

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

+ Crl.A.No.669/06

Reserved on: October 23, 2009

Pronounced on: October 30, 2009

Hakim @ Billu Appellant

! Through: Mr. Manoj Sharma,
Standing Counsel from Delhi High
Court Legal Service Committee.

Versus

\$ STATE
(NCT OF DELHI) Respondent

^ Through:Mr.R.N. Vats, Addl.P.P.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

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

V.K.Jain, J.

This is an appeal against the judgment dated 28.11.2005 and Order on Sentence dated 01.12.2005,

whereby the appellant was convicted U/s. 376 IPC and was sentence to undergo imprisonment for 14 years and to pay fine of Rs. 5,000/- to undergo simple imprisonment for one year in default.

2. The case are prosecution, in nutshell is that on 23.05.2003 at about 6.00PM, the appellant took the prosecutrix, then a girl aged about 4 years with him, on the pretext of giving biscuit to her. When the child returned at about 6.30 PM her mother noticed blood stains on her face, thigh and the frock which she was wearing. On enquiry, the prosecutrix informed that the appellant had taken her to his jhuggi and done bad act with her, after removing her clothes as well as his own clothes. On checking the private parts of the prosecutrix, her mother found fresh wounds and blood there. The people living in the locality gathered on the spot and gave beatings to the appellant, when he tried to run away. The police was informed and the appellant was handed over to the police.

3. The complainant, who is the mother of the prosecutrix, came in the witness box, as PW-1 and

stated that on 23.05.2003 at about 6 PM, when her child was playing with the children in the neighbourhood and she was cooking food, the prosecutrix entered the house in a semi-conscious condition. She was weeping and had blood stains on her face and thighs as well as on her frock. She cleaned her face and thighs and asked her as to what had happened with her. She told her that the appellant Hakim @ Billu who was living in her neighbourhood had taken her away on the pretext of taking a buiscuit. At the time when the prosecutrix pointed out towards appellant he was locking the door of his jhuggi. The prosecutrix further stated that he took her inside his jhuggi, made her lie on the floor and removed her underwear. When she tried to scream, the appellant put his hands on her mouth tightly and then committed rape upon her. She has further stated that she found fresh injuries on the private part of the prosecutrix and also noticed bleeding from her vagina. The prosecutrix was not wearing underwear at that time. On hearing this, she raised alarm immediately, as a result of which people from the neighbourhood,

caught hold of appellant, and gave beating to him, when he was trying to run away. Someone, informed the police. Police reached there and recovered a bed sheet, which was blood stained and underwear of prosecutrix from the house of appellant. The frock which the prosecutrix was wearing was taken by the doctor. The witness has identified frock Ex. P2 which the prosecutrix was wearing at the time of incident.

4. PW-4 Ashehswar is the neighbour of PW-1. He has stated that on 23.05.2003 at about 6 PM, when he returned from work, he noticed the appellant talking to prosecutrix in a drunken condition and then taking her with him. He (witness) went inside his house. After sometimes, he saw the prosecutrix coming out from jhuggi of the appellant while weeping, sweating and bleeding. He also noticed the appellant outside his jhuggi. On being asked by neighbour as to why she was weeping, the prosecutrix replied by making gestures that the appellant had done wrong act with her. The appellant was apprehended seeing the bad condition of

the prosecutrix. He was given beatings by the public and police was called. One bedsheet was recovered from the house of the appellant, alongwith underwear of prosecutrix. The witness has identified these articles in the court.

5. PW-5 Mrs. Manju is the another neighbour of PW-1. She has stated that on 23.05.2003 at about 6 PM, she noticed the appellant taking the prosecutrix inside his jhuggi. After sometime, she saw the prosecutrix coming out of his jhuggi in a bad condition. She was weeping at that time and became unconscious. Some water was sprinkled on her face and she was asked as to what had happened. The prosecutrix gained consciousness and replied that the appellant had wrong act with her. The prosecutrix was bleeding profusely from her vagina at that time. Immediately thereafter, the appellant tried to run away, after putting lock on the door of his jhuggi. People apprehended the appellant and gave beating to him when they came to know about the incident. Somebody telephoned police and the appellant was handed over to them by the public.

6. PW-9 Dr. Shalini Jain examined the prosecutrix in the hospital, on 23.05.2003 and found that her hymen was torn and 2nd degree perinial tear was present which was bleeding.

PW-12 SI Harjinder Rana is the Investigating Officer of this case, who went to the spot and arrested the appellant. He has stated that the bedsheet Ex.P3 and underwear of the prosecutrix Ex. P1 were also seized by him.

7. In his statement of U/s. 313 Cr.PC, the appellant denied the allegations against him and stated that he has been falsely arrested in this case, at the instance of PW-5 Manju and another lady whose name he did not know.

8. The prosecutrix having not been examined in the witness box, presumably on account of her tender age, the case of the prosecution against the appellant rests on circumstantial evidence.

9. When a case rests purely on circumstantial evidence, such evidence must satisfy three tests.

Firstly, the circumstances from which an inference of guilt is sought to be proved, must be cogently and firmly established. Secondly, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances taken cumulatively, must form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the guilt of the accused.

10. For determining whether circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the overall picture emerging from a consideration of the diverse circumstances and their conjoint effect may be themselves appear innocuous. It is only when various circumstances are considered

together that it becomes possible to understand and appreciate their true effect.

11. The first circumstance proved against the appellant is that at 6.00 p.m. on 23rd May, 2003, he took the prosecutrix with him to his jhuggi. This has been duly proved by PW-4 Asheshwar and PW-5 Mrs. Manju. There is no reason to disbelieve the testimony of PW-4 and PW-5. There is no enmity or ill-will between the appellant on one hand and either of them on the other hand. Hence, there could have been absolutely no reason to depose falsely against him. Though in his statement u/s 313 of Cr.P.C., the appellant has claimed that he has been implicated at the instance of PW-5 Manju and another lady whose name he did not know, he has not given any reason as to why Manju should implicate him in a false case. He has just made a bald allegation without any foundation and without giving any details. This is not his case that he had any previous enmity with Manju. Therefore, I find no justification for

rejecting the testimony of either PW-4 Asheshwar or PW-5, Manju.

12. The appellant has not given any reason for taking the prosecutrix with him in his jhuggi. This is not his case that though he took the prosecutrix to his jhuggi, it was for the purpose of serving biscuit or some other eatable to her. He has chosen to altogether deny having taken her to his jhuggi.

13. The second circumstance proved against the appellant is that when the prosecutrix came out of his jhuggi at about 6.30 p.m., she was weeping and had blood stains on her face and thighs as well as on her frock. PW-4 Asheshwar as well as PW-5 Manju had seen the prosecutrix coming out of the jhuggi of the appellant, weeping and bleeding profusely. When the mother of the prosecutrix checked her private parts, she noticed injuries on them and also found her bleeding from the vagina. The prosecutrix was not wearing her underwear at that time. This is another circumstance against the appellant which he has not attempted to

explain. No explanation has been given by him as to why the prosecutrix who was when taken by him to his jhuggi at about 6.00 p.m. was found bleeding from her vagina, was without the underwear which she was earlier wearing and why she had blood stains on her face and thighs and on her frock. The inevitable inference is that the marks of injuries on the vagina of the prosecutrix were caused and her vagina started bleeding while the prosecutrix was with the appellant in his jhuggi between 6 p.m. to 6.30 p.m.

14. The third circumstance against the appellant is that he was found locking the door of his jhuggi and trying to flee away immediately after the prosecutrix came out of his jhuggi. This was noticed not only by the mother of the prosecutrix but also by PW-4 Asheshwar and PW-5 Manju.

15. The testimony of the mother of the prosecutrix and PW-4, Asheshwar corroborated by the testimony of the police officials shows that one bed-sheet Exhibit P.3 was recovered from the jhuggi of the appellant

immediately after this incident. This bed-sheet was sent to Forensic Science Laboratory for examination. The report of FSL exhibit PW-16/A shows that blood was detected on the bed-sheet seized from the jhuggi of the appellant. The testimony of PW-1 and PW-4 corroborated by the testimony of PW-12, SI Harjinder Rana shows that the underwear of the prosecutrix was also recovered from the jhuggi of the appellant. The report of the Forensic Science Laboratory shows that human blood was found on the underwear of the prosecutrix. No explanation has been given by the appellant as to why the underwear of the prosecutrix was found in his jhuggi and why blood marks were found on the underwear. No explanation has been given by the appellant as to why blood marks were found on the bed-sheet recovered from his jhuggi immediately after this incident. The report of FSL shows that blood was also found on the frock of the prosecutrix which she was wearing when she returned to her house after this incident. The frock was taken by the doctor in the hospital and was later on handed over to the police

which he sent it to Forensic Science Laboratory for examination.

16. The incriminating circumstances noted above viz. (i) the prosecutrix was taken by the appellant to his jhuggi at about 6.00 p.m.;

(ii) the prosecutrix came out of the jhuggi of the appellant at about 6.30 p.m.;

(iii) the prosecutrix was crying and sweating when she came out of the jhuggi of the appellant ;

(iv) blood stains were found on the face, thighs and frock of the prosecutrix when she came out of the jhuggi of the appellant;

(v) the prosecutrix was bleeding from the vagina when she came out of the jhuggi at about 6.30 p.m.;

(vi) the prosecutrix was not wearing underwear when she came out of the jhuggi of the appellant;

(vii) blood stained underwear of the prosecutrix was recovered from the jhuggi of the appellant immediately after this incident.

(viii) a bed-sheet stained with blood was recovered from the jhuggi of the appellant immediately after this incident;

(ix) the appellant tried to flee from the spot immediately after the prosecutrix came out of his jhuggi;

17. The hymen of the prosecutrix was found torn when she was examined in the hospital and she had second degree perennial tear which was bleeding at that time leaving no reasonable doubt that the appellant who had taken the prosecutrix to his jhuggi had committed rape on her person and that is why the prosecutrix was weeping and sweating when she came out of his jhuggi, blood was found on her face, thighs and frock and not only her blood stained underwear was seized from the jhuggi of the appellant, blood stains were also found on the bed-sheet recovered from his jhuggi. The circumstances proved against the appellant unerringly

points towards the appellant being the person who raped the prosecutrix. These circumstances leave no reasonable doubt not in all human probability the rape on the person of the prosecutrix was committed by the appellant and no other person. The circumstances proved against him are totally incompatible with the innocence of the appellant and wholly consistent with the guilt attributed to him.

18. These circumstances unmistakably prove that it was the appellant who had committed rape on the person of the prosecutrix. The circumstantial evidence proved against the appellant finds corroboration from the statement made by the prosecutrix to her mother immediately after the incident. It finds further corroboration from the prosecutrix pointing out towards the appellant, as the guilty, at the time when he was locking the door of his jhuggi. Non-examination of the prosecutrix will not be relevant in view of the over-falling circumstantial evidence proved against him during trial.

19. A perusal of the MLC of the prosecutrix shows that when she was examined in the hospital at about 9.15 p.m. on 23rd May, 2003, her hymen was found torn and she had second degree perennial tear which was bleeding even at that time. Though semen has not been detected on the articles sent to Forensic Science Laboratory, that would be immaterial since not only the prosecutrix was found bleeding from her vagina, her hymen was also found torn when he was examined in hospital. Tear of hymen coupled with profuse bleeding from the vagina of the prosecutrix leaves no doubt that penetration had actually taken place and that is why the hymen got torn and the blood continued to ooze out of the private part of the prosecutrix. Without penetration, the hymen was not likely to be torn and the prosecutrix would not have been found bleeding from her private parts even three hours after the incident had taken place. In any case, this is not the case of the appellant that though he had taken the prosecutrix to his jhuggi and was responsible for bleeding from her private parts, he had not actually penetrated.

20. During the course of arguments, the learned counsel for the appellant, considering the overwhelming nature of the evidence led during trial did not challenge the conviction on merits and confined his submission to quantum of sentence, submitting that since the appellant has been in custody for last more than six years and was a young boy belonging to a poor family when he committed this offence and is first time offender, a lenient view may be taken.

21. As provided in Section 376 of Indian Penal Code, the sentence for committing rape on a minor girl when she is under 12 years of age is punishable with rigorous imprisonment of a term which shall not be less than 10 years but which may be for life though for adequate and special reasons to be mentioned in the judgment, the court may impose a sentence of imprisonment for a term of less than 10 years. In the present case, there is absolutely no ground for giving less than the minimum prescribed sentence to the appellant, who had no compunction in ravishing a girl of

four years. The act committed by him, besides being heinous, is horrible and repulsive. No words are enough to condemn such an act of absolute perversity.

22. Keeping in view all the facts and circumstances of the case including the age and social and economic background of the appellant, who could not afford even to engage a lawyer of his own, and was provided legal aid by Delhi High Court Legal Services Committee, the sentence awarded to the appellant is reduced from 14 years to 10 years while increasing the amount of fine imposed upon him from Rs.5000/- to Rs.10000/-. In default of payment of fine, he shall undergo SI for a period of one year. The amount of fine be paid to the prosecutrix through her father.

One copy of this order be sent to the appellant through concerned Jail Superintendent for information and record.

(V.K. JAIN)
JUDGE

October 30, 2009/sk