

(2005) 08 DEL CK 0045
In the Delhi High Court
Case No : Criminal A.No. 653 of 1999

Hori Lal

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 342, 376

Citation : (2005) 123 DLT 506 : (2005) 84 DRJ 81 : (2005) 4 RCR(Criminal) 970

Hon'ble Judges : Manmohan Sarin, J; Manju Goel, J

Bench : Division Bench

Advocate : Sumeet Verma, amicus curiae and Charu Verma, for the Appellant;
Ravinder Chadha, APP and Jagdish Prasad, for the Respondent

Judgement

Manmohan Sarin, J.—The appellant-Hori Lal by this appeal assails his conviction under Sections 376 and 342 IPC and sentence of life imprisonment with the fine of Rs.5000/- and in default, SI for one month u/s 376 IPC and sentence of three months and fine of Rs.500/- and in default, SI for 15 days u/s 342 IPC.

2. The prosecution case is that on 24th July, 1996 at about 9 P.M, appellant-Hori Lal had enticed the prosecutrix aged 6-7 years, who lived in the house opposite to the appellant on the pretext of giving her some sweets and raped her. The mother of the prosecutrix i.e. Raj Bala and her brother on hearing her cries, rushed to the house of the appellant, opened the door and found the appellant in the act, who rushed out putting his trousers on. Rajbala rushed prosecutrix to the LNJP Hospital. The hymen of the prosecutrix was found to be ruptured and the vaginal tear was repaired under general anesthesia. The MLC recorded that initially the prosecutrix did not reveal the cause but on questioning by the Doctor, revealed the incident. It was recorded in the MLC as a case of sexual assault by the appellant. The prosecutrix was found 'fit' for statement on the next day i.e 25th March, 1995 at 12.15 P.M.

3. Mr. Sumeet Verma, learned amicus Curiae for appellant, initially urged that the

delay of about four hours in reporting the matter to the police raised a doubt on the genuineness of the MLC. Further that the DD entry did not mention the name of the appellant though it was subsequently given in the MLC. Counsel sought to urge that there was discrepancy in recording the time for preparation of MLC as per record and the statement of the Constable. Appellant's counsel submitted that seizure of the underwear and frock of the prosecutrix and underwear of the appellant was without involving any public witness, hence vitiated. Further blood samples of the prosecutrix and the appellant were not taken.

4. The judgment of the trial court and the evidence on record have been perused. The testimony of the prosecutrix as well as her mother Raj Bala remains unchallenged and is fully trustworthy and credible. The Doctor who had prepared the MLC was duly examined. The suggestions made by the defense that vaginal bleeding was on account of a fall from chair and injury to the private part by some sharp object were duly repelled. Similarly the Doctor rejected the suggestion that bleeding could have been on account of insertion and sudden pressure by thumb on the vagina. The semen and blood stains were found on appellant's underwear. The doubts sought to be raised regarding the time of preparation of the MLC as well as non-mentioning of the name in the DD entry are inconsequential in view of overwhelming ocular and medical evidence. In these circumstances, we uphold the conviction.

5. Mr. Sumeet Verma, learned amicus Curiae, at this stage, submitted that he craves for clemency for the appellant on the aspect of sentence, without pressing any further on the merits of the appeal. Mr. Verma submitted that appellant was 50 years of age at the time of incident. He has already undergone nine and half years of sentence approximately. The appellant now is now an old man of 60 years. He is frail and is suffering from various ailments related to and symptomatic of old age. He submits that many members of his family have died during his protracted incarceration. Appellant did not even have the benefit of any interim bail. His only son also died recently. In other words, counsel submits that appellant has suffered the incarceration and also been visited by personal tragedies. Learned counsel submits that the appellant conduct during the trial has been satisfactory and he had clean antecedents all through. This was a solitary instance. He should, Therefore, be given a chance for rehabilitation and a lenient view be taken by the court on the sentence imposed. He prays that sentence be accordingly reduced to the period already undergone.

6. Counsel places reliance on the observations made by the Supreme Court in Phul Singh Vs. State of Haryana, to urge that sentence process should be psycho-socially oriented and have a reformatory and therapeutic goal.

7. Reference may also be usefully made to T.K. Gopal @ Gopi Vs. State of Karnataka 2000(2) Crimes 245 (SC). This was an appeal against the conviction in the case of rape of a one and half year old child. Concurrent findings were recorded by the courts below. The Supreme Court had issued notice for enhancement of the sentence. The Supreme Court finally taking into account

mitigating circumstances, namely that the appellant was sole bread earner having two daughters of marriageable age and the fact that appellant had already spent nine years in jail, considered the said period to be enough and the notice issued to the appellant for enhancement of sentence was recalled.

8. We may notice that the approach propounded by Krishna Iyer, J, in *Phul Singh Vs State of Haryana* (Supra) that with correctional courses through meditational therapy and other measures, the erotic aberrations may wither away, has not been followed in subsequent decisions. It was noticed that in spite of devices and measures having been employed and adopted, within the jail premises so as to reform the offenders, there was negligible improvement in the commission of crime. In recent decisions relating to the offence of rape, the Supreme Court in *The State of Karnataka Vs. Krishnappa*, enhanced the sentence and in *State of Rajasthan Vs. N.K.-The Accused*, , the order of acquittal was set aside and substituted by order of conviction.

9. Having noticed the judicial precedents and the approach to be adopted, let us examine the present case. We find that appellant was 50 years old at the time of offence. He had clean antecedents and this is claimed to be a solitary aberration of his life. No doubt the offence committed was an abhorring one, which involved violation of a person of an innocent 7 year old girl, which would leave deep rooted scar on the victim. The conviction of the appellant has already been upheld by us. The appellant has suffered incarceration for nearly 10 years without any break. During the incarceration, he must have pondered over his ghastly act. Apart from introspection and penance that he may have undergone, he has received retribution from the almighty in the loss of his only son and bereavement of other family members.

In these circumstances, while upholding the conviction, we are of the view that appellant's sentence of life imprisonment u/s 376 IPC be reduced to 10 years with fine of Rs.5000/- and in default, SI for one month. The sentence of 3 months u/s 342 IPC with fine of Rs.500/- and in default SI for 15 days remains unchanged. Both the sentences to run concurrently. Appellant also to be entitled to the benefit of remission under rules and set off of the period undergone in custody during trial u/s 428 Cr.P.C. Ordered accordingly.

Appeal stands partly allowed in terms of the above directions on the sentence.