

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

+ Crl.L.P.No.109/2007

% Date of reserve : 04.11.2009
Date of decision : 01.12.2009

GOVT. OF NCT OF DELHI ...PETITIONER
Through: Mr.Navin Sharma, APP for the State

Versus

SANT RAM & ORS. ...RESPONDENTS
Through: Mr.Rohit Singh, Advocate for R 2 & 3

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. Crl.M.A.No.7256/2007

Delay is condoned. Application stands disposed of.

2. This petition for leave to appeal has been filed by the Government of NCT of Delhi against the judgment dated 23.1.2007 passed by Shri Rajiv Mehra, ASJ, Delhi in Sessions Case No. 12/2006 arising out of FIR No. 206/2001 under Section 376(2)(g) and Section 506-II/34 IPC registered at Police Station Kirti Nagar, whereby the learned ASJ has been pleased to

acquit the accused persons/respondents herein of charges under Section 376(2)(g) and Section 506-II/34 IPC.

3. The case of the prosecution rests upon the statement of the prosecutrix wherein she alleged that on 17.4.2001 at about 7.30 am when she was going to her school at Sarvodaya Kanya Pathshala, Ramesh Nagar, accused Deepak and Navin met her. They were known to her as they were the friends of her elder brother, Narender Kumar. They informed her that Narender has met with an accident and is lying injured at B Block, Ramesh Nagar and then both of them brought her to House No. B28/11, B Block. Ramesh Nagar and bolted her in a room. When she tried to raise an alarm, accused Deepak @ Rinku took out one katar and threatened her. Both of them removed her clothes forcibly. Accused Sant Ram joined them later. He brought a quilt. She was ravished by Navin, Deepak and Sant Ram and Navin again ravished her one more time. Accused Vinod was identified by her later as a one who was sitting outside the room at the time of the incident for a watch. She was let off by the accused with a threat to disfigure her face with acid if the incident is disclosed by her to anyone. Thereafter, she stopped going to school. After 3-4 days her mother made inquiry and she disclosed the incident to her mother upon which the FIR in question was registered.

4. On the basis of the aforesaid statement, the FIR of this case was registered. The prosecutrix was medically examined, her ossification test was conducted, her blood sample and underwear was also taken into

possession by the doctor. Her statement under Section 164 Cr.P.C. was recorded by the Magistrate wherein she reiterated her allegations made in the complaint to the Police.

5. During the course of investigation, the accused were arrested in this case. Thereafter, one of the accused, namely, Vinod was identified in TIP. Some objects collected by prosecution were also sent to the CFSL. After the charge sheet was filed, charges were framed against the respondents to which they pleaded not guilty.

6. In support of its case, the prosecution has examined 22 witnesses but the main witness is the prosecutrix, who appeared as PW-1, her mother was examined as PW-2 and again as PW-5. Dr.Bhawna was examined as PW-7 and she proved the report of the ossification test as also the MLC of the prosecutrix. Dr. Rekha, Sr.Resident Gynae, has been examined as PW-18, who did the medical examination of the prosecutrix. IO SI Bhagwati Parshad has been examined as PW 19 and on application of the State allowed by this Court PW 22 Nikka Ram, Lab Assistant from the school of the prosecutrix last attended by her, appeared with records.

7. By the impugned judgment the learned ASJ firstly held that the age of the prosecutrix was somewhere between 15-17 years based upon the statement made by her mother and the ossification test. Insofar as the allegations made by the prosecutrix that she was lifted while going to her school at Ramesh Nagar, relying upon the attendance register of the school

the learned ASJ held that on the relevant day the prosecutrix had not gone to the school. The learned ASJ also found infirmities in the case of the prosecution inasmuch in her statement prosecutrix has deposed that accused Deepak along with Juvenile Navin removed her clothes forcibly in which button of her shirt had broken. The shirt according to her was shown to the IO but not collected by him. Further, PW-18 Dr. Rekha deposed that on local examination hymen of the prosecutrix was found to be old torn and her vagina was admitting two fingers easily. The court opined that the prosecutrix was habitual in having sexual intercourse.

8. As regards the recovery of underwear from accused Deepak, who was arrested on 1.5.2001 i.e. after 14 days and was medically examined on 2.5.2001, the learned ASJ found the story of the prosecution as unbelievable by observing that it is most unlikely that the accused wear the same underwear for more than 14 days. Moreover, the underwear was seized by the doctor and not by the Police. The doctor who has seized the underwear has not been examined. As regards finding of some blood stains on the quilt which was seized by the Police, the trial court has observed that nowhere in her complaint or in her deposition the prosecutrix has deposed that she was bleeding any time in the course of the commission of offence. Moreover, taking clue from the statement of the IO who appeared as PW-17 the trial court opined that in the present case taking into consideration the allegation made by the prosecutrix who had returned back to her own home which is in residential colony and comprises of one room tenement, it was not possible

for anyone to have not come to know about the crime committed on the person of the prosecutrix and thereafter, the delay of four days explains that the story has not been narrated correctly by the prosecutrix. For the same reason the statement of the prosecutrix that she was kept in room for more than four hours has also not found favour with the learned trial court.

9. As regards the report of the CFSL, the trial court has made the following observations:-

15. The version of the story given by the prosecutrix thus fails to inspire the confidence in the truthfulness of the same. There being no support from the MLC. The CFSL result is doubtful. There is no recovery of any Katar from the accused nor any remand for the same has been taken. No presumption under Section 114A evidence Act can be drawn in the present case. The defence has given a suggestion in cross examination to the prosecutrix that her brother was involved in a case of filing a false complaint against the brother of one of the accused before the incident in question thus trying to set up a motive in this case.

10. It is after taking into consideration all these circumstances the trial court has been pleased to observe that the case of the prosecution was highly suspicious and far away from truth and therefore, acquitted the respondents.

11. The crux of the argument submitted by the learned APP for the State is that the learned trial court has gravely erred in forming his opinion that the prosecution has failed to prove its case against the accused person as the said opinion is contrary to the evidence which has come on record and is not tenable in the eyes of law. According to the prosecution, the delay of four days which has been caused in lodging the FIR is not unusual. It is submitted that in such cases it is quite possible that time is taken by the

prosecutrix in coming to the Police for reporting. It is submitted that the trial court has accordingly erred in ignoring the statement of PW-1 Prosecutrix who has explained the delay of four days and has deposed that while permitting her to leave the place of occurrence she had been threatened with dire consequences such as disfiguring her face with acid and killing of her brother. It is also submitted that the statement made by the prosecutrix supports her complaint that she was subjected to gang rape. She has identified the accused correctly. Her testimony is supported with MLC and CFSL report and therefore, the trial court instead of giving benefit to the accused persons should have passed the order convicting the respondents.

12. As regards the date of birth it is submitted that even if the evidence which has come on record is taken as it is, the age of the prosecutrix is below 16 years at the time of the incident and therefore, she cannot be said to be a willing party to the heinous crime. It is also submitted that the FSL report etc. have not been appreciated in the correct perspective.

13. It is further submitted that the statement made by the prosecutrix coupled with her statement under Section 164 Cr.P.C. and her deposition in Court are sufficient to convict the respondents.

14. I have given my thoughtful consideration to the submissions made on behalf of the learned APP. In the present case despite several opportunities the State has not been able to serve respondent No.1 and as such the criminal leave petition qua respondent No.1 was dismissed vide order dated

04.11.2009.

15. As regards the ground taken in support of leave to file appeal, I find that the judgment delivered by the trial court explains the reasons for having coming to a conclusion as to why the respondents were acquitted in this case. The reasons are elaborate, detailed and persuasive. There seems to be no infirmity in the appreciation of the evidence by the trial court.

16. In these circumstances, when two views are possible, the view which favours the accused persons requires to be adopted in terms of the legal position which stands well settled. Accordingly, I do not find any reason to grant leave to appeal to the State in this case. The petition is accordingly dismissed.

MOOL CHAND GARG, J.

December 01, 2009
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