

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

Judgment reserved on: July 23, 2010
Judgment delivered on: November 16, 2010

+ **CRIMINAL APPEAL NO.113/2005**

BALWANT SINGH

....APPELLANT

Through: Mr. M.R. Chawla with Mr.N.Vinoba
Bhoopathy, Advocates.

Versus

THE STATE(GOVT. OF N.C.T. OF DELHI) RESPONDENT

Through: Mr.Pawan K. Bahl, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 29.01.2005 and the consequent order on sentence dated 31.01.2005 in terms of which the appellant Balwant Singh has been convicted in Sessions Case No.25/2004, FIR No.231/2003 P.S. Sarita Vihar for committing offence under Section 376 IPC and sentenced to undergo RI for the period of seven years and also to pay a fine ₹5,000/-, in default of payment of fine to undergo RI for further period of two months.

2. Briefly stated, case of the prosecution is that the FIR of this case was registered on the complaint of the prosecutrix (name withheld) on 30.04.2003. The prosecutrix, in her statement made to the Investigating Officer, claimed that she was a student of 6th standard. On 26.04.2003, her parents had gone to village Kabulpur, District Faridabad, Haryana for purchasing wheat. On 27.04.2003 at around 2:30 pm, when she had gone to ease herself at the Ash Dump of Badarpur Thermal Power Plant, appellant Balwant Singh came there. He caught hold of her hand and gagged her mouth. Thereafter, he forcibly untied the cord of her salwar and raped her. She further claimed that after committing rape, appellant ran away. She went to her house and narrated the incident to her brother Ranjeet Singh. Since their parents were not present in the house, they did not disclose the fact of rape to anyone. On 29.04.2003, at about 11:00 pm when her parents came to the house, they narrated the incident to them and thereafter, they went to the Police Station to lodge the report.

3. ASI Zamil Ahmed (PW12) appended his endorsement on the statement of the prosecutrix and sent the Rukka to the Police Station for the registration of FIR. The prosecutrix was got medically examined. The appellant was arrested on 30.03.2003. Blood sample of the appellant as well as vaginal swab of prosecutrix were taken into possession. X-ray of the prosecutrix was got conducted to determine the bone age. Further investigation was taken over by SI Braham Prakash who sent the sealed packets of Exhibits to FSL Malviya Nagar

and obtained the report. On completion of the investigation, charge sheet under Section 376 IPC was filed in the court against the appellant.

4. The learned Additional Sessions Judge found a prima facie case for putting the appellant to trial for the offence under Section 376 IPC. Accordingly, the charge under Section 376 IPC was framed against the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt of the appellant, prosecution has examined as many as 13 witnesses, including the prosecutrix, who is the sole witness of the incident of rape.

6. The prosecutrix was examined as PW1. She deposed that on 27.04.2003 at about 2:30 pm, she had gone to the bridge near Mazar of Peerbaba to ease herself. There she was caught hold of by the appellant who is resident of Jaitpur. She claimed that appellant gagged her by pressing her mouth with his hand and dragged her into the bushes. Thereafter, he threw her on the ground and raped her. She became unconscious and the appellant fled away from the spot. On regaining consciousness, she returned home and narrated the incident to her brother Ranjeet. She claimed that her parents were not in the house as they had gone to purchase wheat. Their parents came home on 29.04.2003 and thereafter the report was lodged with the Police. She proved her complaint as Ex.PW1/A. In the cross examination, prosecutrix admitted that the talks about compromise took place five

or six days prior to the date of recording of her statement in the court and in the said talks, her mother had proposed the marriage of sister of the appellant with her brother Ranjeet as a condition for settlement. She also stated that her father was unemployed and he had been won over by the appellant's family by luring him with liquor. She denied the suggestion that on the date of incident, her parents were present in the house or that their parents were present in the house during the period from 26.04.2003 to 29.04.2003. She also stated that the Police did not seize the clothes which she was wearing at the time of the incident. She claimed that she had suffered scratch marks from the thorns of bushes on her arms.

7. Mother of the prosecutrix was not examined by the prosecution on the ground that her evidence was hear say evidence. PW3 Surender Singh, father of the prosecutrix turned hostile and did not support the case of the prosecution.

8. PW5 Ranjeet Singh is the brother of the prosecutrix. He stated that about a year ago, his parents had gone to village Kabulpur. On the fateful day, her sister i.e. the prosecutrix had gone to attend the call of nature near Peerbaba Mazar. When she returned, she was crying and told him that she had been raped by the appellant Balwant Singh. Two-three days later, when his parents returned back from Kabulpur, he told them about the incident and the matter was reported to the Police. In the cross-examination, he stated that his parents had

gone to Kabulpur village for purchase of wheat two days prior to the date of incident. He claimed that no quarrel took place between his mother and mother of the appellant at any point of time and no Panchayat was held in relation to any such quarrel. He denied the suggestion of the appellant that a Panchayat was held to bring about a compromise and in that Panchayat a specific proposal was given from their side that the family of the appellant should marry the sister of appellant to him. He denied the suggestion that his sister was not raped and his mother and sister have concocted a false case registered against the appellant to extract money from him.

9. PW4 Dr. Chittranjan Behera examined the appellant on 30.04.2003 and prepared his MLC Ex.PW4/A. As per his opinion in the MLC, the appellant was capable of performing sexual intercourse in normal circumstances.

10. PW8 Smt. Madhu Arora, a Teacher for Govt. Girls Sr. Secondary School, Molarband, Badarpur, No.2 has proved the school leaving certificate of the prosecutrix Ex.PW8/A. As per the certificate, her date of birth is 15.01.1989, which implies that the prosecutrix was a minor girl about 14 years and 03 months.

11. PW13 Dr. Bhuvnesh examined X-ray plate of prosecutrix to determine her bone-age. He stated that as per the bone development, the age of prosecutrix on 30.04.2003 was between 14.5 years to 15.8 years. He has proved the report as Ex.PW13/A.

12. On conclusion of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. to afford him an opportunity to explain the incriminating evidence against him. The appellant denied the prosecution case in totality and stated that there was a quarrel between his mother Jeet Kaur on one hand and prosecutrix and her mother on the other hand. On 29.04.2003, prosecutrix and her mother Sheela demanded ₹2 lakhs failing which they threatened his family with his false implication in a criminal case. He also claimed that a Panchayat was held on 27th and 28th April, 2003 which was also attended by family members of the prosecutrix and when his family could not meet the demand of the family of the prosecutrix, they got the false case registered against him. Appellant has examined four witnesses in defence.

13. DW1 Darshan Singh is the uncle of the prosecutrix. He testified that on 27.04.2003, a quarrel took place between Ms. Sheela, mother of the prosecutrix and Ms. Jeet Kaur, mother of the accused. Five/six days later, a Panchayat was held where Ms. Sheela put a condition for settlement that either Ms. Jeet Kaur should marry her daughter to Ranjeet Singh, son of Ms. Sheela or the appellant should pay a sum of ₹2 lakhs for settling the incident dated 27.04.2003. He claimed that the Panchayat was held for two or three days in the evening. In the cross-examination, he stated that no information regarding the quarrel was given to the police and that no police officer visited the spot either

on 27.04.2003 or 28.04.2003. He claimed that police came to the spot three days after the quarrel.

14. DW2 Gurdeva, DW3 Gurmukh Singh and DW4 Kashmir Singh have also deposed to almost similar effect.

15. On consideration of the evidence, learned Additional Sessions Judge found the appellant guilty of the offence of rape punishable under Section 376 IPC and he was convicted and sentenced accordingly.

16. Learned Shri M.R.Chawla, Advocate appearing for the appellant has assailed the impugned judgment on several counts. Firstly, it is contended that as per the case of prosecution, the alleged incident of rape took place in the afternoon of 27th April 2003 but admittedly the FIR of this case was registered after a delay of 3 days, on 30th April 2003 at 2.30 p.m. on the basis of purported statement of the prosecutrix (Ex.PW1/A) made to the Investigating Officer in the afternoon of 30th April 2003. Learned counsel urged that the above unexplained inordinate delay in registration of the FIR raises a grave doubt against the correctness of the prosecution story and a possibility of false implication after due deliberation cannot be ruled out.

17. I do not find merit in the above contention. Both the prosecutrix (PW1) as well as her brother Ranjeet Singh (PW4) have testified that on the fateful day, their parents were out of station as they had gone to purchase wheat. They also deposed that when their parents returned

on 29th April 2003, they were told about the incident and on this, they went to the police station to report the matter. From the above version of PW1 and PW4, it stands explained as to why the incident was not immediately reported to the police. Otherwise also, much importance cannot be attached to the delay in registration of the FIR in cases of sexual offence because in our society the honour of a woman is kept at a high pedestal and there is always a reluctance on the part of the prosecutrix or her family members to approach the police because of their concern relating to the reputation and honour of the victim as also her family. Thus, I do not find anything suspicious in the conduct of the prosecutrix or her brother in not reporting the incident to the police immediately and waiting for their parents to come home.

18. Learned counsel for the appellant further submitted that as per the testimony of the prosecutrix, her '*Bua*' (father's sister) and her family was also residing in village Jaitpur. The prosecutrix stated in her cross examination that besides her brother she did not tell any other relative about the incident of rape. This explanation, according to learned counsel for the appellant, is highly unnatural because under the normal course of circumstances, had the prosecutrix actually been raped, she was expected to approach her female relative i.e. '*Bua*', who admittedly was residing in the same village. The fact that she did not tell her '*Bua*' about the incident raises a doubt against the correctness of the prosecutrix version.

19. I do not find merit in the above submission. There is nothing on record to suggest that the prosecutrix was close to her `Bua' so as to tell her about the incident. Otherwise also, while dealing with a sexual assault case, the Court is required to bear in mind the psychological impact of the rape on the prosecutrix. Normally a female who has been physically violated undergoes acute trauma and shame and she is concerned about her honour in the society. Therefore, the prosecutrix, under the natural course of circumstances, was not expected to narrate the story of her shame and humiliation to her father's sister. As such, much significance cannot be attached to the failure of the prosecutrix to inform her `Bua' about rape.

20. Learned counsel for the appellant also urged that the learned trial Judge has committed a grave error in relying upon uncorroborated testimony of the prosecutrix. He contended that the learned trial Judge ignored the fact that father of the prosecutrix PW3 Surender Singh has not supported the case of the prosecution and instead he, in his cross-examination, has stated that the prosecutrix as well as her mother Sheela are women of loose character and they had been detained on several occasions by the police on the charge of prostitution. Learned counsel further contended that even the mother of the prosecutrix Sheela, when she came to the Court to depose as a witness, was dropped by the prosecution fearing that she may not support the prosecution case and this has deprived the appellant of his valuable right to bring about true facts on record through cross examination of

the witness. Thus, he has urged us that it is not safe to rely upon the sole testimony of the prosecutrix.

21. I am not convinced with the above argument. It is significant to note that as per the case of the prosecution, father and mother of the prosecutrix were not in town on the date of incident, as such, their evidence could not have helped the case of either the prosecution or the appellant. As regards the testimony of PW3 Surender Singh to the effect that prosecutrix is a woman of loose character and that she had been detained by the police on several occasions on the charge of prostitution, it is suffice to say that aforesaid version of PW3 is not reliable for the reason that he is a hostile witness who has resiled from his earlier version made to the police. Otherwise also, if at all the prosecutrix or her mother were detained by the police for prostitution, there ought to have been some police record in this regard which has not been produced to substantiate the version of PW3. Therefore, in my opinion, testimony of PW3 is of no consequence. Further, prosecutrix in her cross examination has explained that her father is unemployed and he has been won over by the appellant, who frequently provides him with liquor.

22. The Apex Court, in the case of **State of Punjab vs. Gurmit Singh**, 1996 (2) SCC 384, while dealing with the testimony of rape victim, inter alia, observed thus:-

“8. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her

statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a 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, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, Ahmadi, J. speaking for the Bench summarised the position in the following words:

"A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the

record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

23. The Supreme Court in the matter of ***Om Prakash vs. State of U.P.*** (2006) 9 SCC 787 observed thus:-

13. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has a tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members have courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scathing (*sic* scathing) her own prestige and honour.

14. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women’s rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. 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 molestation. This position was highlighted in *State of Punjab v. Gurmit Singh*”

24. From the above enunciation of law, it is clear that evidence of a victim of rape cannot be equated with the evidence of an accomplice and it has to be treated at par with the evidence of the victim of any other crime. If the testimony of a victim of rape, on overall appreciation of evidence is found to be reliable, it can be acted upon without seeking corroboration from any other source.

25. Otherwise also, the testimony of prosecutrix finds corroboration from the testimony of her brother Ranjeet Singh (PW5) who has categorically stated that on the relevant day, his sister i.e. the prosecutrix had gone to attend the call of nature near the *Mazar* of *Peer Baba* and when she returned she was crying and she told that the appellant Balwant Singh has committed rape upon her. Aforesaid version of PW5 Ranjeet Singh obviously is the evidence of conduct of the prosecutrix immediately after the occurrence, which is relevant under Section 8 of the Evidence Act and goes to corroborate the version of the prosecutrix. Thus, I find nothing wrong in the learned trial Judge relying upon the testimony of the prosecutrix.

26. Learned counsel for the appellant also argued that the trial court ought to have taken note of the fact that the story put forth by the prosecutrix is highly unnatural and improbable to be believed. Expanding on the argument, he contended that as per the case of the prosecution, prosecutrix was raped at the ash dump of Badarpur Thermal Plant which is admittedly adjacent to a heavy traffic road and

there is habitation at a distance of around 500 mtr. from the place of occurrence. Learned counsel argued that given such a location of the place of incident, it is highly improbable that anyone, under the natural course of circumstances, would have dared to rape a girl in such a place, as there obviously was a real threat of being caught red handed in the act.

27. The above argument of learned counsel for the appellant is misconceived. As per the version of the prosecutrix, when she had gone to ease herself, the appellant caught hold of her, closed her mouth with his hand and took her behind the bushes. From this, it is apparent that the appellant did take precaution to commit the act of rape behind the bushes so that he could not be seen from the road or the habitation or the '*abadi*' area.

28. Lastly, it is argued on behalf of the appellant that this is a case of unfair investigation where appellant was arrested by the police prior to the registration of the case, from which it can be safely inferred that this is a case of false implication. In support of this contention, learned counsel for the appellant has drawn my attention to the FIR Ex.PW7/A which was registered at P.S. Sarita Vihar on 30.04.2003 at 2.30 p.m. Learned counsel has also drawn my attention to the MLC of the appellant Balwant Singh (Ex.PW4/A) wherein it is recorded that the appellant was produced in AIIMS by Constable Sri Krishan on 30.04.2003 at 11.35 am for the purpose of his medical examination in

a sexual assault case. From the above, it can be safely inferred that the appellant was arrested much earlier to the registration of the FIR which raises a strong doubt against the correctness of the prosecution case and a possibility of false implication of the appellant cannot be ruled out.

29. On the first blush, the argument of learned counsel for the appellant appears to be attractive. However, on perusal of the testimony of the prosecutrix, it transpires that in her cross examination, she categorically stated that her mother and brother had gone to the police station on 29.04.2003 and thereafter the police had come to their house. From this version, it is apparent that the incident of rape was reported to the police on the night of 29.04.2003. If the police, despite of report having been made, opted not to register the complaint or not to record the statement of the prosecutrix and postponed it till the afternoon of 30.04.2003, it cannot be taken as a reason to discard the testimony of the prosecutrix, which is otherwise reliable and finds corroboration in the testimony of her brother Ranjeet Singh (PW5). At this juncture, it is necessary to refer to the defence put forth by the appellant. According to the appellant, a panchayat was held in the village and in that panchayat, mother of the prosecutrix insisted that either the sister of the appellant be married to her son or the family of the appellant should pay her ₹2,00,000/-. Though, according to the appellant, that payment was made in respect of some quarrel but the defence evidence has not spelled out what exactly was

the reason for the quarrel. The demand of payment of ₹2,00,000/- in itself raises a possibility that the reason for panchayat was something serious, rather than a quarrel of simple nature. It is highly improbable that mother of the prosecutrix would have insisted on compensation of ₹2,00,000/- or in the alternative, that the family of the appellant marry their daughter with her son. From this, it also appears that the police waited for the outcome of the panchayat before the registration of the case and for this act of the police, the testimony of the prosecutrix cannot be brushed aside.

30. In view of the discussion above, I do not find any merit in the appeal and I find no infirmity in the impugned judgment which may call for interference in appeal. Accordingly, the appeal is dismissed.

31. The appellant is on bail. He be taken into custody to undergo the remaining period of his sentence.

(AJIT BHARIHOKE)
JUDGE

NOVEMBER 16, 2010
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