

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

% *Judgment Reserved on: September 23, 2014*
Judgment Delivered on: September 30, 2014

+ **CRL.A. 420/2012**

SHAMSHER SINGH Appellant
Represented by: Mr.M.L.Yadav, Advocate.

versus

STATE OF DELHI Respondent
Represented by: Ms.Aashaa Tiwari, APP for the State
with SI Raj Bala, PS Narela.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Shamsher Singh is convicted for the offence punishable under Section 376(2)(f) IPC for raping a minor aged 5 years and sentenced him to undergo imprisonment for life and to pay a fine of ₹3 lakhs and in default of payment of fine to undergo simple imprisonment for two years. Out of the fine, if recovered, a compensation of ₹2,50,000/- is to be given to the prosecutrix .

2. Shamsher Singh assails the judgment on the ground that the prosecutrix is a tutored witness and cannot be relied upon. The medical evidence adduced does not support the case of the prosecutrix. The mother of the prosecutrix has not supported the version of the prosecutrix and has stated the injuries to the prosecutrix were received in an accident and no case was made out against Shamsher Singh. The prosecutrix could not have identified Shamsher Singh. Admittedly, Shamsher Singh was shown to her

in the police station even then she was unable to identify Shamsheer Singh. There is inordinate delay in registration of the FIR and it is not evident when the copy of the FIR was sent to the learned Metropolitan Magistrate. In the alternative, it is submitted that the sentence imposed on Shamsheer Singh is too harsh and be reduced.

3. On October 18, 2008 an information was received regarding commission of an offence of rape in the jurisdiction of PS Narela vide DD No.21A through the PCR which was assigned to ASI Karan Singh, who along with Ct.Prem Prakash reached Lampur Road, Bankner where they got to know that the injured/prosecutrix and her mother have been taken to SRHC hospital. ASI Karan Singh reached the hospital and obtained the MLC of the prosecutrix. In the meantime W/ASI Raj Bala reached the hospital who recorded the statement of mother of the prosecutrix. The mother of the prosecutrix PW-4 stated to W/ASI Raj Bala that she was having three children and her husband used to supply drinking water in jugs. On that day at about 3.05 pm she was sitting along with her brother-in-law and children at her house and her daughter, the prosecutrix aged about 5 years told her that she was going for call of nature and went to the vacant adjacent plot. After about 10 or 15 minutes, the prosecutrix came back weeping and her clothes were smudged with blood. She informed that one person in black clothes kept his hand over her mouth and took her by the side of the heap of dung cakes and committed rape. She raised alarm on which she was threatened and beaten. Thereafter the man ran away towards the field. Her MLC Ex.PW2/A noted hymen torn, vagina admitting one finger, clots present in vagina, Recto-vaginal communication. The child needed surgery with anaesthesia thus she was shifted to LNJP hospital for

further treatment.

4. PW-3 Dr.Raghu Nath appeared from the LNJP Hospital and proved the discharge slip of the prosecutrix who was admitted in LNJP Hospital on October 18, 2008 and was discharged on October 27, 2008 with alleged history of sexual assault with traumatic Rectovaginal fistula. In the cross-examination, Dr.Raghu Nath was suggested that such type of injury can happen if a danda is inserted inside the vagina forcibly to which he agreed. There is no cross-examination on account that this was an earlier injury to the prosecutrix and did not occur on October 18, 2008 when she was admitted to LNJP hospital. PW-4 the mother of the prosecutrix deposed about the entire incident, however she refused to identify Shamsheer Singh as she was not a witness to the incident and rightly so. Thus, this Court is left with the evidence of PW-1 the prosecutrix which is required to be analyzed with regard to the incident and the identity of the appellant.

5. After verifying the competence of the prosecutrix, the Court recorded her statement and she stated that on that day she had gone to a field outside her house for latrine. There one boy who used to visit that area frequently came to her and pressed her mouth with his hand, lifted her and took her behind a Bitora (i.e. a heap of cow dung i.e. Uple). There he put off his garments, also put off her underwear and had done “Galat Kam” and “Ganda Kam” with her. By “Ganda Kam” he put his male organ into her vagina and blood came out. The boy had given beating to her when she started crying. She stated that she could identify the accused and pointed out towards Shamsheer Singh as the accused who did “Ganda Kam” with her. She stated that she was medically examined and treated by the doctor and that she does not excrete/pass stool from the anus because she received severe injuries due

to which the doctor gave some treatment and now she passes the stool from an artificial passage made by the doctors on the left side of the abdomen. She also stated that after the incident she went to similar Court with her mother and one Judge Saheb asked her about the incident which she told. She further stated that after some days of the incident, she identified Shamsher Singh and he was arrested.

6. In the cross-examination, the prosecutrix was suggested that prior to the offence committed on her person, she had received injury from some other source to which she answered “isine mujhe chot mari thi”. She denied the suggestion that she identified the accused on the asking of mother and police officials and reiterated that the accused committed “Galat Kam” with her. She was also subjected to lengthy cross-examination, however, she stood by it and every suggestion directed towards the identity of the accused was thwarted by her and she reiterated that Shamsher Singh was the accused. Though the matter of the prosecutrix vacillated in identifying the appellant however her identification is not material as admittedly she was not present at the time of incident and thus could not have identified the offender.

7. The offence of rape committed on the prosecutrix who was a girl of tender age stood proved by medical conditions. Further as per the FSL report, human semen was detected on the shirt of the prosecutrix of B-Group origin. Dr.Sushma PW-8 who was working as Senior Resident Gyne at SRHC Hospital, Narela on October 18, 2008 and had examined the prosecutrix deposed about her medical condition as noted in the MLC. The Court questioned her to explain the term “Recto vaginal communication” to which she answered “when we do a rectal examination, rent was felt which

was communicating into vagina which may be the result of any external object's insertion forcibly either through rectum or through vagina". She was further questioned by the Court as to whether the communication was possible by penetration of penis to which she replied in the affirmative and clarified that recto vaginal communication is also possible by accidental insertion of an object like a danda or pencil. Thus the possibility of the injury caused to the prosecutrix by penile penetration coupled with the presence of semen on her shirt proved beyond reasonable doubt the offence of rape committed on the prosecutrix.

8. Considering the evidence on record, the appellant has not been able to assail his identification by the prosecutrix in her cross-examination nor on the factum of rape. Consequently the appeal is dismissed.

9. T.C.R. be returned.

10. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 30, 2014
'v mittal'