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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : February 24, 2009

Judgment delivered on : March 13, 2009

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Crl. A. No. 849/2006

% Arvind Kumar @ Pillu Nai ... Appellant
Through: Mr. Sumeet Verma, Legal Aid
Advocate.

versus

State ... Respondent
Through: Mr. Amit Sharma, 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. In this appeal, appellant-Arvind Kumar @ Pillu Nai, assails verdict of guilt returned against him, vide impugned judgment and order on sentence of 17th and 19th April, 2006, under Section 363 and 376 of Indian Penal Code by the trial court.

2. Appellant – Arvind Kumar @ Pillu Nai has been sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.5,000/- and in default of payment of fine he had been ordered to undergo rigorous imprisonment for six months for the offence punishable under Section 376 of Indian Penal Code and to also undergo rigorous imprisonment for a period of

five years and fine of Rs.2,500/- and in default of payment of fine, he has been ordered to undergo rigorous imprisonment for three months, in pursuance to his conviction for the offence punishable under Section 363 of IPC. These two sentences are to run concurrently in terms of the impugned verdict.

3. The factual matrix, available on the record of this case, is as under:-

'On 22nd November, 2003, at about 9.00 pm, on the asking by neighbourhood aunt of prosecutrix, she went out for taking poori subzi being distributed at the election center in the gali, where one person wearing white T-shirt, black pant and jacket on the pretext of providing her poori subzi within five minutes took her to the nearby DDA Park and after taking of her clothes as well as his clothes, he committed rape upon her forcibly and thereafter left the spot. Afterwards, one person came there and took her outside the said park and one police person met her and dropped her at her house. Thereafter, parents of the prosecutrix brought her to police station and asked for legal action against the said wrong doer. In pursuance of the aforesaid statement of the prosecutrix, rukka was prepared by Sub-Inspector Subhash Chand and on its basis, FIR No.453/03 under Section 363/376 of Indian Penal Code was registered. Prosecutrix was got medically examined and her undergarment and swab slide was taken into possession by police. Accused – Arvind Kumar @ Pillu Nai was apprehended and got medically examined. The clothes of the accused as worn by him on the day of incident, were taken into possession by police, exhibits of this case were sent to FSL and

report from FSL was obtained, statements of concerned witnesses were recorded and after conclusion of the investigation, charge sheet was filed against the accused for the offence punishable under Section 363/376 of Indian Penal Code.

Appellant did not plead guilty and claimed trial for the charge of rape framed against him by trial court.

4. To establish the charge against the Appellant/accused – Arvind Kumar @ Pillu Nai, the prosecution had got examined nineteen witnesses in this case. The material witnesses are Smt. Kusum (PW-3), mother of the prosecutrix; Naresh Kumar (PW-4), father of the prosecutrix and Dr. Nischal Chugh (PW-5) and above all, the prosecutrix (PW-2), *whose name has not been indicated in view of the social object of preventing victimization or ostracism of victim of a sexual offence*, is the most crucial witness of the prosecution, who had narrated the whole incident, while deposing before the court. This witness, to specific question of the court as to whether the boy who had taken her inside the park is present in the court, prosecutrix on being terrified and traumatised, pointed out towards the appellant/accused and again started crying uncontrollably and was consoled.

5. The prosecutrix stated in her deposition that the appellant/accused took her to DDA Park and removed his pant and underwear and also removed her pyjama and underwear and laid upon her and put his private part into her private part, on which she felt great pain and blood also came out from her

private part. She also asserted that in this process, accused put his hand on her mouth and tried to strangle her. The appellant/accused, thereafter, left the spot and she wore her clothes and one uncle took her out of the park and, thereafter, one police person took her to house, where she narrated the incident to her mother. At the police station, her statement was recorded and she was got medically examined. She also identified her underwear as Ex. P-1, which she wore on the day of the incident.

6. Smt. Kusum (PW-3) is the mother of the prosecutrix who deposed in the court to the effect that the prosecutrix is aged about eight years and on 21.11.03 at 9 pm on not finding her daughter (PW-2) in the house, they tried to trace her and at about 1.00 am (night), her daughter was brought by police and she noticed blood stains on her private part. She also stated that her daughter (PW-2) had told her that she could identify the culprit, if shown to her.

7. Shri Naresh, (PW-4) father of the prosecutrix had corroborated the narration/version of his wife (PW-3).

8. ASI Surender Singh, (PW-1) is the duty officer who proved the FIR of this case as Ex. PW-1/A, and endorsement on the rukka as Ex. PW-1/B, made by him.

9. Dr. Nischal Chugh, (PW-5) Senior Resident from Hindu Rao Hospital, deposed that on 22.11.03 the prosecutrix (PW-2) was brought to the hospital by Sub-Inspector Subhash and Kusum

(mother of prosecutrix) with alleged history of assault (rape) and he had prepared MLC Ex.PW-5A of the prosecutrix. He had taken the blood sample of prosecutrix (PW-2) and prepared the casualty card, Ex. PW-5/B.

10. A public witness named Harish (PW-6) was also examined in this case, who deposed that one day, at about 9.30 pm in November 2003, while he was going to take juice from the shop at Main Market Shastri Nagar, he had seen Pillu Nai taking one female child, aged about 9-10 years towards Nala and on the next day, he came to know that one minor girl had been raped at Shastri Nagar and he went to the police station in the morning and narrated the said fact to Investigating Officer. However, on point of identity, he turned hostile and had not identified the appellant as accused in the court.

11. Shri A.K. Srivastava, (PW-10) is SSO - cum-Chemical Examiner, FSL, Malviya Nagar had proved the FSL report as Ex. PW-10/A and Ex. PW-10/B, as prepared by him and forwarding letter as issued by their Director as Ex. PW-10/C.

12. Constable Vinod Kumar, Duty Constable (PW-13) had deposed about medical examination of Appellant/accused – Arvind Kumar @ Pillu Nai at Hindu Rao Hospital and he being delivered four sealed parcels containing underwear, baniyan, blood sample alongwith sample seal of the accused of the Investigating Officer, which were seized vide seizure memo Ex. 13A.

13. Dr. Atul Mishra (PW-14) from Hindu Rao Hospital had proved the MLC No.8319/03 Ex. PW-14A. Dr.Archana Sinha, learned Metropolitan Magistrate (PW-14) had proved the TIP proceedings conducted by her as Ex. PW-14A and also deposed that despite her caution, accused insisted upon refusing to participate in the TIP proceedings.

14. Sub-Inspector Subhash Chander (PW-17) is the Investigating Officer of this case, had deposed before trial court that on the night intervening 21st/22nd November, 2003, at about 12.45 am while he alongwith Constable Amar Singh were present at Main Market, Shastri Nagar, Naresh Kumar and his wife Kusum alongwith their minor daughter (prosecutrix) met him and informed about the commission of sexual assault upon the prosecutrix, on which he recorded statement of the prosecutrix, Ex. PW-1/B and got registered the FIR, copy of which is Ex. PW-1/A, thereafter, prosecutrix was medically examined vide MLC Ex. PW-5/A and arrested the accused vide arrest memo Ex. PW-17/B and conducted the personal search memo as Ex. PW-8/B and disclosure statement of accused as Ex. PW-8/A . He also added that the accused was got medically examined vide MLC Ex. PW-14/A and collected sealed parcels containing under garments of accused, one blood sample of accused, one blood sample bottle, which were seized vide memo Ex. PW-13/A. He stated about preparation of site plan of the spot Ex. PW-17/C and recording the statement of witnesses and filing of charge sheet on completion of investigation of this case.

15. Statement of Appellant – Arvind Kumar @ Pillu Nai under Section 313 Cr.P.C. was recorded by the trial court, wherein he had denied the allegation of prosecution and claimed to be innocent and alleged that he had been falsely implicated in this case. The Appellant – Arvind Kumar @ Pillu Nai got examined two witnesses in his defence. Manohar Lal, (DW-2) is father of appellant and Chander Pal (DW-2) is neighbour of Appellant – Arvind Kumar @ Pillu Nai.

16. Trial concluded with conviction and sentence imposed upon appellant, as indicated above.

17. Counsel for the parties have been heard and the evidence on record has been analysed with their assistance.

18. I proceed to evaluate the evidence of the prosecutrix (PW-2), a girl child of eight years, in the light of the pertinent observations made by the Apex Court in the case of *State of Punjab Vs. Gurmeet Singh and Ors.* (AIR 1996 SC 1393), which are as follows: -

“Of late, crime against women in general and rape in particular is on the increase... Rape is not merely a physical assault– it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in

the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

19. To dislodge the prosecution case, the question of identity of the Appellant has been raised in this appeal. The testimony of the prosecutrix (PW-2), regarding the identity of the culprit, deserves to be taken note of and is reproduced as under:-

"Court question: Is the boy who had taken you inside the park present in the court?"

Ans. The witness has looked at accused Arvind present in court produced from J.C. and has started crying very loudly. The witness is terrified and traumatised and states that he is the same man. The witness was so scared and terrified that she cried uncontrollably and fell down on the chair on which she had been made to stand to depose in the witness box. The witness has identified the accused. Once again the court, APP. Naib Court (lady) and mother of child have consoled the child."

20. Prosecutrix (PW-2) in her evidence has not only identified the Appellant as a culprit but has also graphically narrated in her evidence, as to how she was forcibly raped by the Appellant. Nothing worthwhile has come out in the cross-examination of the prosecutrix to discredit her version. The evidence of the prosecutrix not only finds support from the evidence of her parents (PW-3) and (PW-4) but also from the medical evidence on record.

21. Learned counsel for appellant heavily relies upon the evidence of Harish (PW-6) who has resiled from his version of seeing the Appellant with the prosecutrix on the day of incident. Although, Harish (PW-6) has not supported the prosecution case regarding arrest of the Appellant/accused at his instance and has not identified the Appellant/accused before the trial court but he has not denied the fact that one Pillu Nai was seen with the prosecutrix (PW-2) in the main market of Shastri Nagar on the day of the incident. Not only in the evidence but right from the beginning, Appellant/accused has been addressed as "Pillu Nai" and he had the opportunity to deny in his statement under Section 313 Cr. P.C. that he is not '**Pillu Nai**'. Appellant has not denied it. The stand taken by the Appellant/accused before the trial court in his statement under Section 313 of Cr. P.C. deserves notice and is as under:-

"I am Innocent and have been falsely implicated in this case by the police as they had been harassing me

*earlier and used to visit my barbar shop frequently.
Hence, I may be acquitted.”*

22. Even Manohar Lal (DW-1) has claimed in his evidence that he is father of accused Arvind Kumar @ Pillu Nai. He has not stated that Appellant/accused was never known by the name of **‘Pillu Nai’**. Although, Chanderpal (DW-2), being a neighbour of the Appellant/accused gives him a clean chit but even he does not state in his evidence that Appellant/accused was never known as **‘Pillu Nai’**. As per Appellant’s own showing he was having a barber shop and there is no clear cut denial of his being known as **‘Pillu Nai’**. Therefore, the hostility of Harish (PW-6) to the prosecution case is of no avail to the Appellant/accused. No reason is forthcoming as to why the Investigating Officer of this case (PW-17) or the prosecutrix and her parents would falsely implicate him in this case, for such a **heinous** offence.

23. The evidence on record considered in its entirety, persuades this court to uphold the conviction and sentence imposed upon the Appellant by the trial court in this case. Since the Appellant had raped the prosecutrix who was just eight years, therefore, the sentence of rigorous imprisonment for a period of ten years awarded to him is the minimum, as provided under Section 376 (2)(g) of Indian Penal Code, there is no scope for any reduction of sentence imposed upon the Appellant.

24. This appeal lacks merit and is hereby dismissed.

Sunil Gaur, J.

March 13, 2009

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