

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

Judgment reserved on: February 09,2011
Judgment delivered on:February 17,2011

+ **CRIMINAL APPEAL NO. 810/2008**

NEERAJ

....APPELLANT

Through: Ms. Dolly, Advocate

Versus

THE STATE (GOVT. OF NCT OF DELHI) RESPONDENT

Through: Ms. Fizani Husain, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment of conviction dated 08.07.2008 in Sessions Case No.25/07 FIR No.727/06 P.S. Sultan Puri and the consequent order on sentence dated 11.07.2008 whereby the appellant has been convicted for the offence under Section 376 IPC and sentenced to undergo RI for the

period of seven years and also to pay fine of ₹ 5,000/-, in default of payment of fine to undergo SI for the further period of three months.

2. Briefly stated, case of the prosecution is that on 11.05.2006 at about 12:15 pm, an information was received regarding a rape committed at Mother Dairy Road. This information was recorded in daily diary register maintained at P.S. Sultanpuri as DD No.38B (Ex.PW10/A) and copy thereof was forwarded to SI Sanjita (PW11) for verification. On receipt of DD report, SI Sanjita along with Head Constable Kaushal reached at the place of occurrence where she met the prosecutrix "P" (name withheld) and recorded her statement.

3. The prosecutrix in her statement Ex.PW2/A stated that on 11.05.2006 at about 12.00 noon, she was alone in the house as her mother had gone to hear "*katha*". The appellant Neeraj, who is a fruit vendor who used to visit their house, came and he forcibly removed her '*salwar*' and underwear and raped her after gagging her mouth. While the appellant was trying to flee away after the rape, her neighbour Munni (PW6) saw him. Munni asked her as to what had happened and the prosecutrix told Munni about the rape. Munni in turn, conveyed this information to the mother of the prosecutrix, who caught hold of the appellant Neeraj on the way and informed the police on telephone No.100. SI Sanjita obtained the

signatures of the prosecutrix on her statement and appended her endorsement Ex.PW1/A thereon and sent it to the Police Station for the registration of the case. On the basis of "*rukka*", formal FIR No.727/06 under Section 342/376 IPC was registered against the appellant on 11.05.2006 at 4:45 pm vide DD No.24A.

4. Inspector Sanjita (PW11) sent both the prosecutrix as well as the appellant for medical examination and obtained their respective MLCs. She also got the statement of the prosecutrix recorded under Section 164 Cr.P.C. The concerned Doctor took the vaginal swab of the prosecutrix and he also prepared a parcel of the undergarment of the prosecutrix as well as the vaginal swab and handed it over to the police. Similarly, undergarments as well as blood sample of the appellant were also seized. The exhibits were sent to CFSL for analysis, report of CFSL was obtained and after completion of other formalities of investigation, the appellant was challaned and sent for trial.

5. The learned Additional Sessions Judge charged the appellant for the offence under Section 376 IPC. The appellant pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the appellant, prosecution examined 12 witnesses. Material witnesses, however, are the

prosecutrix herself (PW2), her mother Veena (PW5) and a neighbour Renu @ Munni (PW6).

7. Prosecutrix appeared as PW2. She proved her statement Ex.PW2/A given to the Investigating Officer SI Sanjita. In her statement, she reiterated the above noted facts in the complaint. She also stated that she was produced before the Metropolitan Magistrate who recorded her statement under Section 164 Cr.P.C. Ex.PW2/B.

8. PW5 Veena is mother of the prosecutrix. She testified that prosecutrix on the date of her examination was aged about 13 years. On 11.05.2006 at around 11 am, she had gone to “*katha*” (*satsang*) in her neighbour along with her two children and she had left her remaining three children including the prosecutrix at the house. At around 12:00 noon, when she was returning to her house she met PW Munni who told her that the appellant Neeraj had entered her house in her presence and indulged in sexual intercourse with her daughter and that her daughter i.e. prosecutrix was under trauma. On this, she went towards the house of the appellant Neeraj, who was present in the “*gali*”. She caught hold of him and brought him to her house. A large number of public persons had already gathered near her house who gave beating to Neeraj. Witness stated that in the meanwhile, one Satpal resident of

Krishna Vihar also came there and thereafter the matter was reported to the police on telephone No.100. Police arrived at the place of occurrence and apprehended the appellant. She stated that they were first taken to the Police Station. From there, prosecutrix was taken to Sanjay Gandhi Memorial Hospital for medical examination. She claimed that appellant Neeraj was arrested in her presence vide arrest memo Ex.PW5/A and his personal search was conducted vide memo Ex.PW5/B. Her daughter, namely, the prosecutrix told her about the incident. According to her, the clothes of the prosecutrix i.e. her "*salwar*" and underwear were taken into possession by the police.

9. PW6 Renu @ Munni is a neighbour. She failed to support the prosecution case and denied having knowledge about any incident of rape.

10. PW3 Dr. V.K. Jha, Medical Officer Sanjay Gandhi Hospital stated that MLC Ex.PW3/A of the prosecutrix is prepared in the hand of Dr. Jitender Behl who had since left the service of the hospital. He proved the MLC of the prosecutrix Ex.PW3/A by way of secondary evidence by identifying the hand writing and the signatures of Dr. Behl on the same.

11. PW8 Dr. Manoj Dhingra, Medical Officer, Sanjay Gandhi Hospital has stated that MLC Ex.PW8/A of the prosecutrix bears the

signatures of Dr. Vandhana at point A, who has since left the services of hospital and whereabouts are not given. Remaining witnesses are the formal witnesses, including the Investigating Officer.

12. The appellant in his statement under Section 313 Cr.P.C. has denied the prosecution evidence in its entirety. He claimed that father of the prosecutrix used to sell fruit on a "*Rehri*". He also used to sell fruit on "*Rehri*" in competition with the father of the prosecutrix and for that reason, he nursed a grudge against him and in view of the aforesaid grudge, he has been falsely implicated in this case.

13. In defence, the appellant examined Kuwar Pal (DW1) in his defence. He stated that on 11.05.2006, he was present in his house and busy in "*katha*". There were 20/25 persons present in "*katha*". The police reached at his house at about 11:30 am, called the appellant from there and took him to the house of the prosecutrix. Thereafter the appellant was falsely implicated in this case. The witness claimed that there was some dispute between father of the prosecutrix and the appellant Neeraj in respect of place of parking fruit "*Rehri*" for sale.

14. Learned Additional Sessions Judge on consideration of the evidence relied upon the testimony of the prosecutrix and the

supporting witnesses and held the appellant guilty of offence of rape punishable under Section 376 IPC and convicted and sentenced him accordingly.

15. Learned counsel for the appellant has submitted that the appellant is innocent and his conviction is based upon erroneous appreciation of facts. Dilating on the argument, learned counsel for the appellant submitted that the case of the prosecution is essentially based upon the testimony of the prosecutrix, which is not reliable for the reason that the only independent witness examined by the prosecution has not supported her version. Learned counsel argued that it is the case of the prosecution that PW6 Renu @ Munni had seen the appellant running away from the house of the prosecutrix and when she entered the house of the prosecutrix, prosecutrix told her that she had been raped by the appellant. PW6 Munni, however, has not supported the aforesaid version, which circumstance casts a doubt on the correctness of the prosecution case.

16. It is true that PW6 Munni, who as per the case of prosecution was the first person to reach at the spot of occurrence immediately thereafter and who saw the appellant fleeing away, has not supported the case of the prosecution. This, however, does not mean that the prosecutrix is not telling the truth. It is well settled

that conviction in a rape case can be based on the sole testimony of the prosecutrix if her version is found to be reliable. In my aforesaid view, I seek support from the judgment of the Supreme Court in the matter of **State of H.P. Vs. Asha Ram**, (2005) 13 SCC 766.

17. Now the question arises whether the testimony of the prosecutrix is worthy of credence. In the instant case, the prosecutrix appeared as PW2. She has categorically stated that on 11.05.2006 while she was alone in the house, the appellant entered the house and raped her under the threat to kill her parents. While he was indulging in sexual intercourse, PW6 Munni saw him from the door and on this, the appellant ran away. Thereafter, Munni came inside and she narrated the entire incident to her. There is no reason to disbelieve the aforesaid testimony of the prosecutrix (PW2) for the reason that she has withstood the test of cross examination. Otherwise also, her version finds corroboration from the scientific evidence i.e. her MLC Ex.PW3/A as well as CFSL report Ex.PW11/D. PW3 Dr. V.K.Jha, Medical Officer, Sanjay Gandhi Memorial Hospital, who is conversant with the handwriting and signatures of Dr. Jitender Behl, who had medically examined the prosecutrix, has proved the MLC Ex.PW3/A prepared by Dr. Behl by way of secondary evidence. PW8 Dr. Manoj Dhingra has identified the handwriting and signatures of Dr. Vandhana on the said MLC. On perusal of the MLC, it transpires that on local examination, the

concerned doctor found redness and inflammation as well as semen stains at the introitus of the prosecutrix. Even her hymen was found torn. This evidence leads to an inference that the prosecutrix actually was raped and corroborates her version. Further, it is recorded in the MLC that vaginal swab of the prosecutrix was taken and her garments were handed over to the police. As per the Investigating Officer Inspector Sanjita (PW11), the vaginal swab as well as the garments of the prosecutrix was sent to CFSL for chemical analysis and as per CFSL report, vaginal swab of the prosecutrix as well as her underwear and "*salwar*" tested positive for presence of semen. This circumstance leaves me with no doubt that the prosecutrix is telling the truth that she was actually raped by the appellant. Thus, in my view, Trial Court has rightly relied upon the testimony of the prosecutrix.

18. Learned counsel for the appellant further contended that the learned Trial Judge has committed a grave error in failing to appreciate that the prosecutrix had a reason to falsely implicate the appellant because he used to run a fruit "*Rehri*" in competition with the father of the prosecutrix, which provides a strong motive for false implication.

19. I am not convinced with the argument. Running of fruit "*Rehri*" in competition with the father of the prosecutrix is not such a strong

motive which would have motivated the prosecutrix to falsely implicate the appellant for her rape. As per the testimony of the prosecutrix, she was raped on 11th May, 2006 at about 12.00 noon. The DD report in respect of the rape, being DD No. 38B (Ex.PW10/A), was registered at the police station on 11.05.2006 at 12.15 p.m. within a short duration of fifteen minutes. The prompt reporting of the occurrence to the police by itself rules out any possibility of deliberation or false implication of the appellant, who has been named in the complaint Ex.PW2/A of the prosecutrix, which was recorded without much delay on the arrival of the Investigating officer at the place of occurrence. Otherwise also, it is highly improbable that the prosecutrix, with a view to settle score with the appellant, would have put the honour of herself as well as her family on line to make a false allegation of rape against the appellant.

20. Learned counsel for the appellant also argued that the prosecution story is unnatural for the reason that there is contradiction in the testimony of the prosecutrix and her mother about the time of occurrence. On perusal of record, it transpires that the prosecutrix in her testimony, has given the time of occurrence as 12.00 noon and her mother PW5 Veena has also stated that when she returned back to her house at around 12.00 noon, she was told by Munni (PW6) that the appellant Neeraj had entered her house in her absence and had sexual intercourse with

the prosecutrix, who was under trauma and was crying. From this, it is apparent that there is no contradiction in the testimony of the prosecutrix as well as her mother PW5 Veena regarding time of occurrence. Otherwise also, if there is any contradiction regarding time in the statements made under Section 161 Cr.P.C., that can be attributed to the lapse of memory due to efflux of time and cannot be taken as a circumstance to disbelieve the testimony of the prosecutrix, which is corroborated by the scientific evidence.

21. Lastly, it is contended on behalf of the appellant that as per the prosecution story, two siblings of the prosecutrix were playing outside the house at the time of occurrence. Despite that, neither of them have been cited as witnesses by the prosecution and this circumstance casts a strong doubt against the correctness of prosecution case.

22. There is no merit in the above submission for the reason that it is not necessary that the children playing outside the house could have seen the appellant entering the house or committing rape on the prosecutrix. Prosecutrix, in her testimony, has categorically stated that she was threatened and raped by the appellant, which imply that because of fear, she did not raise alarm, as such, it is not surprising that her siblings did not hear noise of resistance or alarm.

23. In view of the discussion above, I do not find any merit in this appeal. I find no infirmity in the impugned judgment of conviction which may call for interference in appeal.

24. Appeal is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 17, 2011
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