

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

% Judgment Reserved on: 17.08.2009
Judgment delivered on: 09.10.2009

Crl. Appeal No. 9/2006

BALWAN SINGH Appellant

Vs

STATE Respondent

Advocates who appeared in this case:

For the Appellant : Mr K.K. Sharma, Advocate
For the Respondent : Mr R.N. Vats, Addl. Public Prosecutor

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

RAJIV SHAKDHER, J

1. This is an appeal preferred against judgment dated 19.10.2005 and sentence dated 24.10.2005 passed by the learned Addl. Session Judge (ASJ) in SC No. 26/2005. By virtue of the impugned judgment the appellant has been convicted under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to in short as the 'IPC'). The appellant has been accorded a sentence of rigorous imprisonment, for a period of seven (7) years along with a fine of Rs 5,000/-. In default of payment of fine, the appellant is to undergo a further simple imprisonment for a period of six (6) months.

2. The prosecution's version is as follows: On 26.07.2003 the prosecutrix (PW1), one Gudiya had, after sunset, visited a nearby

forest area adjoining her house for attending to a call of nature when, she was accosted by the appellant, who subjected her to sexual intercourse without her consent. In the meanwhile, since the electricity of the area where the house of the prosecutrix (PW1) was located was shut down; got the father (PW2) of the prosecutrix (PW1) worried. The father (PW2) ventured out of the house looking for his daughter, taking the direction that his daughter had taken as she stepped out of the house. The father (PW2) knew the direction his daughter had taken, since he had seen her step out while he was sitting on the roof of his house. On reaching the spot he caught the appellant red handed. Because of the ruckus several people gathered. It transpires that someone in the public informed the police control room. The police arrived at the spot and apprehended the appellant.

2.1 In the background of this broad outline the prosecution, in support of its version, cited 16 witnesses. The main witnesses cited by the prosecution were: the prosecutrix (PW1); the father of the prosecutrix Ghan Shyam (PW2); the mother of the prosecutrix Saroj (PW8); one Gajinder (PW9) a public witness; Dr. Monika Jain (PW10) who examined both the prosecutrix and the appellant; Dr. Rahul (PW16) who proved the ossification report, prepared by Dr. Anil Kheri; and SI Harjinder Rana (PW13), who was the Investigating Officer (I.O.) in the case. The remaining witnesses were formal witnesses who were examined with regard to various facets of the investigation.

2.2 It would, therefore, be necessary to briefly notice as to what each of the main witnesses have stated with regard to the offence, with which the appellant is charged.

2.3 Prosecutrix (PW1) deposed in her examination-in-chief that she was an illiterate, and that she did not remember the date of incident. She deposed that on the date of incident, after sunset, she had left her house to attend to a call of nature. Just about the time she had untied the string of her salwar, the appellant caught hold of her hand and took her behind a building. He made her lie on the grass and thereafter, inserted his private part in the place of urination. She stated that her father reached the spot and caught the appellant. The appellant was beaten up by her father. The police arrived at the spot and took down her statement. She identified her statement (Ex.PW1/A) and her thumb impression at point 'A'. She also stated that she was medically examined, and that, the doctors had taken custody of her salwar.

2.4 At this stage, it would be important to note that her examination-in-chief, which had commenced on 19.03.2004 was deferred till 02.11.2004.

2.5 The prosecutrix (PW1) in her cross-examination has contradicted herself, in as much as, she has said that she called the police and, then also said that, she had become unconscious and did not remember as to who called the police; and that when she regained consciousness, she found herself in her own house. She has further stated that she went to the police station alongwith her mother. This statement was again contradicted when she said that someone had called the police and the police came and took her to

the police station. She also testified that she was 30 years of age. Importantly, while denying the suggestion that the appellant was falsely implicated, in the very next sentence she said that the appellant had not committed any wrong act with her. This was in sharp contradiction to what she had said eight months back in her examination-in-chief where she had not only stated that the appellant had committed rape on her but had also identified the appellant who was present in court at the relevant time.

2.6 PW2, Ghan Shyam, the father of the prosecutrix (PW1), deposed that on the date of incident between 7.00 to 8.00 p.m., he was sitting on the roof of his house. He further deposed that his daughter had left the house to attend to a call of nature, and that he could see his daughter from the roof. He deposed that since the electricity of the area was shut down he came down from the roof of the house to look for his daughter, when he saw the appellant committing rape on his daughter. The appellant was caught by him at the spot. Since many people had gathered at the spot, including members of his community, the police was called. The police, on reaching the spot, took away both the appellant and his daughter to the police station. In his cross-examination he testified that the spot, where the incident occurred, which was approximately 40 meters from his house; was visible from his house. He denied that his daughter was in love with the appellant. He asserted that neither he nor his daughter knew the appellant and that they had been residing in the locality for the last two years. PW2 stated that he had seen the appellant only 15 to 20 days prior to the incident in the area, since the appellant was working with different contractors. He denied that

there was any proposal of marriage between the appellant and his daughter, that is, the prosecutrix (PW1).

2.7 PW3, H.C. Partap Singh, testified that S.I. Sudesh Dahiya (PW15) had handed over the rukka to him at about 4.30 a.m. on the basis of which he recorded a formal FIR bearing no. 263/03 (Ex.PW3/A).

2.8 PW4, Dr. Ravinder Kumar, testified that she had examined both the appellant as well as the prosecutrix (PW1). She proved the MLC (Ex.PW4/A) pertaining to the appellant and her signature on it at point 'A'. Similarly, she also proved the MLC (Ex.PW4/B) pertaining to the prosecutrix (PW1) and her signature at point 'A' on the same.

2.9 PW5, H.C. Vijender Singh, who was the malkhana incharge, proved the receipt of three pulandas alongwith sample seal handed over to him by S.I. Sudesh Dahiya (PW15). He also deposed with regard to the fact that an entry had been made by him in register no. 19 at serial no. 1098. Similarly, he also testified with regard to receipt of another three pulandas along with sample seal; the entry with respect to which had been made in register no. 19 against serial no. 1099. He stated that on 30.09.2003, the said pulandas were sent to the Forensic Science Laboratory (FSL), Rohini through Constable Balender vide RC No. 96/21/03. PW5 testified that the said packets were received back alongwith results.

2.10 PW6, Constable Kali Charan, proved the fact that he was handed over by duty officer at police station Narela, the original rukka and a copy of the FIR which he handed over to the I.O., A.S.I. Sudesh Dahiya, at the Maharshi Balmiki Hospital (hereinafter

referred to as the 'hospital'). In his cross-examination he testified that he reached the hospital between 6.00 to 6.15 a.m.

2.11 PW7, H.C. Jai Parkash, proved that he alongwith A.S.I. Mahavir Singh were responsible for taking the appellant to the hospital for medical examination. He also stated that at the hospital the doctors handed over two sealed pulandas to him which he handed over to the lady S.I. vide memo Ex.PW7/A. In his cross-examination he reiterated that A.S.I. Mahavir Singh accompanied him to the hospital for examination of the appellant.

2.12 PW8, Saroj, who is the mother of the prosecutrix (PW1), in her examination-in-chief, while affirming that somebody had committed a wrong act on her daughter denied that the appellant was responsible for it. She testified that the appellant had been mistakenly apprehended by the public. Since she had turned hostile, the prosecution sought permission to cross-examine her, which was granted by the court. In her cross-examination by the prosecution, she testified that she, alongwith her husband, had seen the appellant committing rape on her daughter. However, in her cross-examination, by the counsel for the appellant, she stated that the appellant had not committed any wrong act and that he had been mistakenly apprehended.

2.12 PW9, Gajinder Singh, who is the public witness, turned hostile and retracted from the statement that he had made to the police. He denied having been witness to the events of 26.03.2003. He testified that he was in his house when he came to know that some persons had gone to the police station; which is when, he also visited the police station. In his cross-examination, by the prosecution, he

denied that he had reached the spot of the incident and that there they found the prosecutrix (PW1) crying and the appellant attempting to run away. He also denied that the appellant had been apprehended by PW2.

2.13 PW10, Dr. Monika Jain, Sr. Resident of the hospital, testified to the effect that she had examined the prosecutrix (PW1), who had been brought to her with alleged history of sexual assault by a neighbour. She stated that her examination revealed that the prosecutrix (PW1) was approximately 15 years of age, that even though there were no marks of external injury on the body of the prosecutrix (PW1), the prosecutrix's (PW1) local examination revealed that there was slight laceration on the inner side of labia minora with slight bleeding and a ruptured hymen. She also stated that slides prepared from prosecutrix's (PW1) vaginal swab were sealed and handed over to the H.C. Sarla. She testified that her findings were given on Ex. PW4/B in portion 'X to X', which bore her signature at point 'B'. In her cross-examination, she specifically asserted that she had carried out gynaecological examination of the prosecutrix (PW1).

2.14 PW11, A.S.I. Mahavir Singh, deposed that he was on emergency duty on the date of the incident, and on receiving intimation vide DD No. 24/A, he reached the police station. He stated that the duty officer at the police station produced before him; the prosecutrix (PW1), her parents and the appellant. After making inquiries, he narrated the facts to the Station House Officer (SHO), who then called S.I. Sudesh. S.I. Sudesh (PW15) recorded the statement of the prosecutrix (PW1), based on which the FIR was

registered. He further stated that he, alongwith the prosecutrix (PW1), the appellant, a lady Constable Sarla, Constable Jai Prakash drove to the hospital in a government vehicle. The lady Constable Sarla facilitated the medical examination of the prosecutrix (PW1), while Constable Jai Prakash got the appellant medically examined. After the examination, the exhibits, which were sealed, were seized by the I.O. after preparation of memos (Ex. PW11/A and Ex. PW7/A) on which he had signed at point 'A'. He stated that the appellant was arrested before he was taken to the hospital. He also proved the arrest memo (Ex. PW7/B), and the personal search memo (Ex. PW7/C) of the appellant and his signature at point 'B' on the said memos. He further testified that the appellant accompanied them to the site of the incident i.e., Smriti Van, whereupon the I.O. prepared the site plan (Ex. PW15/B). In his cross-examination he denied the suggestion that the appellant had not led the police party to the spot of the incident. He volunteered that the prosecutrix (PW1) had also pointed out the place of the incident.

2.15 PW12, H.C. Sarla, testified that she had accompanied the victim to the hospital to facilitate her medical examination. She also testified that she had collected two sealed parcels from the hospital alongwith sample seals. She proved the seizure memo (Ex. PW11/A).

2.16 PW13, S.I. Harjinder Rana, proved that on 05.08.2003, when he was posted in Sub-division Narela, the investigation of the case was assigned to him. He proved that he had collected the bone x-ray of the prosecutrix (PW1) which opined that the age of the prosecutrix (PW1) was between 14 to 16 years. He also testified that the exhibits, which were deposited in the malkhana, were sent by him

through Constable Balwinder (PW14) to the FSL. He stated that on completion of the investigation he submitted the file for preparation of challan. He testified that the FSL report, though collected by another officer of the police station, was filed in court through him.

2.17 PW14, Constable Balwinder, testified that on 30.09.2003, on the instruction of the I.O., he had collected the exhibits from police station Narela and deposited them at FSL, Malviya Nagar. He testified that till the exhibits remained with him the samples were intact and had not been tampered with.

2.18 PW15, W.S.I. Sudesh, testified that she was posted at Rohini sub-division, when in the early hours in the morning, on 27.07.2003, that is, at about 3.00 a.m., she received instructions from her superior officers to reach police station Narela. On reaching the police station, she met S.I. Mahavir alongwith the prosecutrix (PW1), her parents and the appellant. She stated that the statement (Ex.PW1/A) of the prosecutrix (PW1) was recorded by her which contains her endorsement at Ex. PW15/A. She further stated that the prosecutrix (PW1) and the appellant were taken for medical examination, and for this purpose, she was accompanied by A.S.I. Mahavir, lady H.C. Sarla and Constable Jai Parkash. She stated that when she was in the hospital Constable Kali Charan (PW6) had brought a rukka alongwith the copy of the FIR based on which she had recorded the FIR number on various other documents. She also deposed having collected the MLC of the prosecutrix (PW1), and the appellant (Exs. PW4/A and PW4/B respectively). She further stated that two sealed parcels, brought by lady Constable Sarla alongwith the hospital seal, were seized by her vide memo (Ex.PW11/A), and

similarly, the two sealed parcels, which Constable Jai Parkash had brought, were collected by her vide Ex. PW7/A. She testified having deposited the same at the malkhana, after that all of them, including the prosecutrix (PW1), had returned to the police station. It is thereafter that she had arrested the appellant. She also stated that all of them had thereafter proceeded to the site of the incident, which was a vacant plot near DDA Flats close to the cremation ground, Rehabilitation Colony, Smriti Van, Narela. She stated that a site plan was prepared at the instance of the prosecutrix (PW1) being Ex. (PW15/B). On their return to the police station, from the visit to the site of the incident, she had recorded the statement of the prosecutrix (PW1). She also proved her application (Ex. PW15/C) for recording the statement of the prosecutrix (PW1) under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to in short as the 'Cr.P.C.'). She stated that the prosecutrix (PW1) was sent for an ossification test on 28.07.2003. To be noted, she got transferred and it seems the investigation thereafter was handled by S.I. Harjinder Rana (PW13). In her cross-examination, she stated that even though the prosecutrix (PW1) was a bit weak but mentally she was able to narrate the incident to her. She denied the suggestion that the statement of the prosecutrix (PW1), recorded by her, did not contain correct facts. She asserted in her cross-examination that the time recorded in the said statement was indicated to her by the prosecutrix (PW1). She denied the suggestion that the appellant was falsely implicated in the case.

2.19 PW16, Dr. Rahul, who at the relevant point in time was a junior specialist at the hospital, deposed with respect to the MLC No.

380/03 pertaining to the prosecutrix (PW1). He was examined in view of the fact that Dr. Anil Kheri, who at the relevant point in time was the radiologist in the hospital and had conducted the ossification test of the prosecutrix (PW1), had been absent from his duty since February, 2005. PW16 testified that he knew Dr. Anil Kheri, and that, he was in a position to identify his hand writing and signature, as he had seen him writing and signing documents in the normal course of duty. PW16 testified that as per the ossification report (Ex. PW16/A) the age of the prosecutrix (PW1) was assessed at 16 years on the date of the incident.

3. On the other hand, the appellant did not cite any witness. However, the appellant's statement under Section 313 of the Cr.P.C. was recorded by the trial court. In his statement under Section 313 of the Cr.P.C. the appellant except for saying that he was falsely implicated did not explain the circumstances in which he was apprehended at the spot of the incident.

4. In the background of the evidence produced by the prosecution the learned counsel for the appellant submitted that the prosecution had not been able to establish its case beyond a reasonable doubt as it ought to have for the following reasons:

(i) There was a contradiction between the statement made by the prosecutrix (PW1) to the police in the first instance which is Ex. PW1/A and her deposition in the court. The learned counsel submitted that in her statement (Ex. PW1/A) the prosecutrix (PW1) had stated that when the appellant accosted her, he had gagged her mouth, whereas in her deposition in the court the prosecutrix (PW1) had stated that; the appellant had caught hold of her hand, and taken

her behind a building, and then, laid her on the grass before committing rape on her.

(ii) The main witnesses for the prosecution had not identified the appellant as the perpetrator of the crime. In this regard, the learned counsel referred to the testimony of PW8, mother of the prosecutrix (PW1), cross-examination of the prosecutrix (PW1) herself and the testimony of PW9, Gajinder, who was a public witness.

(iii) The ossification report had not been proved.

(iv) The statement of the prosecutrix (PW1) under Section 164 of the Cr.P.C. had not been recorded.

(v) In the MLC (Ex.PW4/B), pertaining to the prosecutrix (PW1), the gynaecologist Dr. Monika Jain (PW10), while recording the alleged history of sexual assault, had referred to the fact that the assault had been carried out by a 'neighbour'. The submission made on behalf of the appellant was that he was a resident of Village Kheda, Distt. Sonapat, Haryana, and hence could not have been the neighbour, referred to in the MLC, as the incident occurred in Narela.

5. As against this, Mr Vats, learned APP submitted that the contradiction between the statement (Ex PW1/A) made by the prosecutrix (PW1) and her deposition in examination-in-chief was not significant. He submitted that the core of the prosecutrix's (PW1) testimony was consistent, which is that the appellant had accosted her and committed rape on her in the Smriti Van near Cremation Ground, behind DDA Flats, Narela. The fact that both the prosecutrix (PW1) and PW8, the mother of the prosecutrix (PW1), did

not identify the appellant as the perpetrator of the crime ought to be discarded for the reason that cross-examination of the prosecutrix (PW1) and the examination of her mother took place after a gap of eight months when they seem to have been won over by the defence. Notwithstanding, this, he submitted that the testimony of the prosecutrix (PW1) in examination-in-chief when read with the testimony of PW2, the father, as also the cross-examination of PW2 clearly establish that the appellant had committed rape on the prosecutrix (PW1). The learned APP submitted that the fact that the appellant was apprehended from the spot is clearly brought out in the testimony of PW2, that is, the father of the prosecutrix (PW1). He further contended that for the appellant to be held guilty of rape it would be sufficient if there was penetration. For this purpose, he relied upon the explanation provided in Section 375 of the IPC.

5.1. The learned APP further submitted that the MLC (Ex. PW4/B) of the prosecutrix (PW1) shows that the labia minora was lacerated and that there was fresh bleeding with a ruptured hymen. This, according to him, was enough to prove the offence with which the appellant had been charged.

Reasons:

6. Having heard the learned counsel for the appellant, as well as the learned APP, I am of the view that the prosecution has been able to establish its case against the appellant beyond a reasonable doubt. My reasons for coming to this conclusion are as follows:

6.1. The testimony of the prosecutrix (PW1), read with that of her father (PW2), is a clear pointer to the fact that on 26.07.2003 when

she had left her house to attend to a call of nature she was accosted by the appellant. The appellant forced himself on her, and subjected her to sexual intercourse. The father of the prosecutrix (PW2), arrived at the scene, since the electricity in the area was shut down and in these circumstances, it was not uncommon for a parent to look for his daughter. He caught the appellant red handed. The appellant was handed over to the police. The submission of the learned counsel for the appellant that there was a contradiction between the statement (Ex.PW1/A) of the prosecutrix (PW1) when compared with her deposition in court, is according to me not significant. The core of her testimony would not get impacted by virtue of the fact as to whether the appellant had, in the first instance, gagged the prosecutrix (PW1) and then forced himself on her, or as testified by her in court that the appellant had caught hold of her hand and then forced her to the ground. The variation on this aspect could have also occurred on account of the fact that the statement of the prosecutrix (PW1) was recorded by the police on 27.07.2003, whereas she testified in court after a gap of nearly eight months, i.e., on 19.03.2004.

9. A perusal of the MLC (Ex.PW4/B) of prosecutrix (PW1) would show that her gynaecological examination had revealed that the inner side of the labia minora had slight laceration, there was slight bleeding and the hymen was ruptured. Similarly, the MLC (Ex.PW4/A) of the appellant showed bruise marks over the upper chest region and all over the back; as also significantly, absence of smegma. In the MLC, the doctor had clearly opined that there was nothing to suggest that appellant was not capable of performing

sexual acts. Reading the two MLCs together, I have no doubt in my mind that the appellant had subjected the prosecutrix (PW1) to sexual intercourse. The learned APP is right that for the purposes of conviction under Section 376 of the IPC it would be sufficient to establish that there had been penetration (see explanation to Section 375 of the IPC). The injuries on the person of the prosecutrix (PW1) and the appellant clearly establish this fact. As a matter of fact even ejaculation is not a necessary ingredient. The observations in the **Encyclopedia of Crime and Justice, Second Edition, Volume 3 at page 1307** being apposite are extracted hereinbelow :-

***“Penetration.** The act of rape, described by Blackstone as “carnal knowledge”, has always required sexual intercourse, in the sense of some penetration (however slight) of the penis into the vagina. Ejaculation is not required, but in some jurisdictions, penetration by objects other than the penis was insufficient, as was penetration of other parts of the body (e.g., the mouth or anus).....”*

9.1 The above coupled with the fact that the appellant was apprehended from the site of the incident only fortifies this conclusion. The deposition of PW1 in cross-examination, and that of PW8 clearly shows that over a period of time between March, 2004 when PW8 was first examined in court and in November, 2004 when her cross-examination was carried out, both had been won over by the defence. The examination-in-chief of PW1 had commenced on 09.03.2004. Since the examination-in-chief was not complete it was deferred till November, 2004. Both the examination-in-chief as also her cross-examination was concluded on 02.11.2004. PW8 was also examined on 02.11.2004. It is quite obvious that their subsequent testimonies were influenced.

10. Notwithstanding, the testimonies of the prosecutrix (PW1) and PW8, it is the testimony of PW2, which was recorded on 19.03.2004, which lends support and credibility to the deposition of prosecutrix (PW1) made before court on 19.03.2004. Therefore, I have no hesitation in discarding that part of the testimony of PW8 and PW1, whereby they stated before the court that the appellant was not the one who had committed rape on the prosecutrix (PW1). The important thing to note is that, while PW8 deposed that a rape was committed on the prosecutrix (PW1), she did not identify the appellant as the one who had committed rape. In the circumstances, as discussed above, I am of the view that the later part of her testimony, i.e., where she refused to identify the appellant as the perpetrator of the crime should be discarded.

11. Similarly, in so far as PW9 is concerned, his testimony was also recorded on 02.11.2004. The testimony of PW9 lacks credibility.

12. The submission of the learned counsel for the appellant that the ossification report (Ex.PW16/A) has not been proved is incorrect. PW16 has in his deposition has clearly proved the report. Dr. Rahul (PW16), who at the relevant point in time was a Jr. Specialist, has clearly stated in his deposition that he had seen Dr. Anil Kheri, who had prepared the report, writing and signing documents in the normal course of his duty, and consequently, was in a position to identify his hand writing and signatures on the report. As per the ossification report (Ex. PW16/A) the age of the prosecutrix (PW1) was less than 16 years. Therefore, the submission of the learned counsel of the appellant on this aspect of the matter is also without merit.

13. As regards the submission that the statement of the prosecutrix (PW1) under Section 164 of the Cr.P.C. was not recorded and, therefore, the prosecution's case is not free from doubt, is once again a submission without merit. The Court vide order dated 27.07.2003 has clearly recorded that on the day the prosecutrix (PW1) was produced before it, for recording her statement under Section 164 of the Cr.P.C.; even though she answered the preliminary questions put to her correctly, she was not mentally strong enough, to make a coherent statement. This aspect is quite understandable as the prosecutrix (PW1) had undergone horrific experience only a day before. Given the prosecutrix's tender age, and the social strata, to which she belonged, she was perhaps nervous being placed in unfamiliar surroundings and hence was not in a position to make a statement before the learned Magistrate. According to me nothing much would turn on, the absence of the prosecutrix's (PW1) statement under Section 164 of the Cr.P.C., if otherwise, the court is able to come to a conclusion that her deposition made in court can be relied upon. In the instant case, I have no doubt as regards the veracity of the deposition of the prosecutrix (PW1) made in her examination-in-chief, in court.

13.1 See observations of the Supreme Court in the case of ***Khujji vs State of MP; 1991 Cri.L.J. 2653 in paragraph 7 at pages 2659-2660***. Briefly, in this case the prosecution witness had identified all the assailants in his examination-in-chief; however, in the cross-examination he turned hostile to the extent he resiled in respect of his testimony in-chief with respect to, two out of the six assailants. The Supreme Court agreed with the High Court that it was an

attempt to wriggle out his testimony in-chief, which was recorded only a month back, in order to help the accused. Thus, the testimony in-chief was accepted, even while, his cross-examination was discarded.

13.2 Also see observations in the case of ***Ganpat Mahadeo Mane vs State of Maharashtra; 1993 Supp. (2) SCC 242***, wherein the mother of the deceased in cross-examination resiled from her testimony in-chief wherein she had stated that the accused used to beat the deceased and had also poured kerosene and set the deceased on fire. The court discarded the testimony of the mother in cross-examination and accepted the testimony in examination in-chief and sustained the conviction of the accused taking into account, amongst others, the evidence received in examination-in-chief of the mother of the deceased.

14. The submission of the learned counsel for the appellant that the fact that in the MLC, Dr. Monika Jain (PW10), while recording the history of assault committed on the prosecutrix (PW1), had made note of the fact that the assault was carried out by a neighbour, should be a factor which ought to support the case of the defence, as the appellant was a resident of Village Kheda, Distt. Sonapat, Haryana, which was, nowhere near the site of the incident; is also without merit. Firstly, it is according to me, a minor aberration to which much significance need not be attached when seen in the light of the entirety of events. Secondly, and more importantly, PW2 in his testimony has clearly stated that the appellant worked in the nearby vicinity with various contractors, and since the family of the prosecutrix (PW1) was not acquainted with the appellant it is quite

possible for them to have assumed that the appellant also resided in the same vicinity.

15. The last submission of the learned counsel for the appellant that no opinion of the gynaecologist is sought is factually incorrect. Both the deposition of Dr. Monika Jain (PW10) as well as a perusal of the MLC (Ex.PW4/B) of the prosecutrix (PW1) would show that her opinion is recorded on the MLC in the portion marked 'X to X'.

16. Having regard to the discussion hereinabove, I am of the opinion that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt. Therefore, I have no difficulty in sustaining the impugned judgment of the trial court. Consequently, the appeal is dismissed.

RAJIV SHAKDHER, J

OCTOBER 09, 2009
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