

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

Reserved on: 27th September, 2013
% **Date of Decision: 4th October, 2013**

+ **CRIMINAL APPEAL No.777/2012**

TEK BAHDUR @ TEKENDER NATH Appellant
Through: Mr.Ajay Verma, Advocate with
Mr.Udayan Tondon, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Through: Mr.Sanjay Lao, APP for the State.

CORAM:
HON'BLE MR. JUSTICE P.K. BHASIN
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J:

1. The appellant-Tek Bahdur @ Tekender Nath has filed the present appeal against judgment dated 13th January, 2012, whereby the appellant has been convicted for the offence under Sections 376 and 506-II of the Indian Penal Code (hereinafter referred to as 'IPC') for having committed rape on his daughter (hereinafter referred to as 'prosecutrix'). Vide order on sentence dated 20th January, 2012, the appellant has been convicted to undergo rigorous imprisonment for life and fine of Rs.25,000/- for the offence under Section 376 IPC, in default of payment of fine, to undergo simple imprisonment for three months. He has also been sentenced to undergo rigorous imprisonment

for five years and fine of Rs.5,000/- under Section 506-II IPC and in default of payment of fine, to undergo simple imprisonment for one month. Both the sentences to run concurrently.

2. The prosecution version as unfolded during trial is as follows:-

On 21st March, 2011, the prosecutrix (PW-2) lodged a complaint which is Ex.PW2/A wherein she stated that she was residing with her father (appellant), sister Usha and brother Ganesh. Her elder brother Ajay was residing at Paschim Vihar with his wife. Her mother had died about 7/8 years ago. The appellant had been forcibly committing rape upon her from the last 2/3 years. The appellant used to rape her by establishing physical relations against her wishes. He also used to beat her and threaten her not to disclose the fact of physical relations to anyone. The last occasion when appellant raped her was on 12/13.02.2011 at about 2-3 p.m. About 4-5 days before lodging the complaint, she decided to disclose the facts to someone as her elder sister was also raped by her father due to which she left home. She disclosed the factum of rape to her paternal aunt (Tai), who then gave her Rs.20/- and asked her to visit her brother's place and disclose the above mentioned facts to him. Prosecutrix along with her sister then went to her brother's place and disclosed all the facts to the wife of her brother. Her sister-in-law (bhabhi) took her to Police Station Sarai

Rohilla to lodge a complaint. Thereafter, they went to the hospital for medical examination. On the basis of the said complaint, the present FIR was registered.

3. The statement of prosecutrix was recorded under Section 164 of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C.') before Metropolitan Magistrate (PW-9) on 23rd March, 2011. The said statement has been exhibited as Ex.PW2/B. The application for recording of the statement under Section 164 Cr.P.C. was made on 22nd March, 2011. The statement of prosecutrix under Section 164 Cr.P.C., Ex.PW2/B, is similar and identical to the statement made by the prosecutrix in the complaint lodged by her.

4. We have given our anxious thought to the rival submissions made by learned counsel for the appellant and learned Additional Public Prosecutor for the State and have carefully gone through the material on record.

5. The prosecutrix while appearing as PW-2 on 19.10.2011 deposed on the same lines as she had stated in her complaint. She stated that the appellant under the influence of liquor used to rape her. She used to cry a lot but the appellant never cared and kept on raping her. Due to the threats extended by the appellant, prosecutrix did not

disclose the fact of immoral act of her father to anyone. Once Aarti, her cousin noticed marks on her breast and asked the reason for the same, but she did not disclose anything to her. However, Aarti told her mother and when prosecutrix visited their house, on asking of mother of Aarti, prosecutrix disclosed her about the dirty acts of her father. The prosecutrix along with her sister then went to her brother's place and disclosed the facts to wife of her brother. The appellant then came there and forced them to leave the house to which prosecutrix refused. At this, appellant got furious and lodged a complaint against her paternal aunt and brother. She also stated that the appellant has been raping her since she was only 8 years old. In her cross-examination she stated that the appellant used to rape her only under the influence of liquor and sometimes it was on 2-3 occasions in a month and sometimes more than that. She stated that she had spoken and narrated the truth and had not made the statement at the instance of her elder brother and paternal aunt.

6. Kamla (PW-3) deposed that the appellant is her brother-in-law (Devar). The appellant was residing at Jhuggi No.502, Phase-II, Shahzada Bagh, Inderlok, Delhi with his minor daughter (prosecutrix) and Usha and minor son. About 4-5 days prior to registration of the case, prosecutrix came to her house and told her that her father

(appellant) was committing rape on her for the last two years. She gave Rs.20/- to the prosecutrix and asked to tell her bhabhi, Sapna, at Paschim Vihar about the factum of rape. Then, prosecutrix left for Paschim Vihar with her sister. On 22.03.2011, prosecutrix came back with her bhabhi Sapna and thereafter she and Sapna took the prosecutrix to the police station and stated the entire facts of rape and then case was got registered. In her cross-examination, she stated that she was not on visiting terms with the appellant although the children of the appellant used to visit them. She love prosecutrix and her sister in the same way as she love her children. She denied the suggestion that she has given false statement at the instance of prosecutrix.

7. The sister-in-law of the prosecutrix, Sapna had appeared as PW-8. In her statement, she had indicted the appellant *inter alia*, stating that she along with her husband had been living separately and her sister-in-law (prosecutrix) and other sister-in-law and her younger brother-in-law used to live separately with the appellant. On 20th March, 2011, her both sisters-in-law came to her house and stayed with them. On 21st March, 2011, the appellant came to their house and asked her sister-in-law to come home with him, however, her sisters-in-law refused to go with him. When she asked them about the reason as to why they were not willing to go, they told her that the appellant

used to commit rape on the prosecutrix and the prosecutrix also told her that the appellant has been doing the immoral act with her for the last two years. Then the matter was reported to the police and the paternal aunt also accompanied them to police station. Her sister-in-law (prosecutrix), was medically examined. On 22nd March, 2011, the appellant was arrested from Inderlok Metro Station and his personal search was conducted. In her cross-examination, she has stated that she had got married in November 2009 and her mother-in-law was alive at the time of her marriage. She had been living separately since her marriage as relations between her husband and appellant were not cordial and neither she was on visiting terms to the house of the appellant nor her sisters-in-law or any other family members used to visit them. Her sister-in-law (prosecutrix) came to her for the first time on 20th March, 2011. She denied that she in collusion with her sisters-in-law falsely implicated the appellant.

8. There are no material contradictions in the statements of prsoecutrix made to the police, statement under Section 164 Cr. P.C. and the statement made in Court, while appearing as PW-2. Further, statement of the prosecutrix is corroborated in material terms by the testimonies of PW-3 and PW-8.

9. The prosecutrix was medically examined by Dr.Meetu, Sr. Gynae, Hindu Rao Hospital, Delhi (PW-11) on 31st March, 2011, at about 7.50 p.m. The MLC of the prosecutrix has been exhibited as Ex.PW11/C. As per MLC, there were no signs of any external injuries on the body of the prosecutrix, hymen ruptured was old and one finger can be easily inserted. Therefore, MLC clearly shows that prosecutrix was being sexually assaulted since long.

10. According to learned counsel for the appellant, the factors which render the prosecution version vulnerable are firstly, there was unexplained delay in lodging the FIR. Secondly, the medical evidence indicated that there were no external injuries and therefore, her version that she was raped by the appellant is not believable. Thirdly, the prosecutrix has deposed falsely at the instance of her paternal aunt (PW-3) and her brother as there were bitter relations between the appellant and PW-3.

11. Here with regard to delay in lodging the FIR, we would like to observe that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on ground of delay in lodging the First Information Report. The delay has the effect of putting the Court on its guard to search, if any explanation has been offered for delay, and if offered, whether it is

satisfactory or not. If the prosecution fails to satisfactorily explain the delay and embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the same cannot by itself, be a ground for disbelieving and discarding the entire prosecution version.

12. The evidence of Kamla (PW-3), Sapna (PW-8) read with that of the victim (prosecutrix) clearly explain as to why the FIR was lodged after such a delay. The evidence of the aforesaid three witnesses clearly show that due to the threat extended by the father (appellant), prosecutrix was under fear and, therefore, she did not disclose this fact to anyone. Moreover, the prosecutrix was a motherless child and it is obvious that at such a tender age of about 8 years approximately, she would not have been able to disclose the shameful act of her own father when the father himself happens to be the assailant in the commission of such beastly crime, one can visualize the pathetic situation in which the girl would have been placed.

13. Rape is immorality of the highest order but would be extremely difficult for anyone to lightly brush aside such a conduct by stating that either it was committed in a fit of anger or rage or such other similar situation. If such grotesque offence of rape has been committed by

anyone, other than the father himself, the victim would have had every opportunity to cry for solace in her father or mother. In this context, we are only reminded of the proverb when the ‘fence eats the crops’.

14. Further, Supreme Court in **Ramdas & Ors. vs. State of Maharashtra**, (2007) 2 SCC 170, observed that:-

“24. In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See *Pandurang v. State of Hyderabad* [(1955) 1 SCR 1083 : AIR 1955 SC 216] .) Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.”

15. As regards the absence of injuries, it is well settled that absence of injuries on the person of the prosecutrix is not always fatal to the prosecution case. We have already noticed that the delay in medical examination of the prosecutrix was occasioned by the factum of lodging of the FIR having been delayed for the reasons which we have already discussed. The prosecutrix was in her teens. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfill his lust having succeeded in forcefully committing rape upon the victim where there was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the appellant were abrasions or bruises which would heal up in the ordinary course of nature within two to three days of incident. Absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. 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.

16. Lastly, contention of learned counsel for the appellant that the prosecutrix has deposed falsely at the instance of her paternal aunt due to inimical relations between the appellant and sister-in-law of the appellant is devoid of any merit. The appellant in his statement under Section 313 Cr.P.C. has stated that there were bitter relations between him and his sister-in-law since long, as her brother had fled away with his wife in the year 1999. The said explanation or justification does not merit acceptance. There is no material or evidence adduced to prove this factum. Kamla (PW-3) was not cross-examined on the said aspect. No question with respect to the appellant was put to her. Further, it is relevant to note that it was put to the prosecutrix (PW-2) as a suggestion in her cross-examination that the appellant was falsely implicated at the instance of elder brother and paternal aunt of the prosecutrix whereas it was put to paternal aunt Kamla (PW-3) that she has deposed falsely at the instance of the prosecutrix. The same shows lack of clarity and hollowness in the case of the appellant. We do not see any reason to disbelieve the prosecutrix/child witness, paternal aunt Kamla (PW-3) and sister-in-law (PW-8) as well as the MLC which is Ex.PW11/C.

17. Further, it is well settled law that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after

the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do.

18. At the conclusion of the arguments, learned counsel for the appellant then pleaded for reduction of sentence of life imprisonment awarded to the appellant by learned trial Court. Learned counsel for the appellant, however, could not highlight any mitigating circumstance.

19. The Supreme Court in **State of H.P. vs. Asha Ram, (2005) 13 SCC 766** observed:-

“22. This leads us to consider as to the quantum of punishment. The trial court on conviction sentenced the respondent to 5 years' rigorous imprisonment and a fine of Rs 1000 and in default rigorous imprisonment for 3 months. Here is a case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on civilised society. Gravity of the crime has to be necessarily assessed from the nature of

the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of a hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. A father is the fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter. Serving food at odd hours at 12.30 a.m. he ravished the chastity of his daughter. He jeopardised her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.

23. Having said so, regarding the sentence we are tempted to quote the observation of Justice Pandian in *Madan Gopal Kakkad* [(1992) 3 SCC 204 : 1992 SCC (Cri) 598] where it has been observed that: (SCC p. 226, para 57) “Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand.”

20. Also in **Prabhunath vs. State**, *Crl. Appeal No.335/2005* decided on 23.03.2009, a Division Bench of this Court observed that the penal code prescribes the maximum punishment for rape as imprisonment for life. Thus, the legislative intent is that in extreme case of rape sentence to be imposed should be of imprisonment for life. Obviously, in cases less than the extreme, the sentence has to be

less. What would be the instances of extreme cases of rape? First and foremost would be the acts of brutality which may accompany a rape. The second would be the trauma inflicted, other than the trauma of rape, for example, where the rape victim is beaten or threatened with death, is battered etc. The third would be where the offender is in a dominating position and breaches the confidence of a victim for example, in near relation of the victim being the offender.

21. The case at hand shows to what bottomless pit speed of depravation and lust a person can go down. As indicated at the threshold, the custodian of the trust has betrayed the same. The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a great degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes an unpardonable act. It is not only a loathsome sin, but also abhorrent. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father. The evidence on records clinchingly nails the appellant as the offender.

22. In this case, the appellant's lustful acts have indelible scar not only physically but also emotionally on the victim. No sympathy or leniency is called for.

23. In the light of the aforesaid discussion, we affirm the judgment dated 13th January 2012. We also maintain the order on sentence dated 20th January, 2012 passed by the learned trial Court.

24. Ex consequenti, the appeal, being sans merit, stands dismissed.

25. The appellant is in judicial custody, a copy of this judgment be delivered to him through concerned Superintendent Jail.

(VED PRAKASH VAISH)
JUDGE

(P.K. BHASIN)
JUDGE

October 04, 2013
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