

Ram Dhawan @ Ramdev Vs. State

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Court : Delhi

Decided On : Sep-17-2013

Judge : P.K.Bhasin

Appellant : Ram Dhawan @ Ramdev

Respondent : State

Advocate for Def. : Mr. Sanjay Lao

Advocate for Pet/Ap. : Mr. Bhupesh Narula

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL.A. NO. 67/2009 Date of Decision:

17. h September, 2013 + # ! RAM DHAWAN @ RAMDEV Appellant
Through:Mr. Bhupesh Narula, Advocate versus \$ * STATE Respondent
Through:Mr. Sanjay Lao, APP for the State CORAM: HON'BLE MR. JUSTICE
P.K.BHASIN HON'BLE MR. JUSTICE V.P. VAISH

JUDGMENT

P.K. BHASIN, J: This is a case of rape of a minor daughter by her father and the appellant herein is the father who stands convicted for having raped his minor daughter and sentenced to undergo life imprisonment by the learned Additional Sessions Judge.

living with my sister Sandhya and my father Ram Dhawan @ Ram Dev who is accused present in the court today (correctly identified) at Prem Nagar. My mother Promila alongwith my brother and another sister were living in Ghaziabad separately. In the month of September, 2005 while I was present in my house, my father who is accused present in the court today had done the wrong act with me in the night. He had removed my underwear and had done sex with me. My father accused has done sex with me number of times in night in our house. I used to protest and resist him from doing so but my father accused used to threat me to kill me. On 28/09/05, my mother had come from Ghaziabad and I had narrated the entire incident to my mother. My mother took me to Police Station Patel Nagar and my statement -Ex.PW1/A was recorded which bears my signatures at point A1. I was also medically examined in the Government hospital. Police had also seized my salwar which I was wearing at the time of incident. I was produced in the court by the police where my statement was recorded by a lady Judge and I had also narrated that my father used to rape me ever since daily when my other brothers and sisters used to go to sleep.

5. The brief cross-examination of the prosecutrix is as under: I do not know why my mother is residing separately from my father. I do not know when marriage of my father and mother took place. I do not know from how much time my mother is living separately from my father. My mother used to visit our house one or two times in a month. I never visited my mothers residence at Ghaziabad. There are two rooms in the house where we are residing at Prem Nagar. One room is at ground floor and another is at first floor. My brother used to sleep in the room at first floor and my father used to sleep in the room at ground floor. I used to sleep in the corridor alongwith my sister Sandhya on a single bedsheet. Q. In what manner you protested and resisted against the wrongful act i.e. sexual intercourse committed by the accused with you? A. I cannot tell. The accused had committed sexual intercourse with me at about 12.00 pm night without my consent. After the committal of the above sexual intercourse with me by accused without my consent in the month of September, my mother came to Prem Nagar in the month of December with my younger sister Soni. We used to sleep at about 11.00 pm daily. When I told the act of committal of sexual intercourse with me by the accused to my mother, no other person was present at Prem Nagar at that time with us. Only

my mother and myself had gone to Police Station to lodge the complaint. I alongwith my mother and three lady police officials had gone to DDU Hospital for my medical examination. I did not tell the fact of rape committed with me by the accused i.e. my father ever since daily either to my brother and sister or any of the neighbourer. It is incorrect to suggest that my mother is residing separately due to some illicit relations with some other person to which my father i.e. accused had objected. It is correct that my father i.e. accused was not happy with the visiting terms of my mother with us at Prem Nagar and he always directed her not to visit our house so her illicit relations should not effect our lives. It is incorrect to suggest that I have falsely implicated my father accused in this case at the instance of my mother. It is incorrect to suggest that my mother told me that my father wanted to sell me to some person. It is incorrect to suggest that my mother lured me for marriage in a good family and instigated me to implicate my father accused in a false case.

6. In our opinion, nothing favourable to the appellant-accused could be elicited from the mouth of the prosecutrix in her crossexamination and, in fact, she categorically maintained that her father had sexual intercourse with her. There is nothing in her statement from which it can be said that she could falsely say all these things against her father.

7. It was contended by the learned counsel(amicus curiae) for the appellant , as is usually the argument advanced in such like rape cases on behalf of the accused, that there is no real corroboration of the testimony of the prosecutrix and so the trial Court was not justified in convicting the appellant. We are not impressed with this submission. It is now too well settled that testimony of a victim of rape can by itself be made the basis of conviction unless some serious flaws in her testimony are pointed out. In this regard, we may extract some of the paragraphs from the judgment of the Apex Court in Asha Rams case(supra) wherein the submissions made regarding the requirement of corroboration of the testimony of a victim of rape were considered. This is what was observed by the Apex Court: 5It 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

family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.

8. It was also the submission of the amicus curiae that as per the first information report(Ex.PW-1/A) the first incident of rape was on 01st September, 2005 while the matter was reported to the police on 29th September, 2005 and that delay makes the prosecution case doubtful and supports the plea of the appellant that he had been falsely implicated at the instance of his wife. We are, however, not inclined to reject the prosecution case on this ground, firstly, because the prosecutrix did not give the exact date of the month of September when she was raped for the first time secondly because she was not confronted with her first information statement(Ex.PW-1/A) wherein she had so claimed and thirdly because now it is also well settled by various judicial pronouncements of the Supreme Court that in rape cases the delay in lodging FIR is not considered to be fatal like in cases of other crimes and that the delay in lodging an FIR in rape cases is to be considered with a different yardstick. Reference in this regard can be usefully made to one such decision only which is reported as 2010(VIII) Supreme Court Cases714, Satpal Singh vs State of Haryana. Relevant paras of this judgment are re-produced below:

14. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to

go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concerned about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences.

15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.

16. However, no straight jacket formula can be laid down in this regard. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact-situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that: ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon.

17. In *State of Himachal Pradesh Vs. Prem Singh* AIR 2000 SC 1010, this Court considered the issue at length and observed as under: 6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution

case merely on the ground that there is some delay in lodging the FIR.

18. Thus, in view of the above, the delay in lodging FIR in sexual offences has to be considered with a different yardstick. (emphasis laid) 9. In any case, in the present case the delay is also well explained. It is undisputed from the side of the appellant that his wife was living separately in Ghaziabad because of strained relations with him and also that she used to come and meet her two daughters and one son living with the appellant, including the prosecutrix, after some intervals. So, the prosecutrix could not disclose to her mother, to whom only she could be expected to disclose the bad deeds of her father, whom the learned trial Judge has described as a wolf, and it was only when in the last week of September, 2005 her mother, PW-2, came to Delhi to meet her children living with the appellant that the prosecutrix narrated everything to her. It was not suggested to her in cross-examination that before 28th September also her mother had come to meet her. The prosecutrix had also claimed in her first information statement to the police as well as before the trial Court that the appellant had been threatening to kill her when she had protested against his sexual acts with her. We have no reason to disbelieve the prosecutrix and, in fact, her statement to that effect was not even challenged in her cross-examination. Thus, the delay stood explained quite satisfactorily and the learned trial Judge was right in not considering the delay on the part of the prosecutrix in going to the police to be fatal for the prosecution.

10. It was also submitted by the learned amicus curiae that since the relations between the appellant-accused and his wife(PW-2) were strained chances of her falsely implicating the appellant cannot be ruled out. We find that at the time of recording of his statement under Section 313 Cr.P.C. the appellant had taken a plea that he had been falsely implicated by his wife to grab his property. However, no such suggestion was given to her when she was in the witness box as PW-2 who had also claimed in her deposition before Court that she had been told by her daughter about the appellant having raped her on 28th September when she had come to Delhi to meet her children living with the appellant and then the matter was reported to the police. To the prosecutrix it was suggested in her cross-examination that she had been told by her mother that the appellant wanted to sell her and so she had falsely deposed against him. The prosecutrix denied that

suggestion. That plea in any case the appellant had given up at the time of recording of his statement under Section 313 Cr.P.C. So, the argument of false implication of the appellant accused for this reason also cannot be accepted.

11. Similar argument was raised before the Supreme Court also in Asha Rams case(supra) also but was rejected with the following observations:

13. It is contended by the counsel for the accused that because of the strained relationship between PW3 - mother of the prosecutrix and the accused, the prosecution case has been foisted against the accused at the instigation of the mother and deserves outright rejection. From the evidence it is clearly established that P.Ws. 1 and 2 despite of strained relationship between their mother and father were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to.

12. So, in our view, the testimony of the prosecutrix in the present case alone is sufficient to maintain the conviction of the appellant accused.

13. The testimony of the prosecutrix, in any case, is corroborated also by the medical evidence adduced by the prosecution. PW-10 Dr. Ekta Bajaj, Sr. Resident, Gynae Department, DDU Hospital, Delhi, who had examined the prosecutrix after the matter was reported to the police, had deposed as under: On 29.09.2005, one Sanju, 14 years female was referred to me after her initial examination by Dr. Swati Aggarwal, who had prepared the MLC Ex.PW-9/A. I

examined the girl Sanju vide my observations at portion B1 on the MLC Ex.PW-9/A which bears my signatures at point C1. On local examination, there was no fresh external injuries seen, no bleeding, pubic hair present scanty, secondary sexual characters well developed, gentle local examination with one finger done easily, hymen torn, suggestive of sexual intercourse.

14. Realising the strength of the prosecution case learned counsel for the appellant then made a fervent plea for reduction of the sentence of life imprisonment awarded to the appellant by the trial Court. Counsel for the appellant, however, could not highlight any mitigating circumstances. Learned additional public prosecutor on the other hand, opposed this plea also and submitted that these kind of persons deserve no reprieve and this Court should not reduce the sentence of life imprisonment. In support, he relied upon the following strong observations of the Honble Supreme Court made in Asha Rams case(supra) (which observations have, in fact, been relied upon by the learned trial Judge also while awarding life imprisonment to the appellant), while setting aside the High Courts judgment of acquittal and enhancing the sentence of imprisonment of five years only awarded to the accused by the trial Court to imprisonment for life:

21. This leads us to consider as to the quantum of punishment. The Trial Court on conviction sentenced the respondent to 5 years rigorous imprisonment and a fine of ` 1,000/- and in default, rigorous imprisonment for 3 months. Here is the case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. Moreso, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust

and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 a.m. he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.(emphasis supplied) 22. Having said so, regarding sentence we are tempted to quote the observation of Justice Pandian in case of Madan Gopal Kakkad (supra) where it has been observed that Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if gravity of the offences so demand.

15. It appears that these observations of the Supreme Court that in cases of rape of a daughter by the father extreme punishment of life imprisonment is the appropriate punishment were kept in mind, though not specifically referred to, by a Division Benche of this Court in a judgment reported 2009(3) 1768 Prabhu Nath vs State while observing that in rape cases where the offender is in a dominating position and breaches the confidence of the victim, particularly when the victim is closely related to the offender, extreme punishment of life imprisonment should be awarded. In an earlier judgment of another Division Bench of this Court reported as 2008 (7) 2497 Khem Chand vs State of Delhi also it was observed that while considering the quantum of punishment to be awarded to the rapist of minor girls the Courts should keep in mind whether the act of the rapist involved betrayal of trust. There cannot be a closer relationship than that of father and daughter. We also came across another decision of a Division Bench of this Court rendered on 25th February, 2010 and reported as 2010 (2) JCC 114.Arun Kumar Rao Vs. State of NCT of Delhi, which is subsequent to the one rendered in Prabhu Nath's case (supra), and in which case also a father was held guilty of having raped his minor daughter. The trial Court had awarded life imprisonment to the guilty father. However, in appeal, the Division Bench reduced the sentence of imprisonment to 10 years rigorous imprisonment. Though, in the said judgment the Division Bench had referred to the judgment in Prabhu Nath's case (supra), in which, as noticed already, the Division Bench had observed that where the offender is in a dominating position and breaches the confidence of a victim, who is closely related to the offender, the extreme punishment of imprisonment for life should be imposed but it appears that this observation escaped the attention of the Division

Bench which rendered the subsequent judgment in Arun Kumar Raos case and the sentence of imprisonment of guilty father came to be reduced from life imprisonment to 10 years rigorous imprisonment. However, in view of the decision of the highest Court of the land in Asha Rams case (supra) and the decision of the earlier Division Bench of this Court in Prabhu Nath's case (supra) we are not inclined to reduce the sentence of imprisonment. The appellant herein had made his own young daughter a victim of his animal lust and sexual perversion and that fact by itself disentitles him to claim any clemency or reprieve from this Court. Another factor which has to be kept in mind that if the appellant comes out of jail he can repeat the same acts not only with the prosecutrix but his other daughter also.

16. So, the judgment dated 26th September, 2008 passed by the learned Additional Sessions Judge whereby the appellant Ram Dhawan @ Ramdev had been convicted for the offences punishable under Sections 376 and 506 IPC is affirmed. We also maintain the trial Courts order dated 30th September, 2008 whereby for committing the offence of rape the appellant was sentenced to undergo imprisonment for life and also to pay fine of ` 5,000/- and in default of payment of fine was ordered to undergo further imprisonment for a period of six months and to undergo rigorous imprisonment for a period of two years and fine of ` 1,000/- and in default of payment of fine further imprisonment for a period of three months for his conviction under Section 506 IPC. This appeal is consequently dismissed. Since the appellant is lodged in jail he shall be delivered a copy of this judgment through the concerned Jail Superintendent. P.K.BHASIN, J V.P. VAISH, J SEPTEMBER 17 2013

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