

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

%

Date of Decision : July 25 , 2014

+

CRL.A. 766/2013

NAND KISHORE

..... Appellant

Represented by: Mr.Jivesh Tiwari, Adv.

versus

STATE (GOVT OF NCT) DELHI

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for
State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. An act of highest depravity, committing the rape of his own mother aged 72 years, Nand Kishore stands convicted for an offence under Section 376 IPC by the learned Trial Court and has been awarded a sentence of imprisonment for life and fine of ₹ 20,000/- and if recovered to be paid to the prosecutrix under Section 357 Cr.P.C. as compensation, in default of fine to undergo simple imprisonment for a period of six months.
2. Nand Kishore seeks to assail the impugned judgment on the ground that the PCR call was with regard to quarrel and not rape. He says that earlier he had been tried for murder of his father and was acquitted which was not to the liking of the prosecutrix and thus she falsely implicated him. There is no medical evidence to suggest rape committed on the prosecutrix.

Rather the prosecutrix was strong enough and had actually bolted Nand Kishore inside the jhuggi and falsely implicated him. The explanation rendered to the last question put under Section 313 Cr.P.C. 'what do you want to say' is as follows:-

“My father had constructed the house after purchasing a land 100 yards. During construction, the roof of house had fallen on my father due to which my father had died and I was falsely implicated in his murder. Thereafter, the said house was sold but my share was not given to me and one jhuggi was allotted to me only. I was living in my jhuggi after release from jail about 2 years prior to this case. I was residing in village and I came to Delhi to meet my children who were residing with my mother in the jhuggi. I had consumed liquor when I left for Delhi from my village. My mother had not allowed me to meet with my children. She bolted me inside the jhuggi and she called the police to falsely implicate me in this case.”

3. The process of law commenced when a PCR call information was noted at PS Dwarka North vide DD No.53-B. HC Chander Pal along with Constable Raju reached jhuggi No.397, Bharat Vihar, JJ Colony Sector 15, Dwarka, New Delhi where the prosecutrix met them and stated that she was raped by her son Nand Kishore and she had locked him in the jhuggi. The prosecutrix was taken to the Police Station and the case was assigned to WSI Nirmal Sharma who recorded the statement of the prosecutrix Ex.PW-1/A on the basis of which FIR No.97/2012 under Sections 376/506 IPC was registered. The prosecutrix stated that Nand Kishore was his youngest son whose two sons i.e. Rahul and Naresh were residing with her in jhuggi. She had three sons and four daughters. The four daughters were married. Out of the three sons Chander Pal used to stay in the adjoining jhuggi and used to do the work of painting and would leave in the morning. His other son was

staying in Uttam Nagar. The youngest son Nand Kishore was addicted to alcohol and Ganja due to which his wife had left him. Nand Kishore married again and five years ago he killed her husband. After undergoing punishment, she did not permit Nand Kishore to enter her house. On that day at around 12 noon she was searching her ration card in the jhuggi and both her grandsons were playing outside in the gali. Between 12.00 to 1.00 PM Nand Kishore entered the jhuggi in an intoxicated condition and bolted from inside. She asked Nand Kishore as to why he had entered the jhuggi. He angrily stated that he would stay there only. The prosecutrix stated that she would not permit him to reside over there. Thereafter he retorted that he would tell her immediately. He further stated that he would make her his wife. Nand Kishore embraced her and made her lie on the floor and raped her. When the prosecutrix shouted Nand Kishore stated that he would kill her like her husband. The prosecutrix asked him that if he would kill her who would look after his children. After sometime Nand kishore left her, when she ran out of the jhuggi and bolted her son Nand Kishore inside. Her neighbourer Shambhu made a call at 100 number.

4. The statement of the prosecutrix was also recorded under Section 164 Cr.P.C. by the Magistrate Ex.PW-12/B. She stood by her version in the Court.

5. General medical examination of the prosecutrix was first done by Dr.Manoj PW-7 who exhibited the MLC No.8037 dated May 03, 2012 vide Ex.PW-7/A. The MLC of the prosecutrix noted tenderness in the right elbow and she was referred to X-ray for the same. Since the case was registered under Section 376 IPC Dr.Manoj referred the prosecutrix for gynaecological examination which was conducted by PW-15 Dr.Rachna

Gupta. Dr.Rachna Gupta exhibited the portion of MLC done by her as Ex.PW-15/A bearing her signatures at point 'A'. On internal examination Dr.Rachna Gupta noted "fresh mucosal tears + not bleeding actively". This important aspect of the MLC has been ignored by the learned Trial Court.

6. The prosecutrix is a 72 year old woman whose husband was dead for the last five years. Thus not being used to active sexual intercourse at that post menopausal age of her life it was natural that mucosal lining had been formed on the vaginal orifice which was freshly torn due to sexual act of the appellant. Even in cross-examination this witness reiterated about fresh injuries on the body of patient though there was no active bleeding present.

7. Dr.Rachna Gupta took the vaginal swab sample of the prosecutrix and also handed over her clothes i.e. the petticoat and undergarments duly sealed by the seal of hospital to the investigating officer for FSL examination. The FSL report Ex.PW-19/E notes the presence of semen on the petticoat of the prosecutrix which proves beyond reasonable doubt that the prosecutrix was subjected to sexual intercourse.

8. The version of the prosecutrix further stands corroborated by the MLC of Nand Kishore prepared by PW-4 Dr.Rather Basit Nazir who noted the following injuries on the Nand Kishore.

- "i) B/L swelling in both hands*
- ii) abrasion over dorsal aspect of left hand*
- iii) abrasion over left cheek"*

9. Nand Kishore has not given any explanation as to how he received the injuries. The injuries are of a kind which a male would suffer if a female victim of sexual assault offers resistance. The version of prosecutrix stands further corroborated by PW-2 Shambhu Kumar Jha, the neighbourer, who

made the PCR call to the Police Station and stated that on May 03, 2012 at about 1.30 PM he was present in his house when he heard cries. He saw the prosecutrix coming out of her jhuggi crying 'bachao bachao'. When he asked her as to what had happened, the prosecutrix stated that Nandu would kill her. This witness noticed some scratch marks on her face and neck.

10. PW-19 WSI Nirmal Sharma who recorded the statement of the prosecutrix, prepared the site plan and arrested Nand Kishore also deposed that she recovered three tickets from the possession of Nand Kishore vide seizure memo Ex.PW-8/A, further corroborating that Nand Kishore had come to Delhi on the same day.

11. To this overwhelming incriminating evidence against the appellant we find no explanation rendered by him in his statement under Section 313 Cr.P.C. Thus, there is no scope of argument that either the offence under Section 376 IPC is not made out or that the sentence awarded is in excess.

12. The appeal is consequently dismissed.

13. T.C.R. be returned.

14. 2 copies of the decision be sent to the Superintendent Central Jail Tihar one to be given to Nand Kishore and the other for the jail record.

Crl.M.A. 9873/2014

By this application, the appellant had sought release on cash surety pursuant to the order dated July 17, 2013 suspending the sentence of the appellant subject to his furnishing a personal bond in the sum of ₹ 20,000/- with one surety of the like amount, as he has not been able to arrange the surety bond.

Since this Court has already heard the appeal and decided the same, this application is dismissed as infructuous. The interim order admitting Nand Kishore is declared non-operative.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 25, 2014
‘ga’