

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

+ **CRL.A. 936/2008**

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Reserved on: 6th February, 2013
Decided on: 3rd April, 2013

RAJENDER SINGH

..... Appellant
Through Mr. Ajay Rai, Adv. with Appellant in
custody.

versus

STATE GOVT. OF N.C.T. OF DELHI

..... Respondent
Through Mr. Manoj Ohri, APP with SI Girraj
Singh PS Badarpur.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant impugns the judgment dated 3rd October, 2008 whereby he has been convicted for offences punishable under Section 342/376/325 and 506 IPC and the order on sentence dated 6th October, 2008 whereby he was directed to undergo rigorous imprisonment for 10 years for offence punishable under Section 376 IPC and a fine of Rs. 30,000/- and in default of payment of fine, to further undergo 1 year rigorous imprisonment. The Appellant was further directed to undergo 1 year rigorous imprisonment for offence punishable under Section 342 and 506 IPC.

2. Learned counsel for the Appellant contends that from the testimony of PW2, the son of the prosecutrix and PW5 the brother of the prosecutrix it is apparent that the prosecutrix PW1 was staying separately and did not stay

with her children or the brother. PW3, the doctor has clearly stated that she did not notice any internal injuries and she could not state on examination of PW1 as to whether rape was committed or not. Further the FSL report gave negative of semen. There are material improvements in the statement of PW1 the prosecutrix. In the detailed statement the prosecutrix has alleged that the Appellant raped her earlier as well, however no complaint was made regarding those incidents. It is thus clear that the prosecutrix was a consenting party. The site plan has not been proved by the prosecution. There is no medical evidence on record to suggest that rape was committed on PW1. The Appellant be thus acquitted of the charges framed. In the alternative it is prayed that the Appellant has already undergone more than 9 years of rigorous imprisonment which is more than the minimum prescribed and hence he be released on the period already undergone. Reliance is placed on *Dinesh Jaiswal Vs. State of Madhya Pradesh (2010) 3 SCC 232*.

3. Learned APP on the other hand contends that the multiple injuries on the prosecutrix show that there was no consent. The alleged incident took place on 31st May, 2005 where after she was bolted in the house and some unknown persons hearing her cries opened the bolt and called for the TSR wherefrom she reached her house and thereafter she was medically examined. The clothes of the prosecutrix were stained with blood. The testimony of the doctor cannot be read in isolation. The doctor PW3 stated that since PW1 was a married woman and had given birth to two children, on examination it could not be opined whether rape was committed or not. The Appellant not only raped PW1 but also confined, badly assaulted resulting in grievous injury and threatened the complainant. In view of the gravity of

offence committed by the Appellant the sentence as awarded by the Trial Court is justified. Proving of the site plan is not a necessary condition to prove the offence the Appellant has been charged with. There is no merit in the appeal and the same be dismissed.

4. I have heard learned counsel for the parties. Briefly the case of the prosecution based on the complaint of PW1, the prosecutrix is that the husband of the prosecutrix died in 1983 and she had two children who were residing with her parents. The prosecutrix knew the Appellant as she has purchased a shop from him. When the prosecutrix purchased the shop from the Appellant, he was not doing anything and had come out from the jail at that time. The Appellant used to sympathize with her at that time and sometimes came to her shop for tea. One day the Appellant came to the shop of the prosecutrix and asked her to accompany as he wanted to talk to her for two minutes. When the prosecutrix told that he could talk over there itself, the Appellant asked the TSR driver to bring the knife and on the point of knife, he forced her to sit in the TSR. The TSR was taken towards Kacha road outside power house of Badarpur. The prosecutrix raised an alarm and two persons came forward. However, on seeing the accused those two people also ran away. He then took her to Kalkaji Mandir, offered her Prasad and applied vermilion on her head which she wiped. From that day onwards, whenever the Appellant used to meet her, he used to say that she was his wife. One day the Appellant called her to his Kabari shop and when she went to the shop, he bolted the door and committed rape against her wishes. The Appellant threatened the complainant not to disclose anything or else he will kill her and her children. On 31st May, 2005 at about 2.00 PM

while she was going to the bank from her residence, the Appellant slapped her and threatened her to accompany him to his shop or he would drag her to his shop. He took the prosecutrix to the shop, slapped her number of times and raped her against her wishes. After committing rape, the Appellant bolted the door from outside and went away. The prosecutrix was down with menstrual cycle. In the evening when she got a chance, she came out and went to her house. She prepared the meal and after eating slept. The prosecutrix was living on the third floor and at about 11.00 PM the Appellant came to her house. The Appellant lit the matchstick, woke up the prosecutrix and asked her why she left the shop without informing him and again assaulted her and took her to his jhuggi. At the jhuggi he again beat the prosecutrix and raped her. The Appellant hit the prosecutrix with a sambal (iron road) on the knee, left foot & left hand. When she shouted for help, he again hit on her right hand resulting in breaking of the thumb of the right hand. He also hit her on the head with the iron road. The Appellant went out and when he came after some time, he again assaulted the prosecutrix with kicks and fist blows and iron road on the various parts of her body. In the morning the Appellant went away somewhere after bolting the door and came back after 1-2 hours. He forced her to drink the liquor and went away. He again came back at 9.00 AM and asked as to why she did not live with him and did not give him the money. The Appellant had taken Rs. 45,000/- from her earlier in installment and was demanding more money. Thereafter he snatched the purse of the prosecutrix and took out the keys of her shop. From the shop he took out the goods and money. The Appellant went out and came back at 3.30 or 4.00 PM. Though the prosecutrix tried to take help by crying and shouting, but nobody dared to

come forward to help her. At about 8.30 or 9.00 PM when she was crying for help somebody opened the door. She asked water from him. The unknown person gave her water and put her in the TSR. In the TSR she went to Ashram where her children resided and thereafter her son took her to AIIMS hospital. In AIIMS hospital as no bed was available so she was taken to Holi Family Hospital where she was provided medical aid and X-ray was also done. She went to AIIMS again where she was medically examined and her X-ray was again done. She was examined by a lady doctor at 10.00 – 11.00 PM on 2nd June, 2005 when her statement was recorded by the Police resulting in registration of FIR.

5. Learned counsel for the Appellant has laid a great stress on the testimony of PW2 son of the prosecutrix and PW5 the brother of the prosecutrix to contend that the prosecutrix was not living with her family members and that she did not lodge complaints when the Appellant allegedly committed the offence on her earlier and thus the same showed that she was a consenting party. Merely because a woman is staying alone after her husband's death and earning for herself having left her children to the care and custody of her parents and brother or not having lodged the complaints on the earlier occasion would not lead the conclusion that the prosecutrix consented to the offence committed by the Appellant. The fact that the prosecutrix was not a consenting party is borne out from not only her statement but also from her medical record. MLC of the prosecutrix Ex.PW3/A dated 2nd June, 2005 shows that she was brutally beaten resulting in deformity in the left forearm, right knee and right femur region. She also has lacerated wounds on right knee, crests of patella. As per Ex.PW9/A of

the Holi Family hospital, the prosecutrix had tenderness over left lower side of the chest, swelling & tenderness over left shoulder, forearm, both hands and back, bruises and abrasions over left upper arm, extensor aspect of right forearm, lacerated wounds over right hand and right knee joint as well as on medial aspect of middle left leg, flexor aspect and on ulna aspect, bruise over left gluteal region, anterior aspect of left thigh and left chin. X-ray of the prosecutrix revealed fracture on the left radius and second and third Meta carpel of the left hand resulting in grievous injuries as per Ex.PW9/A.

6. The contention of the learned counsel for the Appellant that the FSL gave negative for presence of semen and hence the offence of rape could not be said to have been committed also deserves to be rejected. The alleged offence was committed by the Appellant on 31st May, 2005 and 1st June, 2005. The prosecutrix has stated, which fact is corroborated by the MLC Ex.PW3/A, that the prosecutrix was down with menstrual cycle at the relevant time and in view thereof the semen not being available on 2nd June, 2005 at about 10-11 PM when her medical examination was conducted is natural.

7. Reliance of the learned counsel for the Appellant on *Dinesh Jaiswal* (supra) is misconceived. In the said case the Appellant therein had gone to recover his cow from the house of prosecutrix where they had a quarrel and both sides received injuries. The husband of the prosecutrix did not enter the witness box. The doctor who conducted medical examination was unable to confirm the factum of the rape and in the light of these facts the Hon'ble Supreme Court held that prosecutrix must be believed irrespective of improbabilities in the story, is unacceptable. It has to be seen whether the

version put forward by the prosecutrix inspires confidence. The Supreme Court held that the said case was an exceptional one and the story of the prosecutrix did not inspire confidence. In the case in hand, the version of the prosecutrix is corroborated by the multiple injuries she has received on her body.

8. I find no infirmity in the impugned judgment of conviction and the order on sentence. Appeal is accordingly dismissed. Copy of this judgment be communicated to the Appellant through Superintendent, Tihar Jail.

(MUKTA GUPTA)

APRIL 03, 2013

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