

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

+ Crl.A.No.101/2008

% Reserved on: 20th January, 2010
Date of Decision: 25th January, 2010

SHANKER SAHANI APPELLANT
! Through: Mr. Madhu Mukul Tripathi, Adv

versus

\$ THE STATE (GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI)
..... RESPONDENT
^ Through: Mr.Jaideep Malik, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 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.

1. This is an appeal against the Judgment dated 16th January, 2008 and the Order on Sentence dated 21st January, 2008, whereby the appellant was convicted under Sections 376 IPC read with Section 511 thereof and under Section 506 of IPC. He was sentenced to RI for 4 years and to pay fine of Rs. 5,000/- or to undergo SI for six months, in

default under Section 376/511 of IPC and was further sentenced to undergo RI for one year under Section 506 of IPC.

2. On 30th August, 2002, the prosecutrix, accompanied by her mother Smt. Shashi Devi and one Jallaluddin, went to the Police Post, Prem Nagar and lodged a report, alleging therein that on 2nd June, 2002, at about 4.00 am, when she went to the nearby temple for the purpose of cleaning it, the appellant started loud speaker of the temple on a high volume and took her to the open space behind the temple. After removing his undergarment, the appellant stuffed a cloth in the mouth of the prosecutrix and made her lie on the ground. When the prosecutrix resisted and tried to run away, the appellant slapped her, threatened her and raped her. She thereafter became unconscious. Her mother came there and took her home. When the appellant was called to their house and was asked to explain the act done by him, he threatened to kill them in case the matter was reported to the police. Being afraid of the appellant, they did not report the matter to the police. Gathering courage, her parents brought the matter to the notice of a leader Shri Jallaluddin, who then

brought them to the Police Station.

3. The prosecutrix came in the witness box as PW-3 and stated that at the time of this incident, she was about 14 years old and that on the day of this incident, she had gone to clean the nearby temple at about 4.00 am. The appellant came there and started the loud speaker of the temple at full volume, caught hold her and took her to the backside of the temple. When she raised alarm, he gave beatings to her and stuffed her *chunni* in her mouth. He then removed her salwar and his own undergarment, lied on her and tried to put his urinal portion into her vagina (lower portion). She became unconscious. Her mother came there and brought her to house. On gaining consciousness, she disclosed the incident to her mother who then called the police to the house and enquired from her. The appellant threatened to kill her parents as well as her brother. On account of this threat, they did not report the matter to the police. Thereafter, they had a talk with Jallaluddin and with his help they went to Police Post from where they were taken to Police Station, Sultan Puri, where report was lodged by her. She also disclosed that she had felt pain in her vaginal portion after

this incident happened with her. In cross-examination, she stated that no one came to her rescue when she raised alarm, as the volume of loud speaker was high and that her mother had reached the temple about 10-15 minutes after this incident happened with her.

4. PW-1, Smt. Shashi Devi, is the mother of the prosecutrix. She has stated that on 2nd June, 2002, her daughter had gone to clean the temple at about 4.00 am. When she did not return, she went to the temple in her search and found her lying unconscious at the backside of the temple, which is situated adjacent to her house. She took her daughter to her house. When her daughter gained consciousness, she told her that the appellant had committed rape upon her. The appellant, who was residing just after two houses from her house, was called and when they enquired from him regarding rape with her daughter, he threatened to kill her family, if they informed the police. The appellant kept on threatening them for three months. On account of the threat given to them, they did not lodge report with the police. However, when they met Shri Jallaluddin, who is the Congress leader of the area, the prosecutrix was taken to

Police Station and the matter was reported to the police.

5. PW-2, Lakhshmeshwar Paswan, is the father of the prosecutrix and is a Gardner. He has stated that on 2nd June, 2002 when his daughter, who had gone to clean the temple, did not return home, his wife went there in order to search her. She was found lying unconscious on the backside of the temple and was brought to the house. When she gained consciousness, she disclosed that the appellant had raped her in the temple. He called the appellant and asked why he had raped his daughter. The appellant thereupon threatened to kill him and his family, if he informed the matter to the police. He, therefore, got perplexed and did not lodge report with the police. However, on 30th August, 2002, he reported the matter to the police, with the help of Jallaluddin.

6. PW-5 Dr. Ritu Chaudhary examined the prosecutrix in SJM Hospital on 30th August, 2002 and found that her hymen was torn. PW-16 R.P. Yadav from Government Co-Ed. Middle School, Village Nithari has stated that the prosecutrix was studying in their school and that as per admission register, her date of birth was 22nd March, 1990. The

photocopy of relevant extract of admission register is Ex.PW-16/A, whereas her School Leaving Certificate is Ex.PW-16/B.

7. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and stated that he has been falsely implicated in this case.

8. DW-1, Hari Om, is the neighbour of the appellant. He stated that on 15th May, 2002, an altercation had taken place between the appellant, prosecutrix and the mother of the prosecutrix on the question of filling water and then in the evening, altercation had taken place between the appellant and the father of the prosecutrix. He further stated that on 9th June, 2002, he and others sat with the prosecutrix for attempting a settlement. The complainant did not agree with the settlement and thereafter he came to know that the appellant had been implicated in a criminal case. He also stated that the prosecutrix was aged about 23 years on the date he was examined in the Court. DW-2 Hari has stated that the temple opens at around 6.00 am and was looked after by a committee constituted for its upkeep. He further stated that the appellant and the father of the prosecutrix used to quarrel with each other on distribution of water

received from tanker. He further stated that on 15th May, 2002, the appellant had quarreled with the father of the prosecutrix and on 9th June, 2002, both of them entered into a compromise. DW-3, is the teacher from the MCD School and has stated that as per record, date of birth of the prosecutrix was 22nd March, 1990.

9. The first contention raised by the learned counsel for the appellant is that there was considerable delay in lodging FIR as the incident of rape is alleged to have taken place on 2nd June 2002 whereas the FIR was lodged only on 30th August, 2002, after delay of almost three months. As regards delay in reporting the matter to the police, the Hon'ble Supreme Court noted in **Ravinder Kumar vs. State of Punjab**, 2001 (VII) AD (SC) 2009, that the law has not fixed any time limit for lodging FIR and delayed FIR is not illegal. Though prompt lodging of FIR is ideal, that by itself does not guarantee the genuineness of the version given in it. Whenever there is delay in lodging FIR, the Court ought to look for reasons, if any. But, delay by itself cannot be the sole ground to doubt and discard the entire case of the prosecution though it does put the Court, on guard, to look

for explanation, if any. As regards delay in lodging of FIR in rape cases, the Court cannot be oblivious to the fact that such cases involve honour of the family and reputation of the prosecutrix and, therefore, a cool thought may precede lodging of FIR in such cases. In **Karnel Singh Vs. State** AIR 1995 SC 2472, there was considerable delay in lodging FIR and the contention made before the Hon'ble Supreme Court was that there was sufficient time for tutoring the prosecutrix who in that case was a married lady and therefore her evidence could not be believed. Repelling the contention the Hon'ble Supreme Court held as under:

“The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.”

10. In **State vs. Gurmeet Singh**, AIR 1996 SC 1393, the Hon'ble Supreme Court, inter alia observed as under:

“The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. *It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.*”

11. In **Gian Chand Vs. State** AIR 2001 SC 2075, the Hon'ble Supreme Court felt that mere delay in filing FIR is no ground to doubt the case of the prosecution and not believing the testimony given by the prosecutrix in the Court. It was held that delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on that ground.

12. As far as the present case is concerned, though according to the prosecutrix and her parents, they were threatened by the appellant and that is why they did not report the matter to the police, the true reason appears to be

pressure that was brought by the appellant upon the family of the prosecutrix. It has come in the testimony of PW-1 as well as PW-2, who are the parents of the prosecutrix that a *panchayat* was held in the locality soon after this incident took place. The prosecutrix has also admitted that a *panchayat* was called in the gali, where she had narrated the incident that took place with her and that the *panchayat* also made inquiry from the appellant and took a decision, though without consent of her father. The appellant himself has relied upon and filed the compromise Ex.PW-2/D1. Vide this document, the appellant admitted misconduct with the prosecutrix and also gave in writing that he was admitting his guilt. He assured not to repeat such an act in future and apologized for the mistake committed by him. This document also shows that a token penalty was imposed upon the appellant by the panchayat which then forgave him. The appellant himself having filed this document, he cannot get out of it and it can definitely be read in evidence against him. Though according to DW-2, Hari, the appellant and father of the prosecutrix had quarreled with each other over water, thereby trying to say that the compromise dated 9th June,

2002 pertained to the dispute over distribution/filling of water, this part of his deposition is not borne out from the document. Had this document pertained to any dispute between the appellant and the father of the prosecutrix with respect to filling/distribution of water, there would have been no occasion for him to name the prosecutrix and say that he has misbehaved with her. There would have in that case been no occasion for him to admit any guilt, apologize and assure that he would not repeat such an act and that if he repeated such an act, he could be taken to the Court at his cost and expenses. The expressions used in this document clearly indicate that he had either raped or attempted to rape the prosecutrix, as stated by her, and it was that act which he admitted as a misconduct with the prosecutrix and which he undertook not to repeat in future.

13. It is thus quite clear that the appellant had been putting pressure on the parents of the prosecutrix not to report the matter to the police, though they were not really willing to forgive him. DW-1, who is a witness produced by the appellant, specifically stated that the complainant party did not agree for settlement and threatened to implicate the

appellant in a criminal case. To the same effect is the statement of the prosecutrix. This is yet another indicator which shows that there was pressure put on the parents of the prosecutrix, by the residents of the locality, not to report the matter to the police. This, to my mind, was the true reason for the parents of the prosecutrix not going to the police immediately after this incident had taken place. In fact, the appellant himself has filed yet another document which is mark-A and which purports to be written by the prosecutrix as well as her parents to the concerned SHO, referring to the FIR lodged earlier on that day and informing him that the matter had been settled in the society without any pressure and, therefore, they did not want any legal action in the matter. This document shows that the pressure of the appellant on the parents of the prosecutrix as well as on the prosecutrix continued even after the FIR had been lodged against him. In these circumstances, when there is sufficient explanation for the delay in lodging FIR, no adverse view of the prosecution case can be taken on account of delay in reporting the matter to the police.

14. If the prosecutrix or her parents were to implicate the appellant in a false case of rape, they would not have said that the incident had taken place on 2nd June, 2002. They knew it very well that if they report an incident of 2nd June on 30th August, the first thing they would be asked is as to why they did not report the matter to the police immediately after the incident had taken place. Therefore, if they were to lodge a false FIR against the appellant, they could easily have said that the incident had taken place on or about a very same day on which they had gone to the Police Station. The fact that they did not do so and said that the incident had taken place on 2nd June, 2002 is a strong indicator to show that this was not a case of false implication.

15. The prosecutrix in this case was a young girl aged about 12 years when this incident took place. Ordinarily, a young girl of this age is not likely to make false accusation of rape since she knows it very well that by reporting such an incident, she would be sacrificing what is most dear and precious to her. In fact, in a society like ours, a young girl would be quite reluctant even to admit that an incident, likely to reflect on her chastity, had even taken place, conscious as

she would be of the danger of being looked down not only by relative, friends and neighbours, but also by her own family members. The fear of her being considered to be at least partly responsible for the incident would always be on the back of her mind, even when she reports such an incident to her parents and family members. The parents of an unmarried girl, while reporting such a matter to the police, would be very much conscious that if the incident becomes public, they may have even difficulty in finding a suitable match for their daughter since not everyone in our society is likely to welcome a victim of rape as his life partner. The parents of the victim as well as the victim herself know that in order to report the incident, they would have to go to the police station and narrate the incident, to the police, to the much embarrassment to the girl. They also know that thereafter the girl will have to repeat the incident firstly before the doctor and then in the Courts in the presence of a number of outsiders, including Presiding Judge, advocates and court staff. It is, therefore, extremely unlikely that they would take the risk of going to the police with allegations of rape unless they are absolutely sure of what they are doing.

They know it very well that in case it is found that the girl had not been subjected to rape, she would face a lot of embarrassment and humiliation in the society and it would thereafter be difficult for them to find a life partner for her. Therefore, I see absolutely no reason to disbelieve the testimony of the prosecutrix, which otherwise could not be impeached at all during her cross-examination.

16. It is by now settled proposition of law that the testimony of the prosecutrix, if believed, can be the sole basis of conviction in a rape case and there is no rule of law or of practice which requires corroboration before her testimony can be expected and acted upon. The standard of proof to be accepted by a Court in such cases must recognize the fact that ordinarily no direct evidence other than the statement of the prosecutrix can be available in crimes of this nature. In the case of **Gurmeet Singh** (supra), the Hon'ble Supreme Court observed as under:

“The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be

self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight.”

17. In the present case, the prosecutrix was raped in early hours of the morning in the backyard of a temple where she had gone for cleaning the temple. No one expected to be present at that place, early in the morning. In fact, improbability of anyone coming to the backyard of the temple in the early hours of the morning, seems to be the precise reason for the appellant choosing the time and place of the crime committed by him. He was claver enough to start the loudspeaker and that too on full volume so that no one comes to the rescue of the prosecutrix, even if she raised an alarm.

18. Even if the Court looks for corroboration of the testimony of the prosecutrix, it is available in the form of medical evidence as her hymen was found to be torn, when she was examined in the hospital. Her testimony also finds corroboration from the statements which she made to her parents soon after this incident took place with her. These previous statements of the prosecutrix, made soon after the incident, are admissible in evidence under Section 157 of

Evidence Act.

19. For the reasons given in the preceding paragraphs, I have no hesitation in confirming the conviction of the appellant under Section 376 of IPC read with Section 511 thereof. In fact, considering the evidence available on record, it would also be at least an equally probable view that this was not a case of attempt to rape but was a case of rape as stated by the prosecutrix. As stated earlier, according to the prosecutrix she was raped by the appellant and she had felt pain at that time. The hymen of the prosecutrix was found torn when she was examined in the hospital. The complaint made by her to her parents was of rape and not of attempt to rape. However, I need not go further into this aspect as no appeal has been filed by the prosecution seeking conviction of the appellant under Section 376 IPC, as against his conviction by the Trial Court for attempt to rape the prosecutrix. Since the appellant had also threatened to kill the prosecutrix, at the time of committing or attempting to commit rape, he has rightly been convicted under Section 506 of IPC. The conviction of the appellant is therefore maintained on both the counts. In the matter of sentence

also, there is no scope for reduction of sentence, considering the fact that the appellant has been convicted only for attempt to rape.

20. For the reasons stated above, the appeal is hereby dismissed. One copy of this order be sent to the appellant through Jail Superintendent. The record of the Trial Court be sent back, alongwith a copy of the judgment.

(V.K.JAIN)
JUDGE

JANUARY 25, 2010
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