

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 3rd August 2010

Date of Order: September 10th, 2010

+ Crl. Appeal No.836/2009

%

Sadhu Ram @ Dalip

10.09.2010

...Appellant

Versus

The State (Govt. of NCT of Delhi)

...Respondent

Counsels:

Mr. Arun Rathee and Mr. Durgesh Pandey for petitioner.
Mr. Sunil Sharma, APP for State/ respondent.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This appeal has been preferred against judgment dated 4th September, 2009 and order on sentence dated 11th September 2009 passed by learned Additional Sessions Judge whereby the appellant was convicted under Section 376,323,506 IPC and sentenced to undergo rigorous imprisonment for a term of ten years and fine of Rs.10,000/-; six months RI and one year imprisonment respectively for these offences.

2. PW-1 is the prosecutrix in this case. She testified before that Court that on 3rd March, 2008 while she was at her home in the evening and her husband was away to fields, appellant, a milk vendor, who used to come to her house, came to her house at around 9 pm when her children were asleep and knocked at the door. She thought that her husband had come back from fields and she opened the door. The

accused/appellant gagged her mouth, bolted the door from inside and took her to the other room where her children were not sleeping and committed rape upon her. Thereafter, the appellant/accused left and threatened that if she would inform her husband or anybody else, she would be killed. He also slapped her. She did not disclose to her husband about the incident, who returned back on next morning, but she left her husband's house and went to her parental house at Siddhipur, Haryana. At her parent's house, she did not tell anything about the incident as she was scared of her life and the life of her husband but subsequently she revealed the incident to her mother who informed it to her father and then on the advice of her parents, she approached police on 12th March, 2008 and a case was got registered against the accused/appellant. The investigating officer took her to hospital where she was medically examined. Police came to her house and seized her clothes.

3. The defence taken by the accused was that the act of sexual intercourse had taken place with the consent of prosecutrix. The prosecutrix was having an extra-marital affair and it was not a case of rape. Since the relationship was exposed, he was falsely implicated in a rape case. This defence was not believed and on the basis of testimony of prosecutrix, the appellant was convicted by the learned trial court for the above offences.

4. A perusal of the testimony of prosecutrix would show that during her cross examination, a photograph of herself with accused was admitted by her. This photograph showed the prosecutrix and the appellant in an intimate relationship with hands of the appellant around the neck and body of prosecutrix. Though she did not deny the photograph, her explanation was that this photograph might have been taken on an occasion of some marriage in the family. The contention of the appellant was that the photograph was taken when the parties had visited K.K. Digital Studio for getting themselves photographed. Since the photograph was not denied by the prosecutrix no

further evidence was required by the appellant to prove the photograph. An admitted fact is not required to be proved further. However, the trial court observed that this photograph was not proved by proving its negative. The trial court rejected this piece of evidence.

5. The explanation given by the prosecutrix about photograph also does not appear to be correct because it is not the case of the prosecutrix that the appellant was related to her. The case of the prosecutrix is that the appellant was a milk vendor and used to come to her house for purchasing milk. I consider that nobody would get herself so intimately photographed, even at a marriage, as the two are seen in photograph unless they are in love with each other. The photographs which are usually taken at marriages are of family participating in the marriage function in a normal marriage clothes. It is not so here. Neither the prosecutrix nor the appellant are dressed for a marriage function. Thus, the version of the appellant that the photograph was taken at a studio when prosecutrix accompanied him to studio, seems to be more probable and trustworthy. This proves that the prosecutrix and the appellant were having an affair even before the incident and most probably this was not in the knowledge of her husband or her parents.

6. The parent of prosecutrix appeared as PW-3 and PW-4. Both of them did not support the prosecution story and stated that they had not made any statement to the police regarding their daughter having told them about rape having been committed on her by the appellant. PW-11 Dr. Shruti Ranjan who had examined prosecutrix stated that the under garments were not made available, therefore, they were not seized. She stated that she did not observe any kind of bruises or sign of struggle on the part of the body of the prosecutrix. It was very difficult for her to give opinion whether the prosecutrix was raped or not but she testified that prosecutrix and the appellee, when produced by the police in the hospital, appeared friendly to each other at that time. DW-2

is the elder brother of husband of the prosecutrix and he deposed in favour of the appellant and stated that the prosecutrix made a tutored statement before the Court. He deposed that Rajesh, husband of prosecutrix, had a doubt about the prosecutrix having extra marital relations with the accused and for that reason he compelled his wife to implicate the appellant in a rape case. He also had a dispute regarding money with the appellant. The CFSL report also did not support the prosecution story and the alleged semen-stained clothes sent CFSL did not show that the semen of the appellant was there on the clothes of the prosecutrix. The sample of blood was also putrefied.

7. Considering the entire evidence, I consider that it is not a case where the offence of rape by the appellant stood proved beyond reasonable doubt. There is every probability that the prosecutrix was having extra marital relations with the appellant and after discovery of her relations with appellant, under the pressure of her husband got implicated the appellant in a rape case. It seems a case of sex with consent since the affairs between appellant and the prosecutrix seemed to be going on for quite some time.

8. I, therefore, consider that the appellant should have been given benefit of doubt. In the result, the appeal is allowed and the judgment and order on sentence passed by the trial court is hereby set aside. The appellant is acquitted. He be released from jail forthwith.

9. The appeal stands allowed.

September 10, 2010
rd

SHIV NARAYAN DHINGRA, J