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

+ CRL. APPEAL No. 667/2007

% Decided on: 7th January, 2010

Shyambir Appellant
Through: Mr. S.B. Dandapani, Adv.

Versus

State Respondent
Through: Mr. Manoj Ohri, APP.

**CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK**

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

A.K. PATHAK, J.(ORAL)

1. Appellant has been convicted under Sections 376/506 of the Indian Penal Code (for short referred to as IPC) by the learned Additional Sessions Judge, Delhi; sentenced to face rigorous imprisonment for eight years and pay fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for five months for the offence

under Section 376 of the Indian Penal Code; sentenced to undergo simple imprisonment for six months and pay fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for one month for having committed offence under Section 506 of the Indian Penal Code.

2. Briefly stated, facts of the case are that the appellant was neighbour of prosecutrix, aged about 8 years. On 17th January, 2006 at about 5:30 PM prosecutrix was playing in her house, while her mother was cooking food at the roof. Appellant came there and forcibly took the prosecutrix with him to a nearby jungle and removed the pyjama and underwear of the prosecutrix. When prosecutrix started weeping appellant gave beatings to her and gagged her mouth. Thereafter he put her on the ground and laid himself upon the prosecutrix and raped her. As a consequence of this act clothes of the prosecutrix became blood stained. Appellant also threatened the prosecutrix that in case she disclosed the incident to any one, he would kill her and her parents. Appellant left the prosecutrix near her house and went away. Prosecutrix narrated the incident to her mother Shyam Dulari, who in turn informed the police.

3. Information regarding incident was recorded as DD No. 62 in the police station Khajoori Khas and was handed over to

ASI Tejawati for enquiry (hereinafter referred to as "Investigating Officer"), who reached the spot and came to know that the prosecutrix had been taken to GTB Hospital by the PCR. Thereafter, Investigating Officer reached GTB Hospital, obtained MLC of the prosecutrix and recorded statement of the prosecutrix wherein she described the incident as mentioned in preceding para hereinabove. Pursuant to this whereof FIR No. 27/2006 under Sections 376/506 IPC was registered.

4. Doctor Namita medically examined the prosecutrix and noticed abrasions on her left thigh, left leg and right thigh; on separating the labia tear fourchette, minimal bleeding plus twigs at perineum were found present. History of rape, as told by the prosecutrix and her mother, was recorded in the MLC by the doctor. Undergarments, Vaginal swab and perineal swab were sealed by the doctor and were handed over to the Investigating Officer.

5. Appellant was apprehended from his house immediately after the incident. He was arrested by the Investigating Officer. He was medically examined in S.D.N. Hospital, Shahdara and doctor opined that he was capable of performing sexual intercourse. Semen, blood sample and

underwear of appellant were also taken in possession and sealed by the doctor.

6. During the investigation, certificate was obtained from Nagar Nigam Prathmik Balika Vidhyalaya, Sonia Vihar, Delhi to verify age of the prosecutrix. As per certificate, prosecutrix was born on 17th January, 1998. Above referred exhibits were sent to Forensic Science Laboratory, Delhi and its report was obtained, according to which, human semen was detected on vaginal swab of the prosecutrix, blood was also found on the underwear, perineal swab of the prosecutrix as well as on the T-shirt and underwear of the appellant.

7. After completion of investigation charge-sheet was filed in the court of learned Metropolitan Magistrate, who took cognizance of the offence and committed the case to the sessions court for trial as offence under Section 376 of the Indian Penal Code is exclusively triable by the sessions court.

8. Charges under Sections 323/376/506 IPC were framed against the appellant on 3rd April, 2006 to which he pleaded not guilty and claimed trial.

9. Prosecution examined thirteen witnesses in all. Thereafter statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded on 26th March, 2007 wherein entire incriminating evidence which had come

on record, was put to him. Appellant admitted that he was the neighbour of prosecutrix. He also admitted that the age of prosecutrix was about eight years. However, he denied that he had taken away the prosecutrix with him on 17th January, 2006 at about 5:30/6:00 PM and committed rape on her. Appellant stated that he had been falsely implicated by the mother and uncle of the prosecutrix in order to avoid repayment of a loan of Rs.5,000/-, which they had taken from him. However, no evidence was led by the appellant to substantiate his this defence.

10. Statement of prosecutrix, without oath, was recorded as PW2. Statement of mother of prosecutrix was recorded as PW3. Learned Additional Sessions Judge found their statements trustworthy and reliable to conclude that appellant had taken away the prosecutrix on 17th January, 2006 from her house to a jungle, and committed rape upon her. Learned Additional Sessions Judge was also of the view that the version of PW2 was corroborated from the medical evidence. As per the MLC, superficial abrasions were found on the left thigh and left leg and right thigh of the prosecutrix. On separating the labia tear in fourchette, minimal bleeding was also noticed. The fact that Prosecutrix was aged about eight years at the time of incident was proved from the school

certificate Ex. PW7/A. This fact was otherwise admitted by the appellant in his statement under Section 313 of the Code of Criminal Procedure. In view of above evidence, learned Trial Judge concluded that the prosecution had succeeded in establishing that the appellant had in fact committed the offences under Sections 376/506 IPC, accordingly, convicted him under the aforesaid provisions.

11. I have carefully perused the statements of prosecutrix PW2 as well as her mother PW3 Shyam Dulari and find them trustworthy and reliable. Their statements had remained unshattered on material point in their respective cross-examinations. PW2 has categorically deposed that the appellant had come to her house on the fateful day and took her to a nearby jungle where he removed his as well as her clothes and put her on the ground and thereafter laid over her. She started feeling pain at the place of passing urine and also started bleeding from there. When she tried to raise noise appellant gagged her mouth. Appellant left the prosecutrix near her house and threatened her that in case she disclosed this fact to any one he would cut her and her parents into pieces. After reaching home, prosecutrix narrated the incident to her mother, who informed the police on telephone. Her this statement had remained unshattered

in her cross-examination. PW3 Shyam Dulari has also corroborated PW2 with regard to the visit of the appellant to her house on the date of incident at about 5:30 PM. She categorically deposed that the appellant had taken her daughter with him. Later on, when she returned home, she was weeping. On her enquiring as to what had happened, she revealed that appellant had taken her to a jungle, removed her clothes as well as his clothes and laid upon her, at which she started feeling pain in her private part and also started bleeding; appellant gagged her mouth when she tried to raise noise. Testimony of PW3 had also remained unshattered in her cross-examination on this point.

12. I do not find any reason to disbelieve the statement of prosecutrix PW2 which otherwise also stands corroborated from the medical evidence on record. Perusal of MLC Ex. PW12/A shows that abrasions were found on the left thigh, left leg and right thigh of the prosecutrix. On separating the labia tear in fourchette bleeding was also found. Injuries on the private part of the prosecutrix corroborate the statement of PW2. PW13 Dr. Namita had proved this MLC. She was not cross-examined with regard to the injuries found on the person of prosecutrix. Medical evidence in this case support the prosecution case.

13. Besides this, I find that the history of rape had been mentioned in the MLC by the PW13 Dr. Namita. It has been categorically mentioned that the history was given by the prosecutrix and her mother. Name of the appellant has been mentioned as the perpetrator of crime of rape upon the prosecutrix. There is no reason as to why doctor would record a wrong statement. This also shows that the stand taken by the prosecutrix and her mother had remained consistent right from the beginning. In view of the above discussions, I am of the opinion that the learned Additional Sessions Judge had rightly concluded that prosecution had succeeded in proving its case beyond the shadow of reasonable doubts and convicted the appellant for the offences under Sections 376/506 IPC.

14. No material discrepancy could be pointed out in the statements of PW2 and PW3 by the learned counsel for the appellant during the course of arguments. Learned counsel for the appellant has contended that, in her cross-examination, prosecutrix admitted that the incident was narrated by her on the tutoring of Investigating Officer and her parents. Thus, her testimony cannot be read against the appellant. In absence of her testimony prosecution has miserably failed to prove that prosecutrix was raped by the

appellant. I do not find any force in this contention of the learned counsel. It appears that a court question was put to the prosecutrix as to whether the Investigating Officer and her parents had told her to narrate the actual happening. In answer to this question prosecutrix first stated "Yes" but thereafter continued to add that the occurrence did actually take place with her. This answer of the prosecutrix clearly shows that the incident indeed took place with her in the manner she described, while deposing in the court. The answer given by her does not indicate in any manner whatsoever that the story of rape was concocted by her parents and that it was narrated by her in the court on their tutoring. As already mentioned in the preceding paras hereinabove, the statement made by the prosecutrix had remained consistent and was also corroborated by the medical evidence and other scientific evidence, inasmuch as, semen was found in the vaginal swab of the prosecutrix. The argument of learned counsel is, thus, rejected.

15. Learned counsel for the appellant has next contended that the mother and uncle of prosecutrix had taken a loan of Rs.5,000/- from the appellant and in order to avoid repayment of loan, appellant was falsely implicated in this case by the prosecutrix, her mother and uncle. This argument of the

learned counsel for the appellant needs to be rejected straightaway. This defence taken by the appellant is not a probable defence and was rightly not accepted by the learned trial court. It is highly improbable that a person will involve his minor daughter only in order to avoid liability of repayment of a loan. No prudent person would like to put at stake the reputation of family and face ignominy and defamation in the society as also jeopardize the marriage prospect of his daughter by attaching the stigma of rape, only in order to avoid repayment of loan. Story propounded by the appellant in his defence had not only remained unsubstantiated by any cogent evidence but otherwise is also improbable and cannot be accepted.

16. In the light of the above discussions, I am of the view that on the basis of evidence led and available on record learned Additional Sessions Judge rightly convicted the appellant for the offences under Sections 376/506 IPC. Keeping in mind that appellant, a middle aged person, had committed rape upon a minor girl aged about eight years, in my view, has been appropriately sentenced by the learned Additional Sessions Judge. I do not find any material illegality, impropriety or any infirmity in the impugned order of conviction and sentence.

17. Dismissed.

A.K.PATHAK, J

JANUARY 07, 2010
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