

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

Date of Reserve: 10th February, 2011

Date of Order: 23rd February, 2011

+ CRL.A. 241/2005

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23.02.2011

JAIPAL

..... Appellant

Through Mr. P. Narula and Ms Geeta,
Advocates

versus

STATE

..... Respondent

Through Mr. Sunil Sharma, Addl. PP with SI
Devender Balhara, P.S. Alipur

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 by the appellant against his conviction under Section 376 IPC. The appellant was sentenced to RI for 10 years and a fine of Rs. 10,000/- by the trial court.
2. The case of prosecution is about rape committed by the appellant on his own daughter.
3. The arguments of the counsel for the appellant are that there was a great delay in lodging of FIR, there were no signs of violence on the body of daughter and daughter alleged that she was aborted but no proof of

abortion was produced before the trial court. It was further argued that maternal uncle as well as *Pradhan* of the village allegedly had come to know of the rape, but, no FIR was lodged at that time. FIR was ultimately lodged after about 9 months of the incident and this created grave doubt on the story of prosecution that the appellant had raped his daughter.

4. Prosecutrix in this case appeared as PW-3 and narrated her tale of woes before the court. She stated that in January, 1999, her marriage had been fixed and she was soon to get married. On 27th January, 1999 she was present at her house while her mother was not present at the house as she had gone to Haiderpur. At about 12.00 midnight her father, under the influence of liquor, slept with her and committed rape on her. Her younger brother and sister though in the house were sleeping. Due to fear and in order to avoid insult to herself and her family she did not tell anyone about the shameful act of her father. When she did not get menstrual cycle next month, she disclosed this fact to her mother. She also told about this to her father who took her to a nearby doctor where her urine was tested and her pregnancy was confirmed. The doctor advised abortion. They went to Indrawati Nursing Home where doctors demanded Rs. 2500/- for abortion. Since her father was not having this much money, he did not get her aborted. She then threatened her father to arrange money otherwise she would have to disclose about her pregnancy to her in-laws. Her father assured her that he would arrange money and get her aborted. However, nothing was done for the next two months and ultimately her marriage was solemnized on 24th April, 1999

with Hari Singh. Even at the time of marriage her father assured that after marriage he would bring her back on 30th April, 1999 for a month and would get her aborted. After marriage a pain developed in her stomach. She told her husband about the pain, who brought her some medicine. However, she felt no relief with the medicine. She was then taken to a doctor who advised ultrasound. She refused to undergo ultrasound fearing that her husband would come to know about her pregnancy. However, seeing that her father was not doing anything about termination of her pregnancy, she disclosed everything to her husband. Her husband asked her to tell this fact in front of her father. On 10th May, 1999, in the presence of her father, she told her husband about her being pregnant from her father. Thus, everybody in her in-laws house came to know about her this pregnancy. On 19th May, 1999, her brother came to take her and she accompanied her brother to her parental home. On 20th May, 1999 her husband also came to her parents' home. On that day she again had a pain in her stomach and her husband asked her father to get her aborted. Her father told that he would get her aborted after 2-3 days. On 23rd May, 1999, her aunt (chachi) expired and on the same day in the evening she was taken to Indrawati Nursing Home for abortion and her abortion was done on 23rd May, 1999. After abortion, she was brought back to her parental home. Neighbours kept on asking as to what had gone wrong with her and her mother replied that she was having fever. After about a week she went back to her matrimonial home with her husband. Her father did not give her the papers of abortion in Indrawati

Nursing Home. Her father even did not give her medicines prescribed by the doctor at Indrawati Nursing Home. On 15th June, 1999, she developed some infection but she did not visit doctor. However, on 27th June, 1999, she visited Doctor Vijay Singh who told her that she would have to be treated for about two weeks. After about two days her maternal uncle came to take her but her husband refused to send her with him. After about three days her elder brother came and took her with him on the pretext that her mother was sick. However, when she reached her parental home, she found that her mother was okay and going to the house of her maternal uncle. Her husband had also come with her. Her father in the presence of her husband asked her as to how much her husband used to beat her. On this her husband got angry and an altercation took place between her husband, her father and herself. Her husband slapped her. Her brother Mahender caught hold of her husband from his neck and her father picked up a lathi in order to give beatings to her husband. Thereafter, she and her husband both were turned out from the house and her father took them quarrelling towards bus stand where about 50 persons were assembled. Her father and brother both abused them. At that moment, her husband asked her to tell all people gathered there about the act of her father. However, she did not do so and husband and wife went to their house. On 19th July, 1999 her husband had gone to the house of one Kuldeep who lived in the neighbourhood of her parental home for getting cassette of their marriage. At that time her mother called her husband and told her that she was raped with her own

consent. When her husband told her this, she told her husband that her father had earlier told her that in case anybody asked about her pregnancy she should reply that the same was of her elder brother Mahender. After all these humiliation and mental torture at the hands of her father the prosecutrix started thinking of taking action against her father. On 26th September, 1999 she and her husband returned all dowry articles at her parental home. When husband and wife went to return dowry articles, her parents were not at home and they met one Lal Chand, *Panch* of the area and they told him about all facts but he took no action against her father. When her parents came back in the mean time and came to know that she had disclosed everything to the *Panch*, her father picked up a *Kulhari* and threatened to kill her and her husband. She reported the matter to her grand-father who also showed his helplessness. So, after leaving dowry articles at her parental home she and her husband came back and a complaint was lodged about the misdeeds of her father on 7th October, 1999. She was thereafter taken to Hindu Rao Hospital by police for medical examination. She proved her complaint in the court.

5. She was cross-examined at length. During cross-examination she gave cogent and rational answers to all queries. She denied the suggestion that her father and husband were having dispute over some plot. She denied the suggestions that her father had not committed rape.

6. There is no doubt that in this case Dr. Narpat Singh, PW-1, who was summoned as prosecution witness had turned hostile and did not support the prosecution case. No record of abortion was recovered from Indrawati Nursing Home. It seems, the hospital clandestinely did not keep record of abortion. Moreover, the petitioner had categorically stated that her father had brought papers of abortion and had kept the same with him. During cross-examination, no suggestion was put to her that she was not pregnant from her father or that she was not taken to Dr. Narpat Singh or that her urine test for ascertaining pregnancy was not conducted, rather, in cross-examination she re-affirmed that she came to know about her pregnancy only after Doctor Narpat Singh conducted tests. It was not suggested to her that she was not pregnant when she was married. Her entire statement remain unchallenged during her cross-examination. It is apparent from the testimony of this witness that she had given a truthful account of what had happened to her. The witness belonged to poor strata of society and she had given reasons in detail why she did not lodge FIR of the episode in the very beginning.

7. It is settled law that if testimony of prosecutrix inspires confidence and appears to be truthful/ trustworthy, the sole testimony of prosecutrix is quite enough to convict a person for rape. The prosecutrix in this case, is none else but the daughter of the Appellant. The Appellant has given no reason why her own daughter would depose against him. The daughter had categorically stated that she was afraid of her father and was also worried about her own reputation and reputation of the family which

compelled her not to lodge a report and not to disclose about the rape to anybody immediately. Mere non-disclosure of the rape immediately after the prosecutrix was raped by her own father, cannot throw doubt on her testimony. I consider that the trial court rightly convicted the Appellant. There is no force in this Appeal. The Appeal is hereby dismissed.

FEBRUARY 23, 2011
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SHIV NARAYAN DHINGRA, J.