

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

+ Crl.A.No.798/2005

ANAND PAL Appellant
Through Mr.Lal Singh Thakur Advocate
versus

\$ STATE Respondent
^ Through Mr.Jaideep Malik, APP.

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

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

: V.K. JAIN, J. (ORAL)

1. This is an appeal against the Judgment dated 27th July, 2005 and Order on Sentence dated 29th July, 2005, whereby the appellant was convicted under Section 363 and 376 of IPC and was sentenced to undergo RI for 2 years and to pay fine of Rs.1,500/- or to undergo SI for one month in default 363 of IPC and was further sentenced to undergo RI for 10 years and to pay fine of Rs.2,000/- or to undergo RI for one month in default under Section 376 of IPC.

2. The case of the prosecution, as disclosed in the FIR lodged by Smt. Raj Kumari, mother of the prosecutrix, on 28th April, 2003, is that on 27th April, 2003, when her daughter, aged 12

years, was alone at home, the appellant, who is her neighbor, came to her room at about 1.00 pm, took the prosecutrix to his room and thereafter he committed rape with her.

3. The prosecution examined 13 witnesses in support of his case, whereas three witnesses were examined in defence.

4. The prosecutrix came in the witness box as PW-1 and stated that the appellant, who is their neighbor, came to her house at about 9.30 am, lifted her and took her to the house of Jagdish. When she started weeping, the appellant pressed her mouth with his hand and kept a knife on her neck. He threatened to kill her in case she shouted. In her examination-in-chief, she also stated that the appellant did nothing else except removing her clothes. According to her, she became unconscious and some children from the neighbourhood came there and sprinkled water on her face, as a result of which she regained her consciousness and went to her house. In the night, when her mother returned home, she narrated the incident to her, who on hearing the incident became unconscious, as she was suffering from fits. The matter was next day reported to the police. This witness was cross-examined by learned APP and during cross-examination, she disclosed that in fact, the appellant had done wrong act with her in the house of Jagdish. She admitted that wrong act with her was done after bolting the

room from inside. She stated that she did not disclose these facts earlier as she was feeling ashamed. At this stage of her examination, the witness was found weeping and when her cross-examination resumed, she stated that on the date of incident, the wife of Jagdish had gone for work, whereas Jagdish had left the room open as his children were playing in the open courtyard. She also stated that the children of Jagdish were playing in the street when this incident took place. She denied the suggestion of the learned defence counsel that the appellant had not committed sexual intercourse with her.

5. PW-2, Smt. Raj Kumari, mother of the prosecutrix, however, did not support the prosecution and stated that there was a quarrel between her daughter and wife of the appellant and that she had gone to Police Station and reported the matter to the police.

6. PW-10 Smt. Bimla Kumari, Presiding Officer, MACT stated that on 29th April, 2003, she had recorded the statement of the prosecutrix Ex.PW-1/A. PW-11 Dr. Bhuvnesh, Senior Radiologist in AIIMS examined the X-ray plates of the prosecutrix on 28th April, 2003 and opined that her age was between 10 to 13 years. PW-12 Dr.A.K. Srivastav, Senior Scientific Officer Biology, FSL, proved his report Ex.PW-12/A.

7. In his statement under Section 313 Cr.P.C., the appellant denied the allegations against him and stated that no such incident took place and that on 27th April, 2003, he had gone to his native village to attend a Jagran. He further stated that the husband of the prosecutrix who at that time was her friend used to come there and both of them used to live like husband and wife to which he had objected and he had also slapped him about one week before the alleged incident.

8. DW-1 Lakhmi Chand is the Pradhan of Gram Panchayat Beri and has stated that the appellant had come to him alongwith his father on 27th April, 2003 for arranging Jagran and the date of Jagran was decided as 3rd May, 2003. According to him, the appellant left the village on 28th April, 2003. DW-2 Ram Avtar has stated that the letter Ex.DW-1/A was signed by him at the instance of DW-1 and that on 27th April, 2003, the appellant had gone to his village. DW-3 Madan Lal has corroborated the deposition of DW-2.

9. After arguments, the learned counsel for the appellant states that in view of the evidence produced during trial, he does not dispute the conviction on merits and only requests that the sentence awarded to the appellant may be reduced, considering his age and other facts and circumstances of the case. Even otherwise, I am satisfied from consideration of the

statement of the prosecutrix, coupled with the statement made by her to the doctor at the time of her examination in hospital on 28th April, 2003 and her statement made before the learned Metropolitan Magistrate on 29th April, 2003 which stands further corroborated from the report of FSL which shows presence of semen on the underwear and salwar sent to the laboratory, that the appellant not only removed the prosecutrix from the lawful custody of her parents, but also committed rape with her on 27th April, 2003. Though in her examination-in-chief, the prosecutrix on account of shame or I would call it embarrassment, which she was feeling and which is otherwise bound to be felt by a girl of her age in narrating an incident of this nature, in the Court, in the presence of a number of outsiders such as Presiding Judge, Advocates, Court staff, Prosecutor. She denied actual commission of rape, the true facts were disclosed by her during cross-examination. The sexual intercourse is also evident from the fact that semen was detected on her salwar and underwear, when they were examined in FSL.

10. Section 376 of IPC provides that a person who commits rape shall be punished with imprisonment which shall not be less than of 7 years. If, however, the rape is committed on a woman when she is under 12 years of age, the minimum

punishment prescribed for the offence is 10 years. In the present case, this is nowhere the case of the prosecution that the prosecutrix was less than of 12 years of age on the date she was subjected to rape. In the FIR as well as in the MLC, Ex.PW-3/A, the age of the prosecutrix has been given as 12 years and as less than 12 years. As per Ossification Test of the prosecutrix, her age could be anywhere between 12 to 13 years. Thus, neither this is the case of the prosecution that the prosecutrix was less than of 12 years of age on the date, she was subjected to rape nor is there any evidence to this effect on record. Hence, the provisions of Section 376(2)(f) of IPC are not attracted to the present case.

11. The appellant belongs to poor strata of society and was a young man when he committed this offence. Taking into consideration all the facts and circumstances of the case, while maintaining conviction of the appellant and the substantive sentence and fine awarded to him under Section 363 of IPC and also maintaining the sentence of fine imposed upon him under Section 376 of IPC, the substantive sentence awarded to him under Section 376 of IPC is reduced from 10 years to 7 years. In default of payment of fine imposed upon him under Section 363 of IPC, he will undergo SI for 15 days whereas he will undergo simple imprisonment for one month in default of fine imposed

on him under Section 376 of IPC. The sentences shall run concurrently.

Trial Court Record be sent back, with a copy of this judgment.

One copy of this order be given to the appellant through Jail Superintendent.

(V.K.JAIN)
JUDGE

JANUARY 20, 2010
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