

* HIGH COURT OF DELHI: NEW DELHI

Crl. Appl. No.27/2009

% Judgment reserved on: 9th February, 2010

Judgment delivered on: 24th February, 2010

Narayan Kumar

S/o. Shri Jagmohan Mehto @ Jagan Nath Mehto

R/o. Village-Gari Bishan Pur,

P. O. Peri Bazar,

Distt. Lakhi Sarai,

(Bihar)

(Presently confined in,

Central Jail No. 2, Tihar,

NewDelhi.)

....Appellant

Through: Ms. Rakhi Dubey, Adv.

Versus

State (N.C.T. of Delhi)

... Respondent

Through: Ms. Fizani Husain, APP.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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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 |

V.B.Gupta, J.

By way of present appeal there is challenge to the judgment and order on sentence passed by Additional Session Judge, Delhi.

2. Vide impugned judgment dated 20th April, 2007, appellant was convicted under Section 376/506 IPC and as per order dated 24th April, 2007 was sentenced to rigorous imprisonment for 10 years with fine of Rs.1,000/- under Section 376 IPC, in default to undergo RI for one year. For offence under Section 506 IPC, appellant has been sentenced to undergo RI for one year.

3. Brief facts are;

Initially, FIR was registered against one Mohd. Alam @ Baba on the statement of the prosecutrix Kumari Afsana, a child of 12 years of age. According to her statement, Mohd. Alam enticed her into his house on the plea that he would give her empty bottles since prosecutrix used to collect waste for her livelihood. On this pretext, Mohd. Alam called her inside his house and assaulted her after removing her clothes. Mohd. Alam threatened her to slit her throat, if she disclosed about the incident to anybody. According to prosecutrix, Mohd. Alam had assaulted her on several other days as well.

4. As per statement of prosecutrix, on 27th December, 2005, again this Mohd. Alam assaulted her in his house. After this incident, when she came

out weeping and was near a Gurdwara, 'Chacha Narayan' met her. She narrated the entire incident to him who brought her to the Police Station.

5. During the course of investigation, prosecutrix was produced before Magistrate for recording of her Statement under Section 164 Cr. P. C. In her statement prosecutrix told the Magistrate that Narayan promised to give her waste plastic, metal etc. and took her to his jhuggi and assaulted her. At that very time, one Baba had come there and asked her as to what has happened to her. Prosecutrix disclosed to the Baba that she had been raped by Narayan (the present appellant). She further stated in her statement that Baba told her that he would take her to her mother but appellant did not allow her to go and caught hold of her hand and took her to Chowki. It was at the instance of appellant that she had given the name of Baba. Prosecutrix also stated in her statement that appellant threatened her that he would kill her if she did not disclose the name of Baba as the perpetrator of the crime. Prosecutrix stated that she was over powered by fear and had therefore gave the name of Baba, who was in Jail at the time of recording of her statement.

6. On this statement of prosecutrix, the Investigating Officer arrested the appellant. Charge-sheet was submitted against Mohd. Alam as well as the present appellant. Charges were framed against both the persons. Vide

impugned judgment, Mohd. Alam was acquitted, whereas present appellant was convicted.

7. It has been contented by learned counsel for the appellant that the prosecutrix in this case has given three statements on different occasion. Moreover, her statement (Ex. PW 5/A) made before the police does not carry any date. In view of three different versions given by the prosecutrix, the case of prosecution is full of doubt.

8. Other contention is that statement given under Section 164 Cr. P. C was made after a gap of 12 days from the first statement. During this period, she had been won over by Mohd. Alam and at his instance, the appellant was named as an accused in her second statement. Thus, her statement is not worthy of any credence.

9. Another contention is that there is no medical evidence connecting the appellant as to having intercourse with the prosecutrix, except the statement of prosecutrix.

10. Under these circumstances, the statement of prosecutrix is not reliable and there is no other corroborative evidence to prove the offence of rape.

11. On the other hand, it is contended by learned APP for the State that prosecutrix was a child and there could be no reason for her to implicate appellant falsely in this case.

12. As per statement of PW-8 Dr. Sunil, who examined appellant Narayan, he found nothing to suggest that appellant was not capable of performing sexual intercourse.

13. As far as prosecutrix is concerned, PW-1 Dr. Rashmi Prasad who examined her, had stated that her Hyman was broken. Under these circumstances, appellant has been rightly convicted by the trial court.

14. Prosecutrix (PW-5) in her statement has narrated in detail the facts with regard to the rape committed upon her by the appellant Narayan. She had stated before the Court that she had gone to pick up waste paper and rags. At that time, appellant caught hold of her and took her to Mandaliaya Lane near Bal Bhawan. He took her to his house which was a jhuggi. There he raped her. She began to weep. One uncle came and asked her why she was weeping. She told him that she had been raped. Appellant at that time was standing there and threatened to kill her, if she named him before anyone. PW-5 further stated that appellant was the person who had raped her. Other person namely Mohd. Alam had inquired from her when he found her weeping. PW-5 has further stated that she had not named Mohd. Alam as a person, who had raped her. That name was furnished by appellant and appellant had threatened her while furnishing that name at the time when complaint was registered. Mohd. Alam had not raped her. It was

only appellant Narayan who had raped her. In her cross examination she had stated that appellant forced her to make statement before the police.

15. As far as rape of prosecutrix is concerned, appellant in his statement under Section 313 Cr.P. C. has stated that it was the prosecutrix who had sexually assaulted him thrice. He states that:

“The mother of the girl had handed the girl to me to help her as she was suffering from incontinence and was in dire need of medical health. After I had brought the children from the school, I had come to the Gurdwara where I was told by the Granthi that a medical camp was being organized on the occasion of 2nd October. I then went to look for the girl as free medical aid was available at the camp. I took the girl for three days to the camp as some treatment was given to her on each date. Thereafter, we were advised to go to OPD. I took the girl to the hospital. First we went to the room No. 16 and then to room No. 17. The doctor in room no. 17, on my query, disclosed that such a problem could be a result of the girl having been raped. I told the doctor that I have not raped her and that if the child had been raped he should verify it. A nurse was summoned. The doctor almost struck me with a stone kept on the table as he became annoyed with me. Thereafter he asked me to bring the child with the mother. The next day I came with the child and we were sent to the children’s ward. There I went for further times with the child without obtaining medical aid. Finally I met a doctor who was familiar to me and she checked up the girl and sent us to room no. 17. There the doctor insisted for the presence of the mother. I called the mother who used to sit outside the gate of the hospital. She informed the doctor that the child was suffering incontinence from

childhood. Then the doctor referred her to AIIMS. However, due to the fact that I was busy we could not go to AIIMS but our friendship grew. The girl had sexually assaulted me thrice by lying on top of me. Thereafter, I also had sexually intercourse with her thrice in retaliation. When I realized that child had been raped, I made inquiries from her and she told true story and I took her to the Hathi Park to the police booth. They sent us away saying that it was an old matter nothing could be done and if a fresh assault took place to contact us. A similar incident took place again while I was sleeping and the child thereafter asked me to pay her on every occasion that I had intercourse with her as she was in dire need of money. This happened for three days. The child informed me that she had been first assaulted by Mohd. Alam by name Rashid when she was a very small. When I was standing near the Gurdwara which I came to me coming and told me that the accused Mohd. Alam had offered Rs.50/- but have paid only Rs.10 so I told her that I was going to the police chowky she would come. After that she told me that she would come back after looking the accused Mohd. Alam. She returned after sometime with Rs.50/- and bottles of liquor. She informed me that she had been raped have been given articles/money by Mohd. Alam. Then I took her to the police chowky where only one police officer was present. I informed the police that the girl had been raped and the police officer sent one policeman alongwith the girl to arrest Mohd. Alam. I went to call her mother after the police had left. By the time I returned to the PS with the mother the police had already arrested Mohd. Alam. After sometime the girl's mother became reluctant to get the case registered but when I threatened that since I had brought the case to the notice of the police, I would go to the superior officers. Thereafter, the case was registered. After 19 days I was threatened in the PS to leave the area.

Since I refused to leave the area, I have been falsely implicated in this case”.

16. The above defence taken up by the appellant, was nowhere put either to PW-5 or to her mother Rehana Khatoon (PW-4) in their cross-examination.

17. In the present case after perusal of medical records coupled with the statement of the prosecutrix, there is no doubt about the fact that the minor girl had been raped. It is to be noted that prosecutrix in the present case was only about 12 years old at the time of incident. After being exposed to the brutality of a horrified crime like rape and assault, it is quite obvious that she was in the state of shock and fear, after the incident. The appellant enticed her because she was in a vulnerable state of mind. It was under fear and threat, she had given first statement against Mohd. Alam.

18. Prosecutrix is quite categorical in her statement under Section 164 Cr. P. C. that she was raped by the appellant. Appellant also admits in his statement under Section 313 Cr. P. C. that it was the prosecutrix, who had sexually assaulted him. Appellant is about 50 years old, whereas prosecutrix was only 12 years of age. It is highly improbable that prosecutrix would sexually assault the appellant.

19. Appellant has categorically stated in his statement that he had sexual intercourse with her thrice, in retaliation.

20. In Visveswaran Vs. State Rep. By SDM., AIR 2003 Supreme Court 2471, the Court observed;

“Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that approach required to be adopted by Courts in such cases has to be different. The cases are required to be dealt with utmost sensitivity. Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the Courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view.”

21. In Moti Lal Vs. State of M. P., 2008 (10) SCALE 81, the Supreme Court observed;

“It needs no emphasis that the physical scar on a rape victim may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable, Judicial

response to human rights cannot be blunted by legal jugglery.”

22. Thus, from the entire evidence on record that is, statement of the prosecutrix, medical evidence and as per statement of appellant under Section 313 Cr. P. C, I have no hesitation in holding that prosecution has fully proved its case against the appellant. The appellant has been rightly convicted and sentenced by the trial court. There is no merit in this appeal.

23. Accordingly, present appeal is hereby dismissed.

24. Copy of this judgment be supplied to appellant through Superintendent, Central Jail, Delhi.

25. Trial court record be sent back.

V.B. GUPTA, J.

24th February, 2010
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