

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

% *Judgment reserved on : 13.07.2015*
Judgment delivered on : 17.07.2015

+ CRL.A. 424/2013
MAN SINGH THAPA

..... Appellant
Through Mr.Sitab Ali Choudhary, Adv.

versus

STATE

..... Respondent
Through Mr.O. P. Saxena, APP for the
State along with SI Neeraj
Kumar, PS Mandwali in person.
Ms.Ranjeet Kaur, house aunt
from Nirmal Chaya.
Ms.Mini Sinha from Salaam
Baalak Trust.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. This appeal is directed against the impugned judgment and order on sentence dated 10.12.2012 and 14.12.2012 respectively wherein the appellant stood convicted under Section 376 of the IPC. He had been sentenced to undergo RI for a period of eight years and to pay a fine of Rs.200/- and in default of payment of fine to undergo, SI for two months.

2. This is an unfortunate incident. The prosecutrix is the daughter of the appellant. The prosecutrix (PW-4) was studying in the 6th standard at the relevant time. She was living with her father. Her sister was also living in the same household. Their mother had died five years ago. Their father had been married for the second time; the prosecutrix and her sister were born out of their father's second marriage. On 19.08.2011, a complaint was lodged at PS Mandwali which was to the effect that the father of the victim had committed rape upon her on several dates. She had been beaten by him due to which she had not disclosed the incident on an earlier occasion. The version of the prosecutrix (PW-4) has been supported by her younger sister (PW-3). The victim had been medically examined. Her MLC had been proved as Ex.PW-9/A. Her hymen was not intact.

3. In view of the ocular and oral evidence adduced by the prosecution, the appellant stood convicted.

4. On behalf of the appellant, arguments have been addressed in detail. The first argument addressed by the learned counsel for the appellant is that this is a case of false implication. All along, the defence

of the appellant was that the victim was in love with a muslim boy namely Pappu and she was interested in marrying him. When her father objected, his daughter has falsely embroiled him in the present case. The second defence of the learned counsel for the appellant was that the appellant is 70 years of age and he has an erectile dysfunction and he could not perform sexual act. This is a clear case of false implication. Learned counsel for the appellant has placed reliance upon 2012 ACR 3007 Narender Kumar Vs. State (NCT of Delhi) and 2009 CrL LJ 3342 Pappu Vs. State of Delhi to support his arguments. In defence, the appellant had also produced three witnesses. DW-1 was his neighbor. DW-2 was his employee and DW-3 was related. Testimonies of these three witnesses was that the accused had a good reputation; his daughter has falsely implicated him; all of them had deposed that the prosecutrix was interested in marrying Pappu which was the bone of contention in the family which had led to the false implication of the appellant.

5. Arguments have been heard. Record has been perused.

6. On the last date i.e. on 13.07.2015, the victim and her sister had been asked to produce from Salaam Baalak Trust and Nirmal Chaya

respectively where they were staying. This was on the information provided by the Investigating Officer. A doubt had been created in the mind of the Court in view of the defence set up by the appellant. Thus the Court in order to satisfy itself about the safety of the victim and her sister had in its endeavor summoned them. They were queried in Chamber. Separate order-sheet of the said date has been recorded. Both the sisters had in fact been sent to the same place i.e. Salaam Baalak Trust where the elder sister was staying. This was on the specific request made by the younger sister.

7. The prosecutrix has been examined as PW-4. She was aged 12-13 years on the date of the incident. A preliminary round of questions had been put to her before recording her statement. She had disclosed that the appellant was her father; her father had got married twice; they were born out of the second marriage. They used to reside with their father. For the last two months, his father used to do ‘galat kaam’ with her in the presence of her younger sister (PW-3). She had elaborated that ‘galat kaam’ means the act of rape. She had informed the ladies and her neighbours but nobody helped her. She had got her statement recorded

pursuant to which the present case was registered.

8. She was subjected to a lengthy cross-examination. She categorically denied stating that she did not know any person by the name of Pappu. She and her sister used to sleep with their father. She stated that her brother Deepak (born out of the first marriage with his first wife) was not living with them. The trial Court had noted the demeanor of this witness; at one stage, the witness had become emotional and stated that her father had done a lot for her but this act which was done by her father could not be forgiven.

9. PW-3 was the sister of the victim. She was younger in years and was of 10 years on the date of the incident. A preliminary round of questions had also been put to her before recording her statement. She reiterated the same averments which were made by her elder sister. Her father used to lie down on her sister and used to kiss her and do an untoward act which she had described in detail. Her father used to do 'galat kaam' with her sister. Her father used to take alcohol. Their brother was aged 25 years. He was not living with them. She admitted that her father used to beat them mercilessly when they wished to

disclose this incident to neighbours. She denied the suggestion that PW-4 knew any person by the name of Pappu.

10. The brother of the victim was examined as PW-6 (Deepak). He was their step brother. He had also supported the version of the prosecution. He deposed that his sister had disclosed to him about the act of rape having being committed upon her by her father. His statement was recorded by the police. In his cross-examination, he admitted that he is living separately from his father and sisters since the last about 10 years. He admitted that when Sapna disclosed this incident to him; he accosted his father but his father denied the allegation. He stated that what Sapna was telling him was the truth. He could not say if Sapna having any affair with any person by the name of Pappu.

11. This ocular version of the prosecutrix and her family members was also corroborated by her medical evidence which was her MLC (Ex.PW-9/A) which had noted that her hymen was missing.

12. The second argument of the learned counsel for the appellant that the appellant was a 70 year old man and incapable of performing sexual act was negated by the medical evidence. The appellant was medically

examined. He was 55 years of age on the date of the incident meaning thereby that as on date, he was 59 years of age. His submission that he was 70 years of age has been falsified.

13. Dr. Vinay Kumar Singh (PW-11) had given the report Ex.PW-11/A and after examination of the patient, had made a categorical statement that there was nothing to suggest that he was incapable of performing the sexual act. The MLC of the appellant Ex.PA-1 has also been perused and so also the report Ex.PW-11/A.

14. Thus, the first argument of the learned counsel for the appellant that this is a case of false implication as his daughter used to love one person by the name of Pappu has to be tested on the anvil of probabilities. As noted supra, the victim and her sister (PW-3 & PW-4) have both been consistent in the manner in which the offence was committed by their father upon PW-4. They were both minors. They have admitted that they used to sleep with their father in the same room. It has consistently come in their version that their brother (PW-6) was living separately. PW-4 has deposed that her father used to do 'galat kaam' since the last two months from the date of lodging of the FIR

which has been corroborated by PW-3 who has described in detail the manner in which rape was committed upon PW-4. There was no reason for both the girls to have falsely implicated their father.

15. The demeanor of PW-4 has also been noted by the trial Judge. In a state of emotional turmoil the victim had stated that her father had done lot for them but the act of rape was not forgotten by her; she had been persuaded by her conscience to make this complaint. The medical evidence also supports the version of the prosecution. The hymen of this 13 years old girl was missing. PW-6 has also supported the version of his sister.

16. The evidence adduced by the defence where were three parrot-like versions of DW-1 to DW-3. These cannot overcome and override the uncontroverted testimony of the prosecutrix who was the victim and there was no reason for her to have falsely implicated the accused. In fact in one part of her examination, she was trying to shield her father but her conscience did not permit her.

17. It was thus a clear case where the prosecution has been able to prove its case to the hilt. This Court again notes that the victim and her

sister had also been called to the Chamber and queries had been put to them. They had reiterated the stand which they had adopted in their examination on oath. They did not know any person by the name of Pappu.

18. There is no doubt that evidence of a child shall be scrutinized with utmost care and caution. In the judgment of Bhupinder Sharma vs State of HP, AIR 2003 SC 4648 the following observations of the Apex Court would be noteworthy and are extracted herein as under:-

“In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. 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. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. 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 sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case”

19. In the facts of this case, the testimony of the prosecutrix remains unchallenged. She has not been belied in her cross-examination. Her version (as noted supra) has been corroborated by the versions of PW-3 & PW-7 as also the medical evidence.

20. The observations of the Apex Court in State of U.P. vs. Krishna Master and Ors., AIR 2010 SC 3071, are also relevant in this context and read herein as under:-

“the child at a tender age is incapable of having any malice or ill will against any person and there must be something on record to satisfy the court that something had gone wrong between the date of the incident and recording the evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of serious nature.”

21. The judgments relied upon by the learned counsel for the appellant would not apply to the factual matrix of the instant case. Testimony of the prosecutrix has remained unchallenged; it being cogent and coherent, this Court has chosen to rely upon it.

22. The defence set up by the accused is wholly sham. At the cost of repetition, there was no reason whatsoever for the prosecutrix to have implicated her father but for the reason that offence has been committed in the manner in which she has detailed.

23. The conviction of the appellant calls for no interference.

24. The minimum sentence for an offence of child rape (under the pre Criminal Law (Amendment) Act, 2013) was RI 7 years. The sentence of

the appellant is modified and sentence of RI 8 years is reduced to RI 7 years. Sentence of fine remains unaltered.

25. Appeal stands disposed of in the above terms.

INDERMEET KAUR, J

JULY 17th 2015

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