

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.A.No.472/2011**

Date of Decision: 29 .03.2012

Prem Dass **Appellant**
Through: Mr. Sumeet Verma, Advocate
Versus

State of Delhi **Respondent**
Through: Ms. Fizani Husain, APP for State

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is an appeal under Section 374 (2) Cr.P.C. read with Section 482 Cr.P.C. assailing the impugned judgment and order of conviction dated 21.10.2010 and 27.10.2010 respectively, passed by the Id. trial Court whereby the appellant was convicted under Section 376 IPC and was sentenced to undergo rigorous imprisonment for 7 years and fined Rs. 2000/.

2. The case of the prosecution in brief was that on 23.07.2007, the prosecutrix came to police station Narela, and complained that in the month of May 2004 she used to visit the Shiv temple near her house regularly and on one day when she was in the temple, she felt unwell and asked the priest of a temple to give her a glass of water. To this, the priest told her to fetch it herself and when she reached the room located in the temple, the priest came in the room, bolted the door and caught her from behind and thereafter raped

her. She stated in her statement that the priest threatened her not to disclose this fact to anyone, otherwise she would be defamed and nobody would believe her as he was the priest of the temple. She stated that he further told her to submit to him whenever he would call her and in this manner he continued to rape her for about two years as she was scared to disclose this fact to her family. She further stated that when her parents stopped her from going outside, the priest used to stop her on the way to school and force himself upon her and this all made her to disclose these facts to her parents. Thereafter her medical examination was conducted at SHRC Hospital and after obtaining the opinion on her MLC, the ASI of the concerned police station recorded her detailed statement.

3. An FIR No. 415/07 was registered and the statements of witnesses were recorded and medical examination of the accused was conducted. Thereafter the prosecutrix underwent the ossification test, as per which her age was opined as 16 years. After the completion of investigation, charge sheet was filed under Section 376 and 506 IPC in the trial Court. After examination of 14 witnesses, the trial Court found the appellant guilty under Section 376 IPC.

4. The impugned judgment and order of conviction are challenged by the the appellant on the grounds that there were discrepancies and inconsistencies in the statements of the prosecutrix and hence the conviction was bad in law. It was submitted by the learned counsel for the appellant that the appellant was falsely implicated by the parents of the prosecutrix as they wanted to grab the land of the temple in which he resided and that he had also filed several complaints against the parents of the prosecutrix. Delay in the lodging of the

FIR regarding the alleged incident of rape was also highlighted. Another issue raked up by the learned counsel for the appellant was that as per the MLC report of the prosecutrix there were no fresh injuries on her private parts which indicates that the offence was not committed by the appellant and instead the prosecutrix was habitual of sexual intercourse with other boys of her locality and has falsely framed the appellant.

5. Per contra, the learned APP for the State submitted that the prosecution has nailed the guilt of the accused/appellant to the satisfaction of the trial Court and there is enough evidence and testimonies of the witnesses on record to substantiate the charge leveled against the appellant. It was further submitted by the learned APP that minor discrepancies in the statement of the prosecutrix who had otherwise given a cogent and reliable testimony, cannot be made the basis for interference in the order of conviction passed by the trial Court.

6. I have heard the rival submissions and perused the trial Court record.

7. It is seen that the prosecutrix in her testimony as PW5 had narrated the entire incident in detail and had stood extensive cross-examination. The facts were stated by her consistently which inspire the confidence of the Court. The only discrepancy in her testimony was that in the statement given by her to the police, she omitted the fact that the appellant pointed a knife to threaten her when the incident took place for the first time. A minor improvement in her statement cannot be a cogent ground to discard her otherwise reliable testimony. It must be borne in mind that the prosecutrix was a young school going girl who was repeatedly exploited by the priest of a temple and she was

scared and embarrassed to report the incident. She gathered courage when the advances of the appellant started increasing. It is understandable that the decision of lodging a report to the police must have been a tough one, not even for her, but for her entire family. The emotional turmoil that she must have been faced at the time of reporting the incident could also be one of the factors behind omission of this fact to the police, which she stated later in her statement before the ASJ. In cases of such nature, it is imperative that the Courts examine the broader probabilities of the case and not get swayed by minor omission or insignificant discrepancies in the statement of the prosecutrix, which are not of fatal nature.

8. The testimony of the prosecutrix must be appreciated in the background of the entire case and the Courts must be alive to their responsibilities in cases involving sexual molestations of young girls. In **State of Punjab Vs. Gurmit Singh: (1996) 2 SCC 384** , while deliberating on this issue, the Apex Court held:

“.....The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating" statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.”

Consequently, this ground taken by the learned counsel for the appellant is untenable.

9. The next contention of the learned counsel that the appellant has been framed by parents of the prosecutrix due to previous animosity and because they wanted to grab the land of the temple where he used to reside, is patently absurd and unacceptable. It is unimaginable that a young girl in Indian society would concoct an untruthful story and level charges of rape for the purposes of blackmail, animosity or revenge. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations of rape. Ours is a conservative society and therefore, a girl and more so a young girl will not put her reputation at peril by alleging falsely about forcible sexual assault. Moreover, no parents would smear the image of their daughter in the society by making false allegation of rape against any person. Although, PW-3, the father of the prosecutrix had admitted that he had filed a complaint against the appellant, but this fact alone does not prove the contention of the counsel for the appellant. Except the bald statement of appellant under Section 313 Cr.P.C. that he has been falsely implicated at the instance of the parents of the prosecutrix, nothing has been brought on record that may substantiate his claim that the prosecutrix had motive to falsely implicate him.

10. As regards the issue of belated FIR, it would suffice to say that the victim was a young girl who was sexually molested and thereafter threatened by the priest of a temple, who is ordinarily held in high regard by people in the society. It was natural for her to be scared of the appellant who had threatened to kill her and her family if she disclosed the incident to anyone.

Also the fear of ostracization by the society must have crept in her mind. The victim was a girl of tender years and was under the terror of the appellant and hence could not muster the courage to report the incident immediately and reported it when the advances of the appellant increased. Delay in lodging of FIR in such sensitive cases cannot be made a ground to acquit a person convicted of such a heinous crime against a young girl, especially when the conviction is based on material evidence and unimpeachable testimonies of witnesses. The victim had categorically stated that she was afraid of the accused who was a priest and the threats were given by him to the extent that she and her family would be put to physical harm if she spoke about the incident to anyone. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. Hence, this contention of the counsel for the appellant stands rejected.

11. The last limb of argument of the appellant was that there were no fresh injuries on the private parts of the prosecutrix as per the MLC report, and so the allegation of the alleged offence, stands refuted. On this aspect, it must be noted that according to the testimony of the prosecutrix, the incident took place for the first time in 2004 and thereafter on several occasions over a period of around two years. In these circumstances, the injuries on her private part must have obviously healed and hence could not be reported in the MLC report. The evidence in such cases has to be looked into in its entirety and not in seclusion. As was noted by Apex Court in **State of Rajasthan Vs. Noore Khan** 2000 (3) Supreme 70....

“..... Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.”

12. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by Apex Court in Shri Bodhisattwa Gautam v. Miss Subdhra Chakraborty MANU/SC/0245/1996 : AIR1996SC922 , the entire psychology of a woman and pushes her into deep emotional crisis.

13. In the present case, the heinous offence was committed by a priest who is respected in the society and considered to be a trustworthy person. But disregarding morality and consequence of his act, he committed such a barbaric offence upon a young girl repeatedly. In my considered opinion, the prosecution has brought home the guilt of the appellant beyond reasonable doubt.

14. In view of the above discussion, I find no illegality or perversity in the impugned judgment and order of conviction. The appeal being without any merit is hereby dismissed.

M.L. MEHTA, J.

MARCH 29, 2012/rd