

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 09.10.2014

Pronounced on : 14.10.2014

+ CRL.A. 905/2009

RAM SINGH

..... Appellant

Through : Ms. Neha Singh, Advocate for
Mr. Ajay Verma, Advocate

versus

STATE (GNCT) OF DELHI

..... Respondent

Through : Mr. Neeraj Kumar Singh, APP for the
State with SI Somvir Singh PS
Malviya Nagar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. *There can never be more graver and heinous crime than the father being charged of raping his own daughters. He not only delicts the law but it is a betrayal of trust. The father is the fortress and refuge of his daughter in whom the daughter trusts. Charged of raping his own daughters under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. [AIR 2006 SC 381 State of Himachal Pradesh vs. Asha Ram].*

2. The Appellant before this Court, though got married twice, both his wives left him. To satisfy his lust, first, he sexually exploited his daughter 'X' aged about 15 years and thereafter set his eyes on his second daughter 'Y' who was just 11 years old at that time (assumed names X and Y have

been given by the learned Trial Judge). When all attempts of 'X' to protect her younger siblings from her father failed, the matter was reported to the Police and presently the Complainant and her three younger sisters are under care and protection of Ms.Rachna Kapoor (PW-3) in whose school the Complainant is employed for taking care of young children.

3. Briefly stated, the case of the prosecution is as under:

4. Kumari 'X' along with her three younger sisters 'Y' (11 years), 'M' (8 years) and 'B' (6 years), used to reside with her father in a *jhuggi* at Malviya Nagar. Their mother deserted them three years prior to this incident and left for Nepal. Her father married second time, who also stayed with them for some time and thereafter she also left their father. Their father used to beat all his daughters mercilessly.

5. About 1 year prior to lodging the FIR, her father committed rape on her thrice. He used to beat and threaten her saying that she should not disclose the incidents (rape) to anyone else. On 20.09.2007 at about 7 a.m., her father tried to commit rape on her younger sister 'Y' (aged about 11 years). She put strong resistance to such attempts of her father on her younger sister and after managing to take her back, 'Y' was sent to school. Thereafter she went to report for her work at school where she was employed for taking care of young children. At 7:30 p.m. when she returned home, she was informed by 'Y' that during day time at about 3 p.m., the Appellant had committed rape on 'Y' also and had given beatings to her asking her not to disclose about the incident to anyone or he would kill all of them. On seeing that 'B' (aged 6 years) had also suffered injuries on her head on being beaten by her father, she informed about the incident to her employer Ms.Rachna Kapoor (PW-3), who brought all the sisters to the Police Station for registration of FIR against the Appellant.

6. During investigation, the sisters were subjected to medical examination at AIIMS. The Appellant was arrested and after completion of investigation, chargesheet was filed in the Court. The learned Trial Court examined 11 witnesses in all to prove the guilt of the Appellant. Thereafter, an opportunity was also given to the Appellant to explain the evidence appearing against him wherein the Appellant claimed himself innocent and his false implication at the instance of Rachna Kapoor, as he objected to the love affair between 'X' and one boy.

7. Learned counsel for the Appellant submitted that it has been admitted by 'X' (PW-1) that she was having an affair with a boy which was to the disliking of her father and that in fact 'X', who was working with Rachna Kapoor (PW-3) had got her father falsely implicated in this case so as to be free to talk to any boy. As a father, Appellant was discharging his duty to take care of his daughters and to check them if found involved with some boy. Counsel further submitted that there are material discrepancies in the testimonies of PW-1 & PW-2 and from the testimony of PW-3, it is clear that in fact she was instrumental in getting the FIR registered against the Appellant and now the daughters of the Appellant are residing with her, which confirms that the Appellant has been falsely implicated at her behest. Learned counsel for the Appellant further submitted that PW-1 'X' despite stating that she was raped thrice by her father, did not report the matter to the Police and this delay on her part makes her testimony doubtful.

8. On behalf of State, it has been submitted that the witnesses against the Appellant are his own minor daughters. Their MLCs prove their version of being sexually assaulted by their own father. It has been further submitted that so far as PW-1 is concerned, she has stated that she stopped talking to the boy when her father asked her to do so. Thus, merely because she was

talking to some boy, in itself is no ground to discard her testimony to the effect that she was raped by her father thrice and when she tried to save her younger sister 'Y' from being raped by her father. However, when she was away to attend her duty in school, on return from there, 'Y' informed her that during day time she had been raped by the Appellant.

9. In the case of ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat*** 1983 CriLJ 1096, the Hon'ble Supreme Court held :

“In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? It was further pointed out that on principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. The aforesaid observation was made by this Court because of the following factors: (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or as acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and

members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.”

10. In the backdrop of the above settled legal principles of law, if the testimonies of PW-1 & PW-2, who both are victims of lust of their own father, are examined, I find that both of them had absolutely no motive against their father to falsely implicate him in this case. It may be mentioned here that the four daughters of the Appellant have been rendered homeless just because PW-1 ‘X’ on seeing the Appellant not sparing even his 11 years old daughter (PW-2 ‘Y’), was compelled to take action against her own father. Long silence by PW-1 in not reporting the matter to the Police when she was being repeatedly raped by her own father, has to be examined in the light that their own father who was under a legal obligation to protect them, was a predator. Perhaps in a hope to have a roof on their head, PW-1 ‘X’ continued to bear the repeated sexual assaults of her own father with the hope that at least her three younger sisters are safe. The mere fact that she raised her voice when she saw her father attempting to rape on her younger sister (PW-2 ‘Y’) and she sent her sister to school, shows that even at that stage, she had no intention to lodge FIR against her own father. It was only when taking advantage of her absence during day time the Appellant committed rape on his 11 years old daughter on the same day at about 3 p.m. that she was left with no option but to seek guidance for necessary action to save them from their own father. Here, so far as PW-3 Rachna Kapoor is concerned, she has provided shelter to the four daughters of the Appellant to

protect them which otherwise was the duty of the Appellant, while PW-3 is running a school just for the reason that PW-1 'X' was taking care of children at the school that she had come forward to help the four sisters in saving themselves from their own father. Thus, no motive can be attributed to PW-3 for false implication of the Appellant in this case. It is his own daughters, who have stood against him, knowing fully well that their act would lead to further disaster, as they had not mother or step mother to take care of them nor any neighbour would come forward in a *jhuggi* cluster to feed them or to take care of them.

11. The MLC of 'X' (Ex.PW4/A) as well as MLC of 'Y' (Ex.PW4/B) show:

"MLC of 'X', daughter of Ram Singh, age 15 years

Alleged history of rape by father- 3 episodes 1 year ago –

Father is a coolie – chronic drunkard having two marriages – 1st wife left 3 years ago and 2nd wife left 5 days ago.

B/A

Soft Nao

Local Exam.

Hymen ruptured

"MLC of 'Y', daughter of Ram Singh, age 11 years

Alleged history of rape by father two days ago on 20.09.2007 – who is chronic drunkard and used to beat children

- *two marriages – 1st wife left 3 years ago and 2nd wife left 5 days ago.*

B/A

Soft Nao

Local Exam

Hymen partially torn"

12. Thus, the testimonies of PW-1 & PW-2 about they being sexually assaulted by their own father stand corroborated by the medical evidence. So far as minor discrepancies on insignificant aspects, referred to by learned

counsel for the Appellant, are concerned, suffice would it be to say that the same does not render the testimonies of PW-1 & PW-2 unworthy of credence. In this regard, it would be apposite to quote the observations made in the case of ***State of Rajasthan vs. N.K. the accused 2000 CriL.J. 2205*** as under:-

"Having heard the learned counsel for the parties we are of the opinion that the High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women".

13. In the impugned judgment, the learned Trial Court has elaborately analysed the evidence of both the child victims before coming to the conclusion that there was no reason for them as to why they would falsely implicate their own father in this case. Both the child victims have been cross-examined at length and they had clearly described the acts of the Appellant who is their own father. The MLCs of both the child victims confirm that they had been sexually assaulted. The MLC of 'B' (aged just 6 years), placed on record confirms the averments made in the complaint

Ex.PW1/A that even 6 years old child was not spared by the Appellant and she suffered injuries. The MLC of 'B' records as under:-

“Allegedly beaten by father on 20.09.2007. Lacerated wound over scalp. No history of LOC/Seizure/Vomiting.....”

14. I find that the learned Trial Court has rightly placed implicit reliance on the testimony of PW-1, the child victim, who had been subjected to rape by the Appellant without even realising that 'Y' was just 11 years of age, was yet to come out of the shock and trauma she had undergone in the morning when PW-1 managed to get her released from the clutches of the Appellant and sent her to the school.

15. The learned Trial Court convicted the Appellant u/s 376 IPC and sentenced him to undergo RI for a period of 10 years. For the reasons recorded hereinabove, there is no ground for this Court to interfere with the conviction recorded by the learned Trial Court against the Appellant for committing the offences under Sections 376 IPC. So far as sentence part is concerned, one of the victims of sexual assault was below 12 years of age and as per section 376(2)(f), committing rape on a woman when she is under twelve years of age warrants a minimum sentence of RI for 10 years. The Appellant has been awarded the sentence of RI of 10 years, which is the minimum sentence prescribed for offence under Section 376(2)(f) IPC, hence no interference on the order of sentence is warranted.

16. The appeal is accordingly dismissed being devoid of merits. Trial Court record be sent back forthwith along with a copy of this order. Appellant be informed through the concerned Jail Superintendent about the orders passed.

OCTOBER 14, 2014/ 'dc'

**(PRATIBHA RANI)
JUDGE**