PW-2). The sordid story of prosecutrix being subjected to rape by her brutish father, time

and again, during the last three or four months, came to light after prosecutrix (PW-2) disclosed about it to her mother, when she met her at the '*sharadh*' of her grandfather, i.e., on 26th September, 2002. Father of the prosecutrix (PW-2) is said to be a drunkard, who used to quarrel his wife and so mother of the prosecutrix had left and had started residing with her brother during the last eight months or so, prior to this incident.

2. In the above referred background, the prosecution case has to be considered. After registration of the FIR, prosecutrix (PW-2) was got medically examined. Appellant and his co-accused were arrested and they were also subjected to medical examination and the bone age test of the Prosecutrix (PW-2) was got done and the age certificate of the Prosecutrix (PW-2) was obtained and upon completion of the investigation of this case, Appellant and his co-accused were charge sheeted for commission of offence punishable under section 376/34 of Indian Penal Code.

3. Appellant and his co-accused preferred to face the trial in this case. The prosecution evidence consists of evidence of prosecutrix (PW-2), her mother (PW-1), School principal (PW-3) has deposed regarding the date of birth of the prosecutrix (PW-2) as available in the school records. Dr. Alok Narang, (PW-6) has proved the bone age report Ex.PW-6/A of the prosecutrix (PW-2), which indicates that she was aged between nine to ten

years. Dr. Monika (PW-11) had proved the MLC (EX. PW6/A) of the prosecutrix/victim (PW-2). Inspector Avtar Singh (PW-14) is the Investigating Officer of this case.

4. Although the Appellant had denied the prosecution case before the trial court, but had admitted that he is friend of his co-accused and the prosecutrix (PW-2) was aged about twelve years and is the daughter of his co-accused. He had also admitted that the mother of the prosecutrix (PW-2) was living at her parents house due to his co-accused quarreling with her and because his co-accused had bad habit of drinking liquor. However, the Appellant had not led any evidence in his defence but the stand taken by him before the trial court was as under:-

I am innocent and have been falsely implicated in this case. Two months prior to the incident of the complaint, Raj Laxmi had taken Rs.20,000/- as loan from me and I had arranged this money after mortgaging my property for purpose of starting of my business for the treatment of her brother. Earlier also she used to take Rs. 500 / 100 from me which she used to return. Raj Laxmi did not return back Rs.20,000/- when I started demanding it she falsely implicated me in this case."

5. Trial ended in conviction of the appellant and his co-accused and vide impugned order of 17th May 2006, appellant has been sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/- with default clause, for commission of offence of rape.

6. Counsels for the parties have been heard in this appeal

and the evidence on record has been analyzed.

7. The submissions advanced on behalf of the Appellant are that there is inordinate delay of ten or twelve days in lodging of the FIR in question and the medical evidence does not support the allegations of rape leveled against the Appellant. Learned counsel for the Appellant submits that had the prosecutrix (PW-2) been raped by the Appellant, then she would have definitely raised an alarm. The discrepancy pointed out in the prosecution case is that mother (PW-1) of the prosecutrix has stated that the prosecutrix (PW-2) had informed her about this incident at 6.30 PM, whereas prosecutrix (PW-2) claims to have informed her mother about it at 10 PM. Lastly, it is submitted that Appellant has been falsely implicated in this case because mother of the prosecutrix (PW-2) did not want to return the loan amount of Rs.20,000/- and that Appellant has been falsely implicated in this case and his conviction by the trial court is illegal and it deserves to be set aside. In the alternative, it is submitted that the Appellant has already undergone the substantial part of sentence imposed and he has got daughters of marriageable age and he has already faced the agony of the trial and the appeal proceedings in this case since the September, 2002 and therefore, his sentence deserves to be reduced to the period of more than six and half years, undergone by him. Nothing else has been urged on behalf of the Appellant.

8. Learned Additional Public Prosecutor for respondent-State submits that the delay in lodging of the FIR stands explained and the testimony of the prosecutrix and her mother sufficiently proves the prosecution case and justifies the conviction and sentence imposed upon the appellant and that this appeal lacks merit and deserves dismissal.

9. I shall first deal with the delay aspect. It has to be kept in mind that this case is of sexual exploitation of a minor daughter by a drunkard father. This had been happening for the last few months because the estranged mother of the Prosecutrix (PW-2) was compelled to leave the matrimonial house as she was being subjected to cruelty by the father of the prosecutrix (PW-2) and taking advantage of the absence of the mother of the prosecutrix (PW-2), father of the Prosecutrix (PW-2) not only himself committed the heinous offence of raping his daughter but also permitted his friend to rape his daughter. It is only when the prosecutrix (PW-2) had the opportunity to meet her mother on the 'sharadh' of her grandfather, she disclosed about her plight to her mother, who promptly reported this matter to the police.

10. Apex Court in the case of *Dildar Singh V State of Punjab AIR 2006 SC 3084*, has dealt with a case which is somewhat akin to the case in hand and the pertinent observations are as under :-

“In the normal course of human conduct an unmarried girl who is victim of sexual offence would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report.”

11. What more explanation is required for the delay in lodging of the FIR in this case. In view of the aforesaid, the delay of ten-twelve days in lodging of the FIR stands sufficiently explained. The discrepancy pointed out by the defence in the prosecution case regarding the time when prosecutrix (PW-2) informed her mother about her plight, is hardly of any consequence. What difference does it make if the Prosecutrix states that she informed her mother about her sexual exploitation by her father and his friend at 6:30 p.m. or at 10:00 p.m. The time lapse explains such like minor variation in the evidence recorded.

12. Although, it has come in the evidence of the Prosecutrix (PW-2) that her mother had got her father arrested on earlier occasions also due to the disputes between them, but a mother would be the last person who would stake the future of her minor daughter, to falsely implicate her husband. In any case, why she would falsely implicate the appellant. It is difficult to believe that she would do so because appellant

used to take side of the father of the Prosecutrix. There is no cross-examination of the prosecutrix (PW-2), as to why she did not raise any alarm when she was raped by her father and by the friend of his father i.e. the appellant.

13. Appellant wants this court to believe that mother of the prosecutrix (PW-2) had staked the honour of her family by falsely implicating the appellant by putting future of her minor daughter in peril by falsely alleging that appellant had raped her daughter, just to avoid repayment of some loan amount. This is hardly plausible. Therefore, the plea of the appellant of false implication to avoid repayment of loan is not at all probable as no self respecting woman would put the honour of minor daughter at stake to falsely implicate the accused.

14. Trial court has rightly relied upon a decision of the Apex Court rendered in the case of *Ranjeet Hazarika v. State of Assam* **(1998) 8 SCC 635**, wherein it was said that absence of injuries on the person of the prosecutrix (PW-2) would not belie the testimony of the prosecutrix (PW-2) as no girl / lady would put her reputation at a stake to falsely implicate the accused.

15. It has been declared by the Apex Court time and again that the testimony of the prosecutrix alone is sufficient to convict an accused for the offence of rape, until and unless, it is shown that her testimony is unreliable. Nothing has been brought on record by the defence to show that the version of

the Prosecutrix and her mother suffers from any serious infirmity. Rather, I find their version to be inspiring utmost confidence and the trial court has rightly relied upon it.

16. In the face of the testimony of the Prosecutrix (PW-2) and her mother (PW-1), no fault can be found with the impugned conviction of the appellant for the offence of rape. Resultantly, impugned judgment convicting the appellant for committing the offence of rape, is upheld.

17. On the quantum of sentence, it is noticed that trial court had already imposed the minimum sentence as provided by law. For awarding lesser sentence than the minimum sentence, adequate and special reasons are required to be stated. Trial court has quoted from the decision of the Apex Court in the case of *Kamal Kishore etc. Vs. State of Himachal Pradesh JT 2000 (5) SC 202*, to point out that occurrence had taken place ten years ago or the accused might have settled in life, are not special and adequate reasons. Therefore, appellant may be having two young daughters of marriageable age and due to this case, he may have lost his service, but to my mind, this will not constitute an adequate reason for awarding less than the minimum sentence, as the facts of this case are such, which do not permit this court to show any leniency to the appellant. Thus, the sentence imposed upon the appellant also deserves to be maintained. Accordingly, it is upheld.

18. In view of the aforesaid narration, I do not find any merit in this appeal, and the same is dismissed. Appellant is in custody. He be apprised of the fate of his appeal, through the Superintendent of concerned jail.

19. This appeal is disposed of with directions, as aforesaid.

Sunil Gaur, J.

May 13, 2009
rs/pkb