

**Vinod Vs. State**

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**Court :** Delhi

**Decided On :** Oct-27-2014

**Judge :** Pradeep Nandrajog

**Appellant :** Vinod

**Respondent :** State

**Judgement :**

\$~6 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: October 27, 2014 + CRL.A. 580/2014 VINOD Represented by: ..... Appellant Mr.M.L.Yadav, Advocate versus STATE Represented by: ..... Respondent Mr.Varun Goswami, APP SI Manisha Sharma, P.S.Aman Vihar CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Vide decision dated March 30, 2013 Vinod has been held guilty for having committed an offence punishable under Section 376(2)(f) IPC and has been sentenced to undergo imprisonment for life and pay fine in sum of Rs.10,000/-, in default of payment of fine to undergo simple imprisonment for six months as per the order on sentence dated April 04, 2013. He challenges his conviction urging that the testimony of the child victim who appeared as PW-9 does not inspire any confidence and further that he has been falsely implicated by the victims parents who have planted Jyoti PW10 as a witness.

2. This is not a case of the usual take off point when process of criminal law is set into motion by a person ringing up the police control room to inform an offence being committed at some place resulting in a DD entry being made at the concerned police station followed by a police officer proceeding to the disclosed place. It is not a case where thereafter investigation leads the investigating officer to the offender.

3. The co-joint testimony of HC Rakesh Kumar PW-1, Jyoti PW-10 and ASI Manisha Sharma PW-13 would evidence that accompanied by the parents of the prosecutrix and a few persons residing in the neighbourhood, along with Jyoti PW-10, Vinod was taken to the police station. HC Rakesh Kumar the duty officer at PS Aadarsh Nagar made daily diary entry No.58B, Ex.PW-1/C to the effect that at 5:30 PM on October 16, 2011 the prosecutrix who was brought to the police station was sent to BJRM Hospital along with woman constable Pooja PW-2. Simultaneously copy of DD No.58B was handed over to ASI Manisha Sharma for investigation who proceeded to BJRM Hospital where she recorded Jyotis (PW-10) statement Ex.PW-10/A in which Jyoti disclosed that the parents of the prosecutrix were her mama, mami and she along with her parents were residing in the same building where the parents of the prosecutrix resided. Her mama mami worked. The prosecutrix who suffered from mental retardation would play in or around in the building. In the afternoon, as she was going to the terrace of the building she heard cries of the prosecutrix from the room in which Vinod resided. She rushed to the room and was horrified to see Vinod with his pant removed lying on the prosecutrix with blood smeared on the bed sheet. People in the neighbourhood assembled and caught Vinod and waited for the parents of the prosecutrix to arrive and thereafter all, including Vinod, were taken to the police station. Making an endorsement Ex.PW-13/A beneath Jyotis statement 4. Ex.PW-10/A ASI Manisha Sharma got registered FIR No.279/2011, Ex.PW1/B.

5. Dr.Meenakshi PW-6 medically examined the prosecutrix aged 7 years and prepared the MLC Ex.PW-6/A confirming that the prosecutrix had been subjected to a sexual assault. Hymen was torn. Fourchett was torn. Clotted blood was seen on and around the genitals.

6. ASI Manisha Sharma received the clothes of the prosecutrix and the sexual assault kit after prosecutrix was medically examined as recorded in the seizure memo Ex.PW-2/A. Sent to the laboratory for forensic examination, but unfortunately not proved at the trial, the forensic report noted that semen was detected on the underwear of the prosecutrix.

7. Dr.Deepak Kumar PW-4, Associate Professor, IHBAS and Dr.Suman Kushwaha PW-5 Associate Professor of Neurology, Members of a Medical Board constituted to examine mental status of the prosecutrix gave a report Ex.PW-4/A to the effect that the prosecutrix was having moderate level of mental condition; her IQ was half of the normal child of her age. But she could convey what she wanted to, when she was comfortable and with the assistance of a person who could translate her monosyllabic and gesticulations into words.

8. At the trial, Suman PW-7 and Avdhesh PW-8, the parents of the prosecutrix deposed that they had gone to work and as usual had left the prosecutrix hoping that the neighbours would keep an eye on her. On the day of the incident when they received information that their daughter had been subjected to a sexual assault they returned home. Their daughter told them that Mama had done the offending act on her. They saw blood on her clothes.

9. Jyoti PW-10 deposed in sync with her statement Ex.PW-10/A, and nothing has been brought out in court before us to discredit Jyotis testimony.

10. Examined as PW-9 in the presence of Dr.Manisha Jha, a clinical psychologist at IHBAS, the testimony of the prosecutrix was recorded as under:

Ques. Aap Ka Naam Kya Hai?. Ans. The witness is unable to answer the question. Ms.Jha states that she is unable to pronounce her name. Ques. Aap ke ghar me kaun kaun hai?. Ans. The witness has pointed out towards her mother and has gestured outside and uttered words Papa. The gestures have been interpreted by Ms.Jha to state that witness is stating that she has mother and father at her house. The witness has now mentioned work Amma. The gesture has been interpreted to state that now Amma (grandmother of victim) is also staying with her. Ques. Aap school jate ho?. Ans. The witness has answered by saying Ha. Ques. Aap school

may kya karte ho?. Ans. The witness has made writing gesture and eating gesture which have been interpreted by Ms.Jha to state that she does writing work and eats her lunch in the school. Ques. Kaun san rang pasand hai aap ko?. Ans. The witness has picked up four crayons lying on the mat. Ms.Jha states that the witness is unable to identify colours. Ques: Aap ko ky khana acha lagata hai?. Ans. The witnesses states that chawal-dal. The gesture have been interpreted by Ms.Jha to state that witness likes dal and chawal. Ques. Ghar par khana kaun banata hai?. Ans. The witness has pointed towards her mother Ques. Aap ki ankhe kaha hai?. Ans. The witness has pointed towards her eyes. Ques. Aap ke hath kaha hai?. Ans. The witness has clapped to show her hands. Ques. Aap ke pair kaha hai?. Ans. The witness pointed towards her legs one by one. Ques. Aaj apne naste me kya khaya?. Ans. The witness states To and Chai which have been interpreted by Ms.Jha to state that witness has Toast and Tea. The witness has now pointed towards her stomach and states that she is hungry. The mother of witness states that she has brought food for the witness and so a break has been given for the child witness to have food. Ques. Aap ne kya khaya?. Ans. The witness has made gesture by raising two fingers of her hand but she is unable to state what she ate. Ques. Aap ke bal kaha hai?. Ans. The witness has removed her scarf and shown her hair. After questioning the witness with the help of Clinical Psychologist Dr.Jha, I am satisfied that the witness can be examined with the help of the support person i.e. Dr.Jha. The mother of the witness is permitted to sit in the room but she has been directed not to intervene or help the witness in making statement. Her statement has already been recorded as PW-7 on 01.12.2012. The accused is also sitting on the other side of the tainted glass partition. The counsel for accused is sitting inside the room along with the learned Additional PP. Since the witness is aged about 7 years administration of oath has been dispensed with. Ques. Aap ko kuch pareshan kiya?. Ans. Ha. Ques. Aap kaha the?. Ans. The witness has picked up hand drawn picture of a man and uttered words Mama. She has also pointed out towards her private parts and put her hand to mouth gesturing that her mouth had been shut and again uttered word Mama. Ques. Aap ke mummy kaha thi?. Ans. The witness has pointed her arm backward and towards outer gate which gesture has been interpreted by Dr.Jha to state that mother of the witness has gone for work. Ques. Aap ke papa kaha the?. Ans. The

witness has pointed her arm backward and towards outer gate which gesture has been interpreted by Dr.Jha to state that father of the witness has gone for work. Ques. Aap kya kar rahe the?. Ans. The witness has folded her hands and kept them next to her face and rested her face on her hands. The gesture has been interpreted by Dr.Jha to state that the witness is stating that she was sleeping. Ques. Fir kya hua?. Ans. The witness has uttered words Mama and shut her mouth with one hand and also pointed towards her private parts and again uttered words Mama. The gesture has been interpreted by Dr.Jha to state that mouth of the witness was shut by the person whom she called mama and then she was sexually assaulted by said person. Ques. Fir kaya hua?. Ans. The witness has made gesture of crying. Ques. Aap ne jane ki koshish nahi ki?. Ans. The witness has made a gesture which has been interpreted by Dr.Jha that the witness was dragged or stopped from doing so. Ques. Phir kaya hua?. Ans. The witness has pointed towards both her cheeks and right hand middle finger and gestured bite by her teeth. The gesture has been interpreted by Dr.Jha to state that she was bitten by a dog. Witness has uttered word Bho The witness at this stage has pointed towards the tainted glass window behind which the accused is sitting and called him mama and again pointed towards her private parts.

11. The testimony of the prosecutrix would evince that she refers to Vinod as Mama. She has explained what mama did to her. The testimony of PW-10 corroborates the testimony of the prosecutrix. The MLC of the prosecutrix establishes that she was raped. The testimony of PW-10 establishes that the appellant was apprehended at the spot. The testimony of the parents of the prosecutrix brings out that soon after the incident the prosecutrix named the appellant.

12. So tell tale is the evidence against the appellant that learned counsel has hardly any worthwhile submission to make, except on the sentence. Counsel urges that the appellant was aged 20 years when passion overtook him and thus prays that the sentence to undergo imprisonment for life should be reduced to the minimum i.e. 10 years.

13. It is the discretion of the trial judge to impose a sentence and unless demonstrably shown to be excessive the appellate court would not be justified in reducing the sentence.

14. The order on sentence passed by the learned trial judge brings out that the learned judge has taken into account not only the young age of the prosecutrix but even her handicap to bring home the aggravating circumstance of the appellant taking undue advantage of an innocent mentally retarded girl child.

15. In the facts and circumstance of the instant case the sentence imposed cannot be called as excessive.

16. The appeal is dismissed.

17. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)  
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