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

Date of Decision: 30th April, 2015

\+ **CRL.A. 281/2012**

SANJEET SAHNI ..... Appellant
Through: Ms.Aishwarya Rao, Advocate

versus

STATE ..... Respondent
Through: Ms.Fizani Hussain, Additional Public Prosecutor for the State along with WSI Renu, PS Adarsh Nagar

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. In the words of Hon'ble Mr. Justice Dipak Mishra as observed in ***Shyam Narain vs. The State of NCT of Delhi***, (2013) 7 SCC 77, the wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire have driven the appellant to commit a crime which can bring in a 'tsunami' of shock in the mind of the collective, send a chill in the spine of the society, destroy the civilized stems of the milieu and comatose the marrows of sensitive polity.

2. This is a case of brutal rape of a 9 year old girl. The learned Trial Judge after recording conviction u/s 376 (2) (f) of Indian Penal Code (for short IPC) had taken note of the brutality meted out to the child and sentenced him to undergo rigorous imprisonment for 12 years and to pay a fine of Rs.10,000/- failing which to undergo simple imprisonment for a period of two months.

3. The horrid episode as unfurled by prosecution is that on 19th March, 2009, a 9 years old child, daughter of Sanjay Sahni was sleeping in her room. The appellant had come from his village in search of a job and used to live in the house of Sanjay Sahni. When the family members were sleeping, accused Sanjeet Sahni came to her, removed her undergarments and also removed his pant and thereafter committed rape upon her. The accused put his hand on her mouth and when he removed his hand, she raised alarm on which the accused ran away. Her father woke up and chased the accused but could not apprehend him. Sanjay Sahni tried to search the accused whole day but could not trace him out. The victim was taken to BJRM Hospital where she was medically examined. Police was also informed which swung into action. SI Mukesh Devi after recording the statement of the victim made endorsement upon the same and got the FIR registered. During the course of investigation, accused was arrested from Bihar. After completing investigation, charge sheet was submitted against him.

4. The prosecution, in order to establish the charge levelled against the accused, examined 13 witnesses including the child 'A',

her father, the doctors and other formal witnesses.

5. The accused, in his statement u/s 313 Cr.P.C. denied the case of prosecution and alleged his false implication in this case. According to him, he was residing at Village Barola**,** Azadpur, Delhi in the house of one Kale and never stayed with Sanjay Sahni. He had borrowed some money from Sanjay Sahni which he could not return to him. Therefore, he implicated him in this false case. The defence, however, chose not to adduce any evidence.

6. Learned Trial Court considering the entire evidence on record and the contentions raised on behalf of the accused came to quote that the version of the prosecution could be relied upon in entirety and by no stretch of imagination it could be said that she was a tutored witness; the delay in lodging the FIR was at all not fatal to the case of prosecution as the victim and her father are illiterate persons and were not acquainted with the technicalities of law; that the factum of rape has been clearly proven from the medical evidence and the testimony of doctors which have remained unimpeachable despite roving cross-examination; that plea of any hostility and animosity has not been proved and the forensic evidence also substantiates the case of the prosecution. Considering the entire evidence in detail, the learned Trial Judge found the accused guilty of the offence u/s 376 (2) (f) of Indian Penal Code and sentenced him as has been stated hereinbefore.

7. In appeal Ms. Aishwarya Rao, Advocate from Delhi High Court Legal Services Committee, representing the appellant

challenged the findings of the learned Trial Court, *inter alia*, on the ground that:-

(i) Prosecution has not examined Smt. Rekha Sahni, bhabhi of the appellant who is the material witness as she was present after the incident and as per the statement of father of the prosecutrix, she was responsible for looking after the prosecutrix after the incident and also administered first aid to her. Non-examination of this witness is fatal to the case of prosecution.

(ii) The medical report of the prosecutrix has not proved the guilt of the appellant beyond reasonable doubt. As per the MLC, no fresh external injury or bleeding was found in abdomen. Even in the scientific evidence, there is no opinion regarding commission of offence as the sample was putrefied. Even otherwise, there was huge delay in sending the samples to the FSL as the samples were collected on 21st March, 2009 and the same were sent on 7th December, 2009, i.e., after nine months of the date from which they were collected.

(iii) There is no evidence on record to prove that the appellant was residing at the complainant's house on the alleged date of incident.

(iv) There is considerable delay in reporting the matter to the hospital and police authorities. The incident

alleged to have occurred on the intervening night of 19-20th March, 2009. However, the FIR was lodged belatedly.

(v) As per the statement of father of the prosecutrix, after the incident, his daughter was soaked in blood and there was a lot of blood on the floor, however, no such clothes were seized by the Investigating Agency which shows the presence of blood at the spot. In the absence of proper and timely investigation, the guilt of the appellant has not been conclusively proved beyond reasonable doubt and as such, the conviction of the appellant cannot be sustained and deserves to be set aside.

8. Rebutting the submissions of the learned counsel for the appellant, Ms. Fizani Hussain, learned Additional Public Prosecutor for the State supported the reasoning given by the learned Trial Court while convicting the appellant on the ground that the testimony of the prosecutrix is consistent throughout and finds due corroboration from the testimony of his father, medical evidence as well as scientific evidence. Non-examination of Smt. Rekha Sahni, bhabhi of the accused is not fatal, inasmuch as, it is the quality and not the quantity of the number of witnesses which has to be seen. Testimony of a single witness is sufficient to sustain conviction. As such, it was submitted that appeal is meritless which deserves to be dismissed.

9. Admittedly, the prosecution case is based on the testimony of

victim child who was 9 years of age at the time of incident.

10. In so far as the issue that the child was 9 years old at the time of incident, the same stands proved from the certificate issued by the Principal of Nigam Prathmic Balika Vidyalaya, Civil Lines where the child was studying in Class III. The certificate issued by the Principal of the School dated 30th March, 2009 shows the date of birth as 3rd June, 2000 proving that on the date of incident, the child was hardly 9-10 years of age. The accused has also not disputed the certificate issued by the Principal of the School. Thus, it stands proved that the prosecutrix was between 9-10 years of age as on the date of incident.

11. A question which further arises is as to whether conviction can be recorded on the sole testimony of a child witness or not.

12. This issue was dealt by the Apex Court in ***Virendra vs. State of UP***, (2008) 16 SCC 582. Relevant paras are 18 to 21 and the same are reproduced as under:-

> 18. *The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that :*
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> > *" 118. Who may testify- All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind."*
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> *20. In* ***Dattu Ramrao Sakhare*** *v.* ***State of Maharashtra****, (1997)5SCC341 it was held as follows: (SCC p. 343, para 5) :-*
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> > *"5..... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child*

witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

19. "A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

*21. Subsequently, in the case of **Ratansinh Dalsukhbhai Nayak v. State of Gujarat**, 2004 Cri LJ 19 wherein one of us (Dr. Arijit Pasayat) was a member the bench held that though the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath."*

13. From the above, it becomes clear that before recording conviction on the sole testimony of a child witness, i.e., the prosecutrix herein, the Court has to ensure whether the victim PW3 is a reliable witness or not. If her testimony is found to be trustworthy and reliable then conviction can be recorded on her sole testimony otherwise accused will be entitled to benefit of doubt.

14. Now coming to the deposition of the victim child, in her initial statement made to the Investigating Officer Ex.PW2/A, the prosecutrix not only specifically named the accused but also described the entire incident stating, *inter alia*, that Sanjeet Kumar who was of

her village had come for the purpose of searching for some job a week prior and used to sleep in her house. At about 11:00 PM, when everybody in the house was sleeping, Sanjeet Sahni removed her clothes and also his underwear and committed *ganda kaam* with her. She was taken to the hospital on the following day where also she gave following history to the doctor:-

> *"She is a student of class III". On 20th March, 2009, at 12:30 AM, when she was sleeping, she was raped by Sanjeet Sahni. After that she washed her private parts. Undergarment which was used at or immediately after the incident was brought by patient."*

15. After the registration of the case, the prosecutrix was produced before the learned Metropolitan Magistrate and her statement u/s 164 Cr.P.C. Ex.PW2/D was recorded wherein she not only named the accused but also explained the alleged act and described the incident. Thereafter, when she appeared in the witness box, she reiterated her earlier version and gave a vivid account of the entire incident. Despite cross-examination, nothing material could be elicited to discredit her testimony.

16. It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused

where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

17. That being so, the testimony of prosecutrix being cogent, consistent, reliable and credible is sufficient to sustain conviction. Even if as a matter of prudence, keeping in view her tender age, any corroboration is required, same is available in abundance.

18. On hearing the noise of prosecutrix PW1-Sanjay Sahni, father of the prosecutrix woke up. According to him, on the intervening night of 19-20th March, 2009, accused Sanjeet Singh, who is his nephew by the village relation had come to stay with them. After taking dinner, they were sleeping in the jhuggi. He was sleeping on the cot while his daughter 'A' aged about 9 years was sleeping on the floor. Sanjeet Sahni was also sleeping on the floor while his son was on the first floor with his nephew. While he was sleeping, he heard the cries of his daughter and then woke up. On seeing him, accused ran away. He found his daughter soaked in blood. Seeing the condition of his daughter, he immediately called Bhabhi of Sanjeet Sahni, namely, Smt. Rekha Sahni who was residing on the first floor and handed over his daughter to her whereas he himself went in

search of the accused. On the following day, he made a telephone call to the police and informed them about the incident. Police officials asked him to remain at the gate of the hospital. Then, the police officials came to the hospital. When the victim was taken to the hospital, her MLC Ex.PW3/A was prepared by Dr. Apran. At that time also, the victim gave the history of commission of rape on her by the accused. She was referred for gynaecological examination and in the testimony of PW4-Dr. Shakuntla Rani, she stated that as per the MLC Ex.PW3/A, although there was no fresh injury and bleeding yet in her cross-examination she deposed that possibility of rape having been committed upon the child 20 hours ago cannot be ruled out. She further clarified that after 20-24 hours, the blood in the case of a child aged 9 years can stop if administered home treatment. The father of the child and the prosecutrix herself have deposed that Smt. Rekha Sahni, Bhabhi of the accused had immediately administered home treatment to her after the incident and precisely for this reason, no fresh injury or bleeding was found. The undergarment which the prosecutrix was wearing at the time of incident was handed over to the doctor who handed over the same to the Investigating Officer Sub Inspector Mukesh Devi. The same was sent to FSL and as per the FSL report, Ex.PW13/G, human semen was detected on the same. The statement of the prosecutrix coupled with the report of FSL proves the incident having taken place and duly connects the accused with the commission of offence.

19. As regards the submission of learned counsel for the appellant that non-examination of Smt. Rekha Rani, bhabhi of the appellant is

fatal to the case of prosecution, the same deserves to be rejected. It is settled law that it is the quality and not the quantity of number of witnesses which matters. In ***Sunil Kumar vs. State of Govt. of NCT of Delhi,*** (2003) 11 SCC 367, Hon'ble Supreme Court repelled a similar submission observing that as a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The view was reiterated in ***Namdeo vs. State of Maharashtra,*** (2007) 14 SCC 150 and ***Kunju @ Balachandran vs. State of Tamilnadu,*** AIR 2008 SC 1381.

20. As regards delay in lodging the FIR, the incident had occurred on the intervening night of 19th-20th March, 2009 and DD No.31A was recorded on 20th March, 2009 at about 8:20 PM, pursuant to which FIR was registered on 21st March, 2009 at 00.15 hours showing that there was a delay of almost of 24 hours in registration of FIR.

21. In the case of ***Tulshidas Kanolkar vs. The State of Goa,*** (2003) 8 SCC 590, the Hon'ble Supreme Court has observed as under:

> *" ..... The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstances for the accused when accusation of rape are*

involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so the mere delay in lodging of first information report does not in any way render prosecution version brittle."

22. The record reveals that the prosecutrix and her family belongs to very poor strata of society. They are illiterate. Father of the prosecutrix Sanjay Sahni is physically handicapped, earns his livelihood by selling *bidis* and was unaware of the technicalities of the legal proceedings. Father had duly explained the causes of delay. According to him, on hearing the screams of his daughter, he woke up, saw his daughter soaked in blood and the accused ran away. The mother of the prosecutrix was not at home at that time. While leaving the child in the care of Smt. Rekha, bhabhi of accused, who was residing in the same jhuggi on the first floor, he himself went in search of the accused but could not succeed. On the next date, the child was taken to the hospital. At that time, doctors asked the father to first inform the police. He informed the police after which the local police came and the prosecutrix was medically examined. Thereafter, the statement of the prosecutrix was recorded on which the FIR was registered. Under these circumstances, the delay is validly explained and is not fatal to the case of prosecution.

23. The submission regarding non seizure of blood stained clothes or blood from the spot by the Investigating Officer of the case causing dent on the prosecution version again deserves rejection because the FIR was registered after about 24 hours of the incident, that being so, the blood would not have remained on the floor. Moreover, no such clarification was sought either from the father of the prosecutrix or prosecutrix herself or Investigating Officer of the case.

24. As regards absence of external injury on private parts of the victim, same does not belie the otherwise trustworthy testimony of prosecutrix. In ***Ranjit Hazarika vs. State of Assam***, (1998) 8 SCC 635; ***B.C. Deva @ Dyava vs. State of Karnataka,*** (2007) 12 SCC 122, the Apex Court has observed that merely because there were no injuries on the person of the victim and hymen was intact does not lead to a corollary that there was no coitus. Under the circumstances, from the consistent stand taken by the prosecutrix coupled with the medical and scientific evidence, learned Trial Court rightly observed that the prosecution had succeeded in proving that on the intervening night of 19-20th March, 2009, the accused raped the prosecutrix 'A' aged 9 years.

25. As regards the plea of accused regarding false implication on the ground that he had taken some money from the father of the prosecutrix but was unable to return the same and that he was not residing in the house of the prosecutrix, same rightly did not find favour with the learned Trial Court, inasmuch as, the plea is quite

unconvincing and vague. He has not disclosed as to how much amount he had taken from the father of the prosecutrix which he could not return. Even otherwise, it does not appeal to reason that a father would put his child's reputation at stake only to seek return of the borrowed amount and that too, under the circumstances, when he is aware that the accused himself who has come in search of job has no means to pay the amount. This plea seems to be concocted one. The other plea that he was residing in the house of Kale at Azadpur, he has not even examined the said Kale to prove that the accused was residing with him. On the other hand, there is consistent testimony of the prosecutrix as well as her father that the accused who had come in search of job from the village used to sleep in the house of the prosecutrix. They have further deposed that the accused used to leave the house early morning at about 5-6 AM and used to come back by 8:00-8:30 PM and then Sanjay Sahni and the accused used to cook meal together as mother of the prosecutrix at the relevant time was in her village.

26. Under the circumstances, in view of the voluminous evidence coming on record, the prosecution had succeeded in proving the guilt of the accused beyond reasonable doubt. The entire evidence was meticulously examined by the learned Trial Court and vide a well reasoned judgment convicted the appellant for which no interference is called for.

27. Coming to the quantum of sentence, learned counsel submitted that the appellant was a young boy of 25 years of age. He is a

rickshaw puller by profession, his antecedents are clean. As such, the sentence be reduced to the minimum.

28. Per contra, learned Additional Public Prosecutor for the State submitted that no leniency is warranted keeping in view the fact that the appellant betrayed the trust reposed in him by the family of the victim who allowed him to sleep in their house being village relation. Moreover, gruesome crime has been committed upon a small child who at the time of incident was only 9 years old.

29. An act of rape is a gruesome and abhorring act. It leaves a permanent scar on the personality of the child, inhibiting growth and development. It instills a feeling of fear, insecurity and a brooding sense of shame and guilt for no fault of the victim.

30. In ***State of Karnataka*** **v.** ***Krishnappa,*** (2000) 4 SCC 75, a three-Judge Bench opined that the courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. It was further observed that to show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced.

31. ***Shyam Narain*** (Supra) was a case of rape of an eight years'old girl. The learned Trial Court sentenced the accused to undergo

rigorous imprisonment for life and fine. The order was up held by the High Court. In appeal before Hon'ble Supreme Court, leniency in sentence was prayed on the ground that the appellant has four children and in case the sentence is maintained not only his life but also the life of his children would be ruined.

32. Repelling the contention, it was observed as under:-

> *"22. .....It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a State of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and*

such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned Counsel for the Appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court. "

33. The factual matrix in the present case is substantially similar wherein the victim is 9 years old. Moreover, the learned Trial Court has awarded only a sentence of 12 years unlike life sentence in ***Shyam Narain's*** case. The mitigating circumstances set up by the learned counsel for the appellant cannot outweigh the gravity of the crime. That being so, there is no warrant for reducing the sentence awarded to the appellant.

34. In the result, the appeal being devoid of merits, is dismissed.

Trial Court record be sent back along with copy of the judgment.

Appellant be informed through Superintendent Jail.

(SUNITA GUPTA)
JUDGE

APRIL 30, 2015/rs