

**State Vs. Mohan Singh**

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**Court :** Delhi

**Decided On :** Jul-28-2014

**Judge :** Pradeep Nandrajog

**Appellant :** State

**Respondent :** Mohan Singh

**Judgement :**

§~15 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 353/2014  
STATE Represented by: ..... Petitioner Ms.Aashaa Tiwari, APP for the State.  
versus MOHAN SINGH ..... Respondent Represented by: None. CORAM:  
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE  
MUKTA GUPTA

**ORDER**

2807.2014 % CrI.M.A.No.8297/2014 (Exemption) Allowed, subject to all just exceptions. CRL.L.P. 353/2014 1. By the present petition the State seeks leave to appeal against the impugned judgment dated February 13, 2014 whereby the respondent though convicted of charge under Section 354 IPC has been acquitted of the charge for offences punishable under Sections 376/506 IPC.

2. The State assails the judgment on the ground that even if the Prosecutrix in her statement in Court has not stated about the offence of rape being committed however, in the statement under Section 164 Cr.P.C. she has clearly alleged

about the offence of rape.

3. We are not able to subscribe to the contention of learned counsel for the State as a statement of a witness under Section 164 Cr.P.C. is only a previous statement and does not assume the character of substantive evidence. No conviction can be based on the statement recorded under Section 164 Cr.P.C.

4. The FIR in the present case was registered on the allegation that the respondent committed rape of his own daughter A then aged about 13 years and threatened to kill her with knife and throw her in the park. The mother of the victim was not residing with the family and the incident came to the notice when the victim visited the house of her aunt on May 09, 2012 who in turn called the police. The victim was medically examined. As per the DNA finger printing report no male DNA profile was generated from the sources 1C, 1E, 1G and 1H which were the vaginal wall swabs of the Prosecutrix. As per the MLC the hymen was found intact. There was no external injury present on the body. It would be appropriate to note the statement of the Prosecutrix in the court after the learned trial judge was satisfied that the witness was capable of understanding the questions and answering them reasonably and was a capable witness. Q. Aapke papa ka kya naam hai?. Ans. Mohan. Q. Wo kya kaam karte the?. Ans. Rikshaw Chalate the. Q. Kya apke papa sharab pite the?. Ans. Ha, pehle pite the ab unhone chod di. (At present accused is in judicial custody) Q. Sharab pine ke baad phir papa ka bartav kaisa hota tha?. Ans. Woh Sharab piker, normal bartav nahi karte the. Woh mujhe aur mere bhai behein ko marte the aur bahut gussa karte the. Q. Kya hua tha?. Ans. 25-26/4/2012 ko karib 3 baje, mere papa uthe aur mujhe jagane lage aur mujhe mere kapde uttarne ke liye bola. Maine jab mana kiya toh unhone mujhe kaha ki main tujha marunga agar maine unka kehna nahi mana to. Q. Phir kya hua?. Ans. Mere mana karne ke bad bhi, mere papa ne meri Pajami uttar di. Q. Phir kya hua?. Ans. Unhone apne kapde pahene the, sirft pishab karnewala nikala tha. Q. Phir kya hua?. Ans. Unhone apni peshab karnewali jagah ko meri pehsab karnewali jagah se chua aur hata liya. Q. Apke bhai aur behein uss samay kaha the?. Ans. Woh kamare me the, aur so rahe the. Q. Kya apne shor machaya tha?. Ans. Nahi shor bhi nahi machaya na royi. Q. Kya apko papa ne kuch kaha tha?. Ans. Nahi. Q. Phir kya hua?. Ans. Aur kuch nahi hua. Savere maine call kar di. Q.

Kise call kari?. Ans. Police ko call kari. Q. Kaise call kari?. Ans. Papa ke mobile phone se kari. Q. Phir kya hua?. Ans. Police aa gayi. Maine sab bata diya. Mujhe nahi pata tha ki itna bada case ban jayega. Q. Phir kya hua?. Ans. Sanjay Gandhi Hospital le gay, waha maine doctor ko sab sach sach bata diya. Q. Phir kya hua?. Ans. Police ne meri statement likhi par apni taraf se bhi usme likh diya. Q. Aap pehle Court aaye the?. Ans. Ha. Wo aadmi thee. Q. Aap apney sign pahchan logey?. Ans. Ha.

5. Certain leading questions were put to the witness by the learned APP however, she stood by what she had stated in the deposition. In view of the fact that there was no penetration or any attempt to penetration, the learned Trial Judge convicted the respondent for offence under Section 354 IPC and acquitted him for the charge for offences punishable under Section 376/506 IPC and in our opinion rightly. Thus we find no merit in the present petition.

6. Leave to appeal petition is dismissed.

7. TCR be sent back. PRADEEP NANDRAJOG, J.

**MUKTA GUPTA, J.**

JULY28 2014/vn

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