

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

Date of Pronouncement: 16th May, 2011

+ **CRL.L.P.170/2010**

STATE

... PETITIONER
Through: Ms. Richa Kapoor, APP for the State.

Versus

PAPPU @ YADRAM & ANR.

... RESPONDENT
Through: Respondents in person.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G.P. MITTAL, J.

1. **CrI.M.A.No.6367/2010 (under Section 5 of the Limitation Act.)**

Delay condoned for the reasons as stated in the application.

CRL.L.P.170/2010

2. The State seeks leave to Appeal against the judgment dated 17.08.2009 passed by the learned Additional Sessions Judge (ASJ) Rohini, Delhi whereby the Respondents (accused before the Trial Court) were acquitted of the charges punishable under Sections 363/376/511 of the Indian Penal Code (IPC).
3. The gravamen of the charge against the Respondents is that they had abducted the prosecutrix on 08.12.2005 at about 08:15 P.M. and had attempted to commit rape upon her.
4. The facts on which the Trial Court proceeded are extracted from Para 2 of the impugned judgment hereunder:-

“2. Briefly stating the case of the prosecution is that on 08/12/05 at about 8:15 p.m., the prosecutrix Pooja went to Shani Bazar, Sultan Puri, Delhi as her mother Geeta had asked her to fetch peas where both the accused persons namely Pappu and Sonu whom she already knew met her. It is further alleged that after enticing her, both the accused persons took her to a

Government toilet situated at Shani Bazar Road, Sultan Puri where they stripped her of her salwar and forcibly tried to rape her on which Ms. Pooja raised noise and somehow managed to escape, leaving her Shawl, Shalwar & chappal behind in the said toilet itself.

It is further the case of the prosecution that thereafter, the prosecutrix went to her house, narrated the incident to her mother Geeta who further communicated it to her step father Tinkoo who informed the police in pursuance of which DD No.85B was recorded and necessary investigation was conducted and thereafter, the present FIR was lodged.

During the course of investigation, both the accused persons namely Pappu @ Yadram and Sonu @ Tani were arrested, other necessary legal formalities were complied with and after completion of investigation, the charge-sheet u/s 173 Cr.P.C. u/s 363/376/511 IPC was filed against both the accused persons.....”

5. In support of its case, the prosecution examined 15 witnesses. PW-2 “P” the prosecutrix is the star witness of the prosecution, whereas PW-4 Geeta and PW-6 Tinku, the parents of the prosecutrix and PW-3 Dr. Niti Mathur have been examined to corroborate the version of the prosecutrix.
6. In their examination under Section 313 Cr.P.C., the Respondents denied the allegations of the prosecution. They stated that they had been falsely implicated in the case by the prosecutrix and her family. They averred that the prosecutrix had eloped with some boy and had got pregnant. She returned after she was abandoned. Thereafter, the prosecutrix used to force Respondent Pappu to marry her, co-accused Sonu was his friend. On Pappu’s refusal, the Respondents were falsely implicated.
7. The Trial Court also relied upon *Bharwada Bhoginbai Hirjibhai v. State of Gujrat*, AIR 1983 SC 753, where it was held that corroboration to the testimony of prosecutrix is not required in a case of rape and that refusal to act on the testimony of a victim of sexual assault in the absence of any corroboration as a rule, adds insult to injury. The Trial Court, however, found the testimony of the prosecutrix to be discrepant on material aspect and thus held that it was not safe to rely upon her testimony. The Respondents were accordingly acquitted.
8. We have heard Ms. Richa Kapoor, learned Additional Public Prosecutor (APP) for the State as well as Respondents in person and have perused the record.

9. The principle which govern and regulate the hearing of Appeal by the High Court, against an order of acquittal passed by the Trial Court are well settled by catena of judgments of the Apex Court.
10. The law does not allow the State to file an Appeal against an order of acquittal. Under Section 378 (3) Cr.P.C., the State has to seek leave to file an Appeal. The powers of an Appellate Court are not limited while hearing an Appeal against acquittal and it has the same powers as it has while hearing an Appeal against an order of conviction. Yet the presumption of innocence which is attached to every accused, unless proven guilty, is strengthened and reinforced by an order of acquittal. Thus, the Courts interfere in an order of acquittal where the finding of the Trial Court is perverse or there is gross mis-application of law. The Appellate Court interferes with the order of acquittal where there are compelling and substantial reasons. (*Syed Peda Aowlia v. The Public Prosecutor, High Court of A.P., Hyderabad, (2008) 11 SCC 394,*).
11. The law with regard to the appreciation of the testimony of a prosecutrix is well-settled. In *State of Maharashtra v. Chandraprakash Kewalchand Jain, 1990 (1) SCC 550* it was held that the testimony of a victim of sexual assault has to be treated at par with the testimony of an injured witness. In *State of U.P. v. Pappu & Ors., 2005 (3) SCC 594* the Supreme Court held that even in a case where it is shown that the prosecutrix is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. In *Mahila Vinod Kumar v. State of Madhya Pradesh, (2008) 8 SCC 34* the Supreme Court held that so far as sexual offences are concerned, sanctity is attached to the statement of the victim. It was observed that evidence of the prosecutrix alone is sufficient for the purpose of conviction if it is found to be reliable, cogent and credible.
12. It has been urged by the learned APP that the Trial Court erred in not appreciating the testimony of the prosecutrix in the right perspective and acquitted the respondents on the basis of minor variations as to how the police reached, where the statement of the prosecutrix was recorded and how the *slippers, salwar and shawl* were recovered.

13. We agree that the witnesses are not expected to make parrot like statements. Everyone does not have a photographic memory; therefore, minor variations are bound to occur in the testimony of the truthful witness particularly because of the time gap in the occurrence and in recording of their statements in the court. Keeping this principal in view we would like to advert to the version of the prosecutrix as to the actual commission of the offence.
14. The mother of the prosecutrix (PW-4) had refused her (the prosecutrix's) internal (medical) examination to find out evidence of rape. The date of last menstruation was also not disclosed by the prosecutrix to the gynecologist (PW-3) who examined her. These circumstances by itself, in view of the law declared, are insufficient to discard the prosecutrix's testimony though the defence taken by the respondents was that she had eloped with some boy and after her return she/her parents wanted Pappu (one of the respondents) to marry her, and on his (Pappu's) refusal, she falsely implicated them.
15. Criminal law was set into motion with the recording of the statement Ex.PW-2/A of the prosecutrix on the basis of which FIR Ex.PW-13/A was registered. In her statement made to the IO the prosecutrix stated that the accused persons Pappu and Sonu met her at *Shani Bazar Road* where she had gone to buy vegetables and they enticed her to a government toilet; where they attempted to rape her. She raised an alarm and managed to escape.
16. The version of the incident was again disclosed by the prosecutrix while recording the history on the MLC Ex.PW-1/A (by Dr. Niti Mathur PW-3). The doctor recorded that the prosecutrix was an unmarried girl who was brought for medical examination with a history of *alleged sexual assault*, committed upon her by accused Sonu and Pappu in the evening of 08.12.2005. It is stated that there is also alleged history of abduction and rape by both the accused persons.
17. The prosecutrix appeared in the Court as PW-2 and stated in her examination-in-chief that she was forcibly taken to the toilet complex by the accused persons where both the accused persons forcibly took off her *salwar* and laid her on the floor of the toilet. She testified that both the accused persons forcibly tried to put their penis into her mouth and threatened her that if she reported the matter to the police they would kill her and her parents.

18. Since the version given in examination-in-chief was contrary to the case of the prosecution the Trial Court allowed the learned APP to put leading questions to the prosecutrix wherein she changed her stand and stated that one of the accused persons tried to put his penis into her vagina. She deposed that accused Pappu tried to commit rape on her whereas the other accused tried to put his penis in her mouth.
19. Thus there are four different versions given by the prosecutrix as to the actual act committed by the respondents. Admittedly the prosecutrix knew the respondents earlier. The prosecutrix has not stated a word as to how she was lead or enticed away to the government toilet. She did not allege any kind of force or threats extended to her while she was taken to the government toilet. Then the story of escaping from the public toilet is also improbable. The prosecutrix deposed that while accused persons were wearing their *pants* she managed to escape and came home leaving her *salwar, shawl and slippers* at the spot. If the respondents took the prosecutrix to the public toilet to commit rape, it is not explicable why they would wear their pants, to abandon their intention. In the circumstances it cannot be said that the testimony of the prosecutrix is cogent and reliable.
20. Of course PW-4 Geeta, prosecutrix's mother testified to the factum of sending her to the market to bring vegetables and her returning wearing only a shirt. PW-4 also deposed that the prosecutrix made a complaint regarding attempt to rape/molestation committed by the respondents. As observed earlier, the prosecutrix gave four different versions in respect of the alleged offence committed by the respondents. The testimony of PW-4 Geeta would not make the prosecutrix's evidence credible and reliable. Thus, in our opinion, it is a case where implicit reliance cannot be placed on the testimony of the prosecutrix on account of her giving four different versions and improbabilities in the story of the respondents enticing her to the public toilet and her subsequent escape.
21. We do not find any error or infirmity in the impugned judgment. The State is, therefore, not entitled to a leave to file an Appeal. The petition is meritless and has to fail.
22. The leave petition is accordingly dismissed.

23. Before parting with the judgment, we may mention that in *Delhi Domestic Working Women' Forum v. Union of India and Ors.*, (1995) 1 SCC 14, the three Judges Bench of the Supreme Court while issuing guidelines for protection of the victims of sexual assault directed that in rape trials anonymity of the victim must be maintained. These directions were reiterated in several subsequent decisions including *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 and *S. Ramakrishna v. State*, (2009) 1 SCC 133. This Court notices that in the number of cases as also in this case the directions issued by the Supreme Court are not being adhered to by the Trial Courts. The prosecutrix's name has been mentioned in the judgment, at several places. We would like to emphasise that in order to save any embarrassment to the victim of sexual assault the Trial Courts have to maintain the anonymity of the victim by not disclosing her name, address or other particulars. The Registrar General of this Court is directed to issue a Circular that the direction of the Supreme Court must be complied with in letter and spirit.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

MAY 16, 2011
vk/sa/hs