

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

+ Crl.A.No.529/2009

NANNU GUPTA @ BABLU Appellant

! Through: Mr. A.K. Bhamhani, Adv.

versus

\$ THE 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? Yes
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. (ORAL)**

1. This is an appeal against the Judgment dated 5th August, 2008 and Order on Sentence dated 6th August, 2008, whereby the appellant was convicted under Section 452, 506 Part-II, 324 and 376/511 of IPC and was awarded the following sentences (i) RI for 2 years and fine of Rs.1,000/- and in default of payment of fine, RI for one month under Section 324 IPC; (ii) RI for three years and fine of Rs.1,000/- and in default of payment of fine, RI for one month under Section 452 of IPC; (iii) RI for three years and fine of Rs.1,000/- and in default of payment of fine, RI for one month under Section 506 Part-II IPC; (iv) RI for

five years and fine of Rs.2,000/- and in default of payment of fine, RI for two months under Section 376/511 IPC.

2. On 13th March, 2007, on receipt of copy of DD No. 19-A, SI Ram Kumar of Police Station Sarai Rohilla went to House No. 211, Gali No.5, Padam Nagar, Delhi where he came to know that the complainant/prosecutrix had been taken to hospital. On reaching the hospital, he met the prosecutrix and recorded her statement. It was alleged by the prosecutrix that on 13th March, 2007, at about 11.30 am, she was watching T.V. in her room and was alone at that time. The appellant, who was her neighbour, entered her room, bolted the door from inside, threatened to kill her with a knife which he was carrying with him and made her forcibly lie down on the bed. The appellant then sat on her chest, as a result of which her shirt-suit got torn. The appellant gave tooth bites at both her cheeks and also gave to knife blows on her neck. When the prosecutrix resisted, the appellant gave a cut on a finger of her left hand, using his teeth for this purpose. Thereafter, the appellant stuffed a cloth in the mouth of the prosecutrix and tried to rape her. The prosecutrix pushed him, as a result of which, he fell down and after some time opened the door and ran away. After about 1 ½ hour, the prosecutrix informed her husband on telephone, who reached home in about an hour and called the police,

which brought her to Hindu Rao Hospital and got her medically examined.

3. The prosecutrix came in the witness box as PW-4 and supported the case set up in the FIR. She stated that on 13th March, 2007, at about 11.30 am, when she was watching T.V. in a room on the first floor of their house, the appellant Nannu Gupta @ Bablu, who was residing in the adjacent room, came inside and bolted the door. She thought that he might have come to pay rent. Showing a knife to her, the appellant insisted on her lying on the bed. When she declined, he threatened to kill her. When she acted in the protest, the appellant forcibly made her lie on the bed and sat on her chest. Her shirt got torn in this process. The appellant then gave knife blows on her neck and tooth bites on both her cheeks. He put a piece of cloth on her mouth and tried to commit rape on her. The appellant also bitten three fingers of her left hand. When she pushed the appellant to save herself, he ran out of the room. She, thereafter, went to a public booth and informed her husband, who reached there after about an hour. She narrated the incident to her husband, who then called the police. She was taken to hospital, where her statement was recorded. She further stated that one vegetable cutting knife belonging to the appellant, and one woolen sweater having semen stain of the

appellant alongwith her partly torn salwar shirt and a bed sheet were seized by the police. It is also stated that after two-three days, she was produced before a Magistrate where she gave statement Ex.PW-4/G.

4. PW-3 Shri Ashok Kumar Chauhan is the husband of the prosecutrix. He has stated that on 13th March, 2007, at about 12.00 noon, he received a telephone call from his wife, regarding the occurrence with her. He reached home at about 1.00-1.30 pm. His wife was present in the house and narrated the incident to him. He then informed the Police Control Room and when the police officials came there, they took him as well as his wife to the hospital.

5. PW-6, Const. Kul Avtar, had accompanied the IO SI Ram Kumar on the spot on 13th March, 2007. He later on joined investigation with the IO. According to him, the appellant was arrested from the house of the prosecutrix and was taken to hospital where his underwear and shirt were handed over to him in sealed condition by the doctor and the same were then seized by the IO vide PW-6/A.

6. PW-7, Dr. Jitender Bali, of Hindu Rao Hospital has deposed that on 14th March, 2007, the appellant was brought to him by the police and he was requested to take the blood sample of the appellant for analysis. The appellant, however,

refused vide endorsement vide Ex.PW-7/A. He also recorded his refusal on the back of the MLC and the same is Ex.PW-7/B.

7. PW-8, Dr. Vandana Jain, examined the prosecutrix in Hindu Rao Hospital on 13th March, 2007. According to her, the prosecutrix given her history of being assaulted by a man on the point of a knife and an attempt to sexual assault.

8. In his statement under Section 313 Cr.P.C., the appellant admitted that he was residing as a tenant in a room on the first floor of the house of PW-3, Ashok Kumar Chauhan, alongwith his cousin Santosh Kumar. He, however, denied having entered the room of the prosecutrix, having injured her and having attempted to rape her. He stated that he was apprehended by the police from the residence of his uncle at Nangloi and had been falsely implicated in this case.

9. I see absolutely no reason to disbelieve the testimony of the prosecutrix. There existed no good reason for the prosecutrix to implicate the appellant in a false case of trespass, causing injuries and attempted rape.

10. In his statement under Section 313 Cr.P.C., the appellant has not claimed any particular reason for the prosecutrix and/or her husband to implicate him in a false case of this nature. He simply stated that he had been falsely implicated in this case, but, did not attribute any motive to PW-3 and PW-4 to involve

him in a false case. However, during cross-examination of the prosecutrix, it was suggested to her that she had implicated the appellant in a false case, at the instance of her husband, in order to get the room vacated from the appellant. In my view, the defence suggested in the form of the suggestion given to the prosecutrix is not tenable at all. As stated by PW-3, Ashok Kumar Chauhan, in his cross-examination, the appellant was residing with his cousin Santosh Kumar, who was the tenant under him. Therefore, if the prosecutrix and/or her husband were to put any pressure to get the room vacated, they would have put pressure on Santosh Kumar and not upon the appellant, who happened to be only residing with him and was not the tenant in the room in which he was residing with Santosh Kumar. There is no way PW-3 could have got the room vacated from Santosh Kumar by implicating the appellant in a false case. Moreover, it cannot be believed that the husband of the prosecutrix would have gone to the extent of implicating the appellant in a false case, involving the honour of his own wife, merely for the purpose of getting the room vacated from the tenant. In fact, no reason at all has been assigned by the appellant for PW-3 being keen to get the room vacated from him or from Santosh Kumar.

11. No husband is ordinarily likely to consent to his wife making a complaint of this nature, without his being convicted of her being a victim of the crime. PWs first called the PCR and then took his wife to Police Station alongwith police officials. The prosecutrix was then taken to hospital and after three days, she was taken to a Magistrate everywhere, the prosecutrix had to repeat the horrible incident that took place with her, at the cost of considerable embarrassment to her, which is always implicit in narrating incidents of this nature to outsiders. She then came in the witness box to depose during trial. In the absence of a really strong motive, she was extremely unlikely to undergo this ordeal unless she was absolutely true and innocent.

12. Had the prosecutrix and/or her husband to implicate the appellant in a false case, they could have done so merely by making allegations of trespass, threat and causing injuries with a knife and there was no need for them to make the false accusation of attempted rape when their purpose could have duly served by leveling other allegations against the appellant.

13. It is, by now, well settled by a catena of decisions of the Hon'ble Supreme Court including Rafiq vs. State of Uttar Pradesh, 1980 CrL J. 1344 and in the case of Bhogin Bhai Hirji Bhai vs. State of Gujarat, (supra) that there is no rule of law or

practice that the evidence of the prosecutrix cannot be relied upon without corroboration. If the testimony of the victim does not suffer from any basic infirmity and is not inherently improbable, there can be no justification for discarding the same. The prosecutrix in a rape case is not an accomplice in a crime and no infirmity is attached to her deposition in the Court. It would therefore be adding insult to the injury if the Court, insists on corroboration of her testimony, unless the facts and circumstances of a given case call for such a corroboration. No such circumstances, however, exist in the case.

14. Even if I look for corroboration of the testimony of the prosecutrix, the same is available in abundance in this case. The testimony of the prosecutrix finds full corroboration not only from the injuries sustained by her, but also from the statements made by her soon after this occurrence took place. A perusal of the MLC of the prosecutrix would show that she had a number of injuries on her person when she was examined in the hospital. The appellant has not given any explanation for the injuries that were found on the person of the prosecutrix when she was examined in hospital on 13th March, 2007. Therefore, the injuries found on the person of the prosecutrix are a strong corroboration of her testimony in the Court.

15. According to PW-3, who is the husband of the prosecutrix, when he reached home at about 1.00 or 1.30 pm, the prosecutrix narrated the incident to her. Ordinarily, a wife is not likely to make false complaint of attempt to rape to her husband, apprehensive as she would be that her husband may not trust her and may even go to the extent of her being a consenting party to the act complained of. Therefore, unless she is absolutely true and honest, she would not report a matter of this nature to her husband, with whom she has to spend the rest of her life. She would be quite conscious that if she is not found to be true, her husband may suspect her throughout her life and may even go to the extent of deserting her, suspecting her loyalty. Therefore, the statement made by the prosecutrix to her husband immediately after this incident is one more corroboration of the statement given by her in the Court.

16. When the prosecutrix was examined in hospital, she gave history of assault and attempt to sexual assault to the doctor, who examined her in the hospital. This also is a corroboration of the testimony of the prosecutrix.

17. In her statement recorded under Section 164 of Cr.P.C., the prosecutrix stated that the appellant, who entered her room, closed the door of the room, threatened her with a knife, made her lie down on the bed and thereafter, sat on her chest,

tried to rape her and cause injuries to her. This is yet another corroboration of the testimony of the prosecutrix in the Court. These previous statements of the prosecutrix are admissible in evidence under Section 157 of Evidence Act. In Madan Lal vs. State of Jammu and Kashmir, AIR 1998 sc 386, the statement made by the prosecutrix to her mother immediately after the incident was accepted to be a corroborative piece of evidence.

18. A perusal of the MLC of the appellant would show that he had nail injuries below left eye besides bite on right thumb and left finger. The nail injuries and bites show the attempt made by the prosecutrix to save her from rape by giving the nail blows and biting the thumb and finger of the appellant. Therefore, the injuries found on the body of the appellant are also a corroborative evidence against him as he has not given any explanation for the injuries that were found on his body, when he was examined in the hospital on 13th March, 2007.

19. A perusal of the deposition of PW-6 would show that the underwear of the appellant was given to him by the doctor in a sealed cover and was thereafter, seized by the IO. A perusal of the FSL report would show that semen was found on the underwear which was sent to the laboratory. It thus stands proved that semen was found on the underwear of the appellant. There is no explanation from the appellant as to

who semen came on his underwear. Therefore, the inference is that the semen came on his underwear in his attempt to commit rape with the prosecutrix. Thus, presence of semen on the underwear of the appellant is one more evidence which corroborates the version given by the prosecutrix.

20. It was submitted by the learned counsel for the appellant that according to the prosecutrix when the appellant entered the room, she thought that he might have come to give rent though according to her husband, it was the cousin of the appellant and not the appellant, who was the tenant in the room, and therefore, there could have been no occasion for the appellant to come to her room to give rent. In my view, the contention is misconceived. Since the appellant was residing with the tenant and was none other than his cousin, the prosecutrix was justified in presuming that he might have come to pay rent for the room which both the appellant as well as his cousin was occupying. In fact, during cross-examination of the prosecutrix, it was suggested to her that the appellant was wearing pant and shirt at the time when he came to the room. This suggestion contains an admission that the appellant had come to the room of the prosecutrix on 13th March, 2009 at the time, stated by her though he, at that time, was not wearing underwear and vest, as was stated by the prosecutrix. But,

when the appellant was examined under Section 313 Cr.P.C., he did not say that he had gone to the room of the prosecutrix and was fully clothed at that time. He altogether denied having gone to her room. This is not the case of the appellant that though he had caused injuries to the prosecutrix, he had not attempted to commit rape on her person. The plea taken by him, is totally of denial. Therefore, it cannot be said that though the appellant had caused injuries to the prosecutrix, he had not tried to rape her.

21. The facts and circumstances of the case clearly show that the appellant attempted to rape the prosecutrix, finding her alone in the house. There can be no other explanation for the appellant coming to her house, armed with a knife wearing only underwear and vest and bolting the door immediately on entering the room. Though the prosecutrix did not elaborate how the appellant had attempted to rape her, I find that there has been no cross-examination of the prosecutrix on this aspect despite her stating twice that the appellant had attempted to rape her. The appellant sat on the chest of the prosecutrix whose clothes had got torn when she attempted to save her from the clutches of the appellant. A number of knife blows were given to the prosecutrix besides the appellant having bitten on both her cheeks and also having cut her fingers from

his teeth. The presence of semen stains on the underwear of the appellant also shows that he had attempted to rape to the prosecutrix and that is how stains of semen came on his underwear at that time.

22. For the reasons given in the preceding paragraphs, I am satisfied that the appellant committed criminal trespass in the room of the prosecutrix having made preparations to cause injuries to her and to commit rape on her person. He, therefore, has rightly been convicted under Section 452 of IPC. The appellant threatened to kill the prosecutrix in case she resisted his attempts to rape her. The appellant was carrying a knife at that time of extending the threat, and therefore, was in a position to execute the threat given by him. The prosecutrix was all alone in the house at that time and the door of the room was bolted by the appellant from inside. It was, therefore, extremely difficult and in fact, required a lot of courage on the part of the prosecutrix to save her from the appellant. Hence, the appellant has rightly been convicted under Section 506 Part-II of IPC. Using a knife, the appellant gave a number of blows to the prosecutrix for no rhyme and reason. He has, therefore, rightly been convicted under Section 324 of IPC. Since he tried to commit rape on the person of the prosecutrix,

he has rightly been convicted under Section 376 of IPC read with 511 thereof.

23. Coming to the sentence, it was contended by the learned counsel for the appellant that the maximum sentence prescribed under Section 376 of IPC is 10 years and the Trial Court has given maximum permissible sentence of five years to the appellant for attempt to commit rape. He further stated that the appellant comes from a rather lower strata of society and has not even been able to engage a counsel of his choice, the counsel appearing on his behalf having been provided to him by Delhi High Court Legal Services Committee. Taking into consideration the age of the appellant and all other facts and circumstances of the case, the substantive sentence, awarded to the appellant under Section 376 of IPC read with Section 511 thereof is reduced to 4 years from 5 years. The sentence of fine, awarded to him under Section 376 of IPC read with Section 511 thereof, is maintained, but in default of payment of fine, the appellant would undergo SI for one month. While maintaining, the substantive sentences awarded to the appellant under Section 452, 324 and 506 Part-II of IPC, I direct that in default of payment of fine under the above referred Sections, he shall undergo SI for 15 days each in

default as against the sentence in default awarded by the Trial Court.

The appeal stands disposed of with these modifications in the quantum of sentence. One copy of this order be sent to the appellant through concerned Jail Superintendent. Trial Court Record be sent back alongwith the copy of the Judgment.

(V.K.JAIN)
JUDGE

JANUARY 18, 2010
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