

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

+ CrI.A.No.837/2005

% Reserved on: 4th February, 2010
Date of Decision: 8th February, 2010

RAGHU NATH Appellant
! Through: Mr.S.P.Kaushal, Advocate,

with Mr.Jagjit Nandal &
Mr.Brijesh Singh, Advs.

versus

\$ THE STATE (NCT OF DELHI) Respondent
^ Through: Mr.Jaideep Malik, APP

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

: V.K. JAIN, J.

1. This is an appeal against the judgment and Order on Sentence dated 24.8.2005, whereby the appellant was convicted under Section 506 and 376 of IPC and was

sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- or to undergo Simple Imprisonment for six months in default under Section 376 of IPC and was further sentenced to undergo Simple Imprisonment for two years under Section 506 of IPC. Both sentences were to run concurrently.

2. On 13.8.2004, the prosecutrix, accompanied by her parents came to Police Station Nangloi and lodged an FIR alleging therein that the appellant, who was related to her and who had been called by her parents to perform *puja* (Hawan) in the night intervening 25/26th April, 2004, advised her parents that unmarried girl should perform *puja* in darkness or at cremation ground or at bank of river Yamuna. At about 2:30 a.m., he sent her parents out of the house. She was left alone with the appellant, who first got his head massaged from her and then raped her and threatened that in case she disclosed the matter to her parents, he, using the super natural power possessed by him, would kill them even before they came inside. Being scared, she did not disclose the incident to her parents. In this manner, he raped her at her residence a number of times. She did not disclose the

incident to her parents, but, when, she came to know that her cousin had also been raped by the appellant on the pretext of performing *puja* and was in jail, she narrated the incidents to her parents who brought her to the Police Station.

3. The prosecution examined fourteen witnesses in support of his case. The prosecutrix came in the witness box as PW-1 and stated that the appellant who was related to her, came to their house in the night of 25.4.2004 at about 11:00 p.m. and told her father that he would perform Hawan, as a result of which the business of her father would flourish. Her father agreed to the proposal of the appellant who then started Hawan and completed it in about two hours. In the night, the appellant told her parents that he wanted to teach “Mantras” to her in private and, therefore, they would have to go out of the room. Her parents then went outside the room. The appellant laid her on the bed and after removing her clothes as well as his own clothes tried to do wrongfully acts with her. When she tried to raise alarm, the appellant put a knife at her neck, as a result of which, she could not raise alarm. She further stated that the accused had then

penetrated for about half an hour. He also threatened to kill her parents with the help of "Ginn" (a super natural power), which was under his control, in case the incident was disclosed by her to anyone. She did not inform her parents in this regard. After 4-5 days, the appellant again came to their house, sent her parents outside on the pretext of teaching "Mantras" to her and again raped her. She was thus raped 5-6 times. She did not disclose the incident to her parents being afraid of him. According to her, she told her mother after she had been raped 5-6 times and one month thereafter, her parents lodged report with the Police.

4. PW-2, the mother of the prosecutrix, has stated that the appellant, who is a Tantrik, had come to their house in the night on 26.4.2004. They got Hawan performed by him so that their furniture business could flourish. At his instance, she and her husband sat outside the room, as the accused was to teach Mantras to their daughter. When she and her husband later entered in the said room, the prosecutrix and the appellant were seated separately. After several months, the prosecutrix informed her that the appellant had raped her

5-6 times, as and when he performed Hawan at their house which had taken place past midnight on all occasions.

5. PW-3 is the father of the prosecutrix, has stated that the appellant was known to him, being related to him and was on visiting terms with him. On 25.4.2004, at about 8:00/9:00 pm, the appellant came to their house and the Hawan was performed at his instance, so that his furniture business could flourish. The appellant told him that it was necessary to teach Mantras to his daughter and to get *puja* done by her which could be done either on the bank of river Ganga or Yamuna or at his house in privacy. He agreed to the suggestion of the appellant to get it done in privacy. At about 2 or 2:30 a.m., he along with his wife went outside the room. The room was closed. After about one and a half hour, the appellant called them and said that Hawan and Jap was to be repeated after 8-10 days. In the same manner, the appellant got *puja* and Jap done from his daughter in privacy. His furniture business did not flourish even thereafter. His daughter started remaining extraordinary silent. After four months, his daughter told him that the appellant had threatened to kill her parents, using super natural powers

and had also raped her on all occasions when Hawan Jap was performed by him in the house. On the next day, he went to the Police Station accompanied by his wife, his brother and a few neighbours. In cross-examination, he stated that before registration of the case against the appellant, they had come to know about the rape case against the appellant at Faridabad which was registered on the complaint of his niece and that the allegations in that case were also identical to the allegations in their case.

6. PW-4, Dr.Sweety Bansal, Gynaecologist, examined the prosecutrix in Sanjay Gandhi Smarak Hospital on 13.8.2004. The hymen of the prosecutrix was found torn, though, signs of fresh injury or inflammation region were not present. PW-5 Dr.Ashish Jain, examined the appellant in Hospital on 20.8.2004 and he was of the view that no definitive opinion regarding the appellant performing sexual act could be given.

7. PW-12 Smt.Kanta Rani is the Vice Principal of the Government Girls Senior Secondary School, JJ Colony No.II, Nangloi, Delhi. She has stated that as per the record of the School, date of birth of the prosecutrix was 16.12.1989. Copy of the admission register maintained by the school is

exhibit PW-12/B whereas the certificate of the date of birth issued by the School is Ex.PW12/A.

8. In his statement, under Section 313 of Cr.P.C., the appellant admitted that he was related to the prosecutrix and her family. He also admitted that he had been visiting the house of the prosecutrix, though he denied that he was a Tantrik. He denied having gone to the house of the prosecutrix on 25.45.2004 and having raped her on that date and on subsequent dates. He stated that he was to recover a sum of Rs.3,42,000/- on account of sale of buffaloes from the father of the prosecutrix and his brother and that is why he has been implicated in this case.

9. DW-1 Jai Narain, had stated that he knew the appellant as well as the father of the prosecutrix. According to him, whenever he went to the house of the appellant, he found that the conversation between him and the father of the prosecutrix was on money, which the appellant had been demanding from the father of the prosecutrix, towards sale of buffaloes to him.

10. The first contention raised by the learned counsel for the appellant is that there is delay in lodging FIR, which has

not been explained by the prosecution. It was pointed out that the prosecutrix alleges to have been raped, for the first time, in the night intervening 25/26th April, 2004, whereas the incident was reported to the police only on 13th of August, 2004.

11. As regards delay in reporting the matter to the police, the Hon'ble Supreme Court noted in **Ravinder Kumar vs. State of Punjab**, 2001 (VII) AD (SC) 2009, that the law has not fixed any time limit for lodging FIR and delayed FIR is not illegal. Though prompt lodging of FIR is ideal, that by itself does not guarantee the genuineness of the version given in it. Whenever there is delay in lodging FIR, the Court ought to look for reasons, if any. But, delay by itself cannot be the sole ground to doubt and discard the entire case of the prosecution though it does put the Court, on guard, to look for explanation, if any.

12. In **Karnel Singh Vs. State** AIR 1995 SC 2472, there was considerable delay in lodging FIR and the contention made before the Hon'ble Supreme Court was that there was sufficient time for tutoring the prosecutrix who in that case was a married lady and therefore her evidence could not be

believed. Repelling the contention the Hon'ble Supreme Court held as under:

“The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false.”

13. In **State vs. Gurmeet Singh**, AIR 1996 SC 1393, the Hon'ble Supreme Court, inter alia observed as under:

“The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. *It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.*”

14. The courts need to keep in mind that the cases of rape,

particularly with unmarried girls, involve not only the honour and reputation of the family but the very future of the girl, who has been subjected to this heinous crime. The family of a minor girl, who has been subjected to rape, therefore, needs time to think over and deliberate whether to report the matter to the police and thereby take the risk of jeopardising the future of the girl, particularly her marriage prospects, or not. In fact, a number of incidents of rape of minor girls are not reported due to apprehension of the parents that if it becomes public that their daughter has been subjected to rape, they may find it extremely difficult to get a suitable matrimonial alliance for her. Therefore, they need to examine all the pros and cons before taking an appropriate decision in a matter of this nature. The dilemma of the family members become more acute when the person committing rape happens to be a relative or a friend.

15. In the present case, according to the parents of the prosecutrix, the incidents of rape were not reported by her to them soon after they took place with her. According to PW-2, mother of the prosecutrix, when they entered the room in the night of 25/26th April, 2004, they found the appellant

and the prosecutrix sitting separately and it was only after several months that their daughter informed her that the appellant had raped her 5-6 times, at the time he performed HAWAN in their house. According to PW-3. Father of the prosecutrix, she took them into confidence only after about four months and on the very next day he took her to the police station. As far as the prosecutrix is concerned, in her examination-in-chief, she specifically stated that she did not inform her parent in the night of 25/26th April, 2004 as she had been threatened by the appellant. She further stated that on subsequent occasions also, being afraid of the appellant, she did not disclose the incident to her parents. In the later part of her deposition she said that two months after she had been raped for the first time, she disclosed this fact to her mother and they informed the police one month thereafter. In her cross-examination, however, she stated that on the day she was raped for the first time, she had handed over her bloodstained clothes to her parents and had told them that she had been raped by him.

16. It is difficult to accept that the parents of the prosecutrix, despite having come to know of the appellant

raping their daughter would not have reported the matter to the police and would also have allowed the appellant to keep on visiting their house, and remain all alone in the company of their daughter, without even trying to keep a check on him. This is not the way the parent of a minor girl would behave on coming to know of rape with their daughter. Even if they decide not to report the first incident of rape to the police, in order to avoid adverse publicity and embarrassment to their family and their daughter, they would certainly not allow the rapist to come again and again to their house and then to remain all alone in the company of their daughter unless their daughter has been subjected to rape with their tacit approval. The true fact seems to be that the prosecutrix, who was a minor girl less than 15 years old when she was subjected to rape, was scared on account of the super natural powers claimed by the appellant and genuinely believed that if the incident was reported by her to her parents, the appellant, possessed since he has a super natural powers such as controlling a gin, he would definitely kill her parents using the super natural powers wielded by him. The prosecutrix came from a rather lower strata of the society and

was a school going child when she was subjected to rape. The appellant was not a stranger to her. He was a relative who had represented to her parents that if he performed HAWAN in their house and also a Puja by an unmarried girl was performed by him either in darkness or at the bank of a river, that would result in the flourishing of the business of her father. An educated and aware family would not have believed a claim of this nature but we cannot deny that in our country there are many people who still believe that the persons claiming to be TANTRIK possessing super natural powers are capable of giving desired results to them, if they scrupulously follow the instructions given by such a person. In the present case, the parents of the prosecutrix allowed him to remain in the company of their daughter in darkness, believing the false claim made by him. In fact, there have been instances where people have just killed their child under the influence of persons such as the appellant who claim to be TANTRIK possessing super natural powers. Therefore, there was nothing unusual in the prosecutrix, who came from a weaker section of the society and did not possess necessary awareness, to believe that the appellant was capable of

harming her parents, in case she complained against him to her parents. It has come in evidence that the appellant had committed similar act of rape with the cousin of the prosecutrix and he was arrested when those incidents of rape were reported to the police. Obviously, when the appellant was arrested for committing rape with the cousin of the prosecutrix, she realized that he, in fact, was a monster, who had abused not only her but also her cousin sister. Finding that the appellant despite his claiming to possess enormous super natural powers was not able to save himself from being arrested for rape of her cousin, the prosecutrix was able to overcome her fear of the appellant and the super natural powers claimed by him and decided to disclose the matter to her parents. The claim in the cross-examination that she had disclosed the incident to her mother and had also handed over the clothes to her, may be an attempt to overcome the embarrassment which she felt in the court, on account of her failure to disclose incidents of this nature to her mother. Once the matter was brought to the knowledge of the parents, there was no delay in reporting it to the police. Thus, there is adequate explanation for the delay which took

place in reporting the incidents of rape to the police.

17. In case I believe the deposition of the prosecutrix in her cross-examination, to the effect that on the very day she was subjected to rape, she had not only disclosed the incident to her mother, the inevitable inference is that the parents of the prosecutrix were not party to her being subjected to rape by the appellant, since they believed that he being a TANTRIK, their business of furniture will flourish in case the appellant is allowed to have his say, even at the cost of sacrificing the honour and dignity of their own daughter. Since they continued to believe in the TANTRIK powers claimed by the appellant, they, in that case, would have allowed him to continue to have his say, under a belief that it would result in their business getting flourished. Later, when they found that their business had not flourished and that the appellant was, in fact, did not wield any super natural power and was only a crooked, who had also spoiled the life of their niece in a similar manner, they decided to report the matter to the police. Either way, the appellant would be guilty of rape since consent on the part of the prosecutrix and/or parents would be absolutely immaterial when the prosecutrix was

less than 16 years of age at the time of commission of rape on her.

18. It was pointed out by the learned counsel for the appellant that as per the opinion of PW-5, Dr.Ashish Jain, who examined the appellant, no definite opinion regarding the capacity of the appellant to perform sex could be given. This, in my view, does not help the appellant in the facts and circumstances of this case. The medical opinion does not say that the appellant was incapable of performing sexual act. There is no reason to disbelieve the positive assertion of the prosecutrix that the appellant had raped her a number of times. The prosecutrix has fully described the act committed by the appellant with her and has specifically stated that the penetration by the appellant lasted about half an hour. The hymen of the prosecutrix was found torn when she was examined in hospital. Had the appellant not been capable of performing sexual act, he would not have been able to penetrate and the hymen of the prosecutrix would not have been found ruptured. Admittedly, the appellant not only been convicted for raping the cousin of the prosecutrix the appeal filed by him against his conviction in that case also

been dismissed by the Punjab and Haryana High Court. Therefore, the conviction in the other case for the very same offence is yet another proof that the appellant was capable of performing sexual act.

19. The learned counsel for the appellant has pointed out a few discrepancies in the case of the prosecution. He has pointed out that when the prosecutrix was examined in hospital she told the doctor that the last incident of rape had happened 15 days before her examination in the hospital, whereas, in fact, the appellant was in custody since 15 days before the date the prosecutrix was examined in hospital. I find that there has been no cross-examination of the prosecutrix on this aspect of the case. Her attention was not drawn to this endorsement made on her MLC and she was not asked as to whether such a statement was made by her in the hospital. Moreover, either the prosecutrix or someone accompanying her may have made such a statement in the hospital by estimation. Nothing, therefore, really turns on this endorsement in the MLC of the prosecutrix, I see no reason to disbelieve the deposition of the prosecutrix.

20. It was also pointed out by the learned counsel for the

appellant that according to PW-1, the prosecutrix, and PW-3, the father of the prosecutrix, the appellant had come to their house on 25th April, 2004, whereas according to PW-2, the mother of the prosecutrix, he had come on 26th April, 2004. Since the incident in question took place in the night intervening 25/26th April, 2004. It is hardly material whether the appellant had come to their house on 25th or 26th April, 2004. In fact, the appellant himself has admitted that he had been visiting the house of the prosecutrix in the year 2004, though he denied having visited the house in the night of 25th April, 2004. Therefore, the discrepancy as regards the exact date on which the appellant visited the house of the prosecutrix is not material at all.

21. The defence taken by the appellant is that he had sold certain buffalos to the father of the prosecutrix and that instead of paying for the buffalos he implicated him in this case, so as to avoid paying the money, which he owed to the appellant. In my view, the defence taken by the appellant is not at all believable. There is no documentary proof of the appellant having sold buffalos to the father of the prosecutrix. The appellant does not even say how many buffalos were sold

by him and what exactly was the consideration for which buffalos were sold by him to the father of the prosecutrix. In case the father of the prosecutrix wanted to implicate the appellant only in a false case of rape, he would have preferred to allege rape with his wife, instead of bringing her daughter into picture and thereby jeopardising the very future, including marriage prospects of his young daughter. The appellant being a relative and a frequent visitor to their house, it would have been more convenient for the father of the prosecutrix to allege rape with his wife, instead of alleging rape with his daughter. If the parents of the prosecutrix were to implicate the appellant in a false case of rape, they would not have said that the incidents of rape had taken place a few months before they were reporting the matter to the police. They knew that if they report incidents which took place a few months ago, the first reaction of the police or courts would be to ask them as to why they did not report the matter to the police on the very first day their daughter was subjected to rape in their house. Therefore, they would have preferred to lodge a recent incident of rape instead of saying that the incident took place a few months ago. In any case,

admittedly the appellant was already in custody when the FIR in this case was lodged. The appellant having already arrested for raping the cousin of the prosecutrix, no motive could thereafter have subsisted for the father of the prosecutrix to implicate him in a similar case, as he would have felt satisfied on the appellant being arrested for the rape of his niece and, therefore, there would have been no necessity for him to concocted for these incidents of rape against the appellant. The prosecutrix was a young girl aged about 15 years when she was subjected to rape. She knew it very well that by reporting incidents of this nature, she would be jeopardising her reputation and matrimonial prospects. The false accusation of rape are more difficult to make when the person involved is either related to the family or is otherwise well-known to them. While disclosing these incidents to her parents, the prosecutrix would be conscious that she may be looked down and even disbelieved by her own family members who may hold her to be at least partly responsible for causing embarrassment to the family and bringing it into disrepute. When the parents of an unmarried girl report incident of this nature to the police, they are very

much conscious that if the incident becomes public, it may not be possible for them to find a suitable match for their daughter since not many persons would be willing to marry a girl who has been subjected to rape, and that too in her own house and by a relative of the family. The parents know it very well that if they report the matter to the police, they would have to take their daughter first to the police station for giving the statement, then to the hospital for her medical examination, then before a magistrate for recording her statement and, thereafter, bring her to the trial court to narrate the incident, in the presence of a number of outsiders, including Presiding Judge, Prosecutor and Defence Counsel thereby bringing causing acute embarrassment to the girl. They would, therefore, be extremely unwilling to take recourse of going to the police with allegations of rape unless they are absolutely sure that the truth is on their side and there is no likelihood of their daughter being disbelieved and that they would not face embarrassment and humiliation on account of being disbelieved by the court.

22. It is by now settled proposition of law that the testimony of the prosecutrix, if believed, can be the sole basis of

conviction in a rape case and there is neither a rule of law, nor of prudence, which requires corroboration of the testimony of a prosecutrix, before it can be acted upon. The courts need to recognise the fact that ordinarily there would be no direct evidence of such a crime, other than the statement of the prosecutrix. In any case, even if the court does look for corroboration, it is available in the form of statement made by the prosecutrix to her mother, then to the doctor who examined her in the hospital and then in her statement to the Magistrate. Her testimony also finds corroboration from her medical examination wherein her hymen was found to be torn.

23. Though, this is not the case of the appellant that he had sexual intercourse with the prosecutrix with her consent, even if that had been the case, the consent would have been absolutely immaterial as the prosecutrix was less than 16 years of age when she was subjected to rape. A perusal of the school certificate of the prosecutrix, Ex.PW-12/A, and the copy of the school register, Ex.PW-12/B, shows that the date of birth of the prosecutrix is 16th December, 1989. There is no evidence to rebut the documentary evidence regarding the

age of the prosecutrix and even the appellant does not claim that the prosecutrix was not less than 16 years of age in April, 2004.

24. For the reasons given in the preceding paragraphs, I hold that the appellant has rightly been convicted under Section 376 IPC.

25. Coming to the sentence, though the crime committed by the appellant is very heinous and he deserves no leniency in the matter of sentence, considering the fact that he is already undergoing sentence of rigorous imprisonment for seven years for committing rape with the cousin of the prosecutrix, I am of the view that the ends of justice will be met if the substantive sentence awarded to him is reduced to seven years, provided that the sentence awarded to him in this case starts running only after he has already undergone the sentence awarded to him for committing rape with the cousin of the prosecutrix. Hence, while maintaining the sentence of fine as well as the sentence of simple imprisonment for six months in default of payment of fine, the substantive sentence awarded to the appellant under Section 376 IPC is reduced to seven years. The sentence awarded to the

appellant under Section 506 IPC does not call for any interference. The sentences awarded to the appellant in this case shall start running only after he has served the sentence awarded to him for raping the cousin of the prosecutrix.

26. One copy of this order be sent to the appellant through concerned Jail Superintendent. The trial court record be sent back, along with a copy of this order.

(V.K.JAIN)
JUDGE

FEBRUARY 8, 2010
RS/'sn'