

**State vs.kamruddin Alam**

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**SooperKanoon Citation :** [sooperkanoon.com/1205209](http://sooperkanoon.com/1205209)

**Court :** Delhi

**Decided On :** Mar-31-2017

**Appellant :** State

**Respondent :** Kamruddin Alam

**Judgement :**

§~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI + DECIDED ON :

31. t MARCH, 2017 CRL.A.29/2015 ..... Appellant Through : Mr.Amit Gupta, APP.  
VERSUS STATE KAMRUDDIN ALAM ..... Respondent Through : Mr.Kunal  
Prakash, Amicus Curiae. CORAM: HON'BLE MR. JUSTICE S.P.GARG  
S.P.GARG, J.

(Oral) 1. The instant appeal has been preferred by the State to challenge the legality and correctness of a judgment dated 24.09.2012 of learned Addl. Sessions Judge in Sessions Case No.24/2011 arising out of FIR No.238/2009 PS Welcome whereby the respondent - Kamruddin Alam was acquitted of the charge under Section 376(2)(f) IPC.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 14.11.2009 at around 11.00 a.m. an information was received at Police Control Room that a child was lying unconscious in MCD Park near railway line Vivek Vihar, Delhi. PCR officials on duty at red light Surya Nagar, Delhi rushed to the spot, lifted the female child aged around 4 years and noticed that blood was

oozing out from her private part. PW-8 (HC CrI.A.29/2015 Page 1 of 12 Bhimsain) immediately admitted the victim at Hedgewar Hospital for treatment. She was examined vide MLC (Ex.PW-10/B) and was referred to GTB Hospital for further management.

3. On 14.11.2009 at around 07.45 a.m. the respondent had taken the prosecutrix X (assumed name) aged around 4 years on his rickshaw. When he did not return, Xs parents started searching her but in vain. PW-4 (Dinesh) - victims father lodged complaint (Ex.PW-4/A).

4. On getting information from the police about victims recovery, PW-4 (Dinesh) and Brijesh went to GTB Hospital on 15.11.2009. They noticed scratch marks on victims neck and blood oozing out from her private parts. Efforts were made to find out the appellant; he was found absconding. Statements of the witnesses conversant with the facts were recorded. Victims statement under Section 164 Cr.P.C. was recorded.

5. On 02.01.2011, the respondent was arrested and medically examined. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the respondent for commission of offences punishable under Sections IPC. Charges under Sections 363/376(2)(f) IPC were framed against the respondent and to prove it, the prosecution examined fifteen witnesses. In 313 Cr.P.C. statement, the respondent denied his involvement in the crime and pleaded false implication. He did not examine any witness in defence.

6. On evaluation of the evidence and after considering the rival contentions of the parties, the Trial Court while convicting the respondent under Section 363 IPC acquitted him of the charge under Section 376(2)(f) IPC. Aggrieved by the said findings, State has preferred the instant appeal. CrI.A.29/2015 Page 2 of 12 7. It is relevant to note that the respondent did not challenge conviction for commission of offence under Section 363 IPC and it has attained finality. Notices of the leave petition as well as appeal were given to the respondent, however, he preferred not to appear on both the occasions. Mr.Kunal Prakash, Advocate was appointed amicus curiae to defend him.

8. I have heard the learned counsel for the parties and have examined the file. After the victim aged around 4 years was taken by the respondent who was acquainted with the victim and her family members on his rickshaw on 14.11.2009 at around 07.45 a.m., he did not return. PW-4 (Dinesh) after waiting for the return of the victim for around 20 minutes started searching both of them but to no effect. Finally, he lodged complaint (Ex.PW-4/A) forming basis of the FIR. In the complaint, the complainant named the respondent to have taken her daughter X from his tea shop on his rickshaw on the pretext to get her toffee. He suspected respondents involvement in her kidnapping. The police machinery came into motion and all attempts were made to find the prosecutrix and the respondent but in vain. Finally, at around 11 a.m. information was received in the control room that a child was lying unconscious in MCD park near railway line, Vivek Vihar. The PCR officials immediately shifted her to Hedgewar Hospital where she was medically examined vide MLC (Ex.PW-10/B). PW- 8 (HC Bhimsain) testified that when he reached the spot in PCR vehicle, he found a female child aged around 4 years in unconscious condition; blood was oozing out from her private part. He immediately lifted and admitted her in Hedgewar Hospital, Karkdardooma. In the cross-examination, he disclosed that the distance between the spot and the base was of 2 kms. and CrI.A.29/2015 Page 3 of 12 they had reached there within 7 minutes. He further elaborated that the injured was lying at a place between railway line and park on the grass.

9. PW-12 (Dr.Kirti) proved MLC (Ex.PW-10/B) prepared by her. She deposed that on local examination X was found bleeding from vagina, slight bleeding was present from rectum. The patient was referred to GTB Hospital for further management. She proved photocopies of medical case history (Ex.PW-10/A-1 to Ex.PW-10/A-5) prepared by her during Xs treatment. She further revealed that the patient was conscious but not responding to verbal commands; she was unable to give history and was uncooperative.

10. From the testimony of PW-12 (Dr.Kirti) who had the occasion to examine the victim at first instance, it is clear that the victim had sustained injuries on her vagina and rectum and blood was found present / oozing out. The alleged history was given by PW-8 (HC Bhimsain). It is unclear as to how he came to know that

the victim had sustained injuries due to fall from train. In his Court statement as PW-8 (HC Bhimsain), he did not explain if he had seen the victim falling from any train. The alleged history given by PW-8 (HC Bhimsain) cannot be taken as correct particularly when MLC (Ex.PW-10/B) specifically records that the patient was unable to give history. Nothing was revealed if injuries on private parts of the victim were possible due to fall from a train. Apparently, the victim was defiled by the assailant.

11. Before Xs examination in the Court as PW-1, the learned Presiding Officer had put various questions to ascertain if she was capable to give rationale answers to the questions put to her and was making her statement voluntarily without any fear or pressure. After recording CrI.A.29/2015 Page 4 of 12 satisfaction that the victim was having the knowledge and capacity to understand, her statement was recorded without oath on 19.07.2011. In the examination-in-chief, she identified the respondent to be the individual who had taken her in a rickshaw while she was playing on the road in front of her fathers shop, X testified that the respondent had taken her in the rickshaw. She further deposed that the respondent had given beatings to her and had left her near the railway line. In the cross-examination recorded on 24.08.2011, the victim revealed that the respondent present in the Court had taken her, put off her wearing clothes, given beatings and had committed rape (wrong act) with her. She further elaborated that the respondent had laid her down near the railway track. She further deposed that the incident was narrated by her to the doctor and her father. She denied to be a tutored witness, adding voluntarily that her parents had told her that day to go to the Court to attend the date. She denied the suggestion that the respondent had not committed rape upon her after her abduction. She denied to have sustained injuries on her private part due to fall from train. She denied if there was a quarrel between the respondent and her father when living as tenants in the house of one Jaibir.

12. On scanning Xs statement in entirety, no sound reasons prevail to discredit her testimony. She was intelligent, capable to answer all the queries put to her by the learned Presiding Officer before recording her statement. After recording his satisfaction that X was able to understand the questions and was capable to give

rationale answers, her testimony without oath was recorded in congenial atmosphere. She was categorical to identify the respondent to be the perpetrator of the crime. She attributed specific and definite role to him in the crime. She was aware that the CrI.A.29/2015 Page 5 of 12 respondent had acquaintance with her family and had taken her on his rickshaw prior to the incident too. She had no ulterior motive to level serious allegations of commission of rape upon her person. A tiny child aged around five years would not level false allegation of rape against an acquaintance by putting her own honour at stake. The respondent did not elaborate as to what quarrel had taken place between him and victims father prompting them to falsely implicate him. He did not examine any witness to prove if any serious quarrel had taken place any time with the victims parents, and if so, on what account. No complaint whatsoever was lodged by the respondent regarding the said alleged quarrel. Moreover, for a petty issue (if any), the victims parents were not expected to use their own minor daughter to settle score. The victim had sustained injuries on her private parts. Victims parents must be interested to bring the real culprit to book. In the absence of prior animosity or ill-will, the victim and her family members were not imagined to let the real offender go scot free and rope the respondent in a bogus case. The victim, an infant girl aged around five years has given complete and exhaustive detail of the incident. It is well settled that if satisfied that the testimony of the child witness is a voluntary expression of what transpired and is an accurate impression of the same, no corroboration of the testimony is required. The Indian Evidence Act, 1872 (in short the Evidence Act) does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rationale 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 CrI.A.29/2015 Page 6 of 12 scrutiny and only on being convinced about the quality thereof and reliability can record conviction based thereon.

13. Certain insignificant discrepancies or infirmities highlighted by the respondents counsel in the victims statement are inconsequential as they do not go to the root of the case to affect the core of the prosecution case.

14. The victims statement has been corroborated in material particulars by her parents PW-2 (Brijesh) and PW-4 (Dinesh). Medical evidence is in consonance with ocular testimony. PW-10 (Nand Kishore) has proved the MLC (Ex.PW-10/B) and related documents (Ex.PW-10/A-1 to 10/A-5). As per record, X was brought at Hedgewar Hospital, Karkardooma at 01.15 p.m. on 14.11.2009; she was referred to GTB Hospital. She was medically examined by Dr.Sushma and Dr.Kirti. PW-12 (Dr.Kirti) deposed that the patient was conscious but not responding to verbal commands. On general examination, she found slight bruises over left side of the neck. On local examination, bleeding was found present from vagina; slight bleeding from rectum.

15. Pertinent to note is that the Trial Court came to the conclusion that X was kidnapped by the respondent, however, it fell into grave error to reject the prosecution case about commission of rape. After the respondent had kidnapped the prosecutrix and had taken her on his rickshaw, he did not come back to handover her custody to her parents. When the victim did not return after long wait, her parents became suspicious and went for her search; she could not be traced. Since the victim was a child aged around 5 years and the respondent familiar with her parents, had taken her on some pretext to get toffee on his rickshaw; he in the normal course of conduct CrI.A.29/2015 Page 7 of 12 must have brought the child back; it however did not happen. The victim was found lying abandoned at a secluded place. Apparently before abandonment, X was in the respondents company. It was however, not explained or disclosed by the respondent as to where he had abandoned or left the child, and if so, why. Contrary to that, the respondent also did not return and was found absconding to be arrested on 02.01.2011 after a long gap.

16. PW-9 (Om Pal) used to give rickshaws on rent to the rickshaw pullers. As per his testimony, the respondent known to him had also hired the rickshaw from him on several days in the end of year 2009. On enquiry by the police, he had informed that the respondent had hired his rickshaw. The respondent, however, did not return for about one year and two months; he had fled away along with rickshaw. Search made by PW-9 (Om Pal) for the accused and rickshaw turned futile. He further deposed that when the respondent returned after one year and

two or three months, he demanded the rickshaw back. He intimidated the police about the respondents presence. The respondent did not furnish any reason as to why he had opted to abscond soon after the occurrence. Circumstance of abscondance soon after the crime for a considerable period points an accusing finger against him.

17. As discussed above, the child and the respondent were seen together at a point of time in close proximity with the time and date of commission of crime. It was respondents duty to furnish cogent explanation as to how and in what manner, the victim sustained injuries on her private parts. All these facts were in the special knowledge of the respondent which he failed to divulge. Adverse inference is to be drawn against him for not providing necessary information under Section 106 CrI.A.29/2015 Page 8 of 12 Evidence Act. The respondent had no explanation as to what had compelled him to take the tiny girl to a remote place and to abandon her there putting her life in danger.

18. True, in her examination-in-chief recorded on 19.07.2011 the victim did not specifically accuse the respondent for committing rape upon her. She, however, was categorical to claim that she was taken in a rickshaw by the respondent and he had left her near the railway line. At this juncture, it was the duty of the prosecution as well as of the learned Presiding Officer to ascertain from the child witness as to what had happened thereafter. Seemingly, testimony of the child witness was recorded mechanically without showing sensitivity expected from the Presiding Officer. A child aged around 5 years was not expected to describe the entire incident on her own. Her statement should have been recorded in question and answer form. The Presiding Officer was expected to put specific questions to find out as to how; in what manner she had sustained injuries on her private parts and who was the author of the crime. In the cross-examination conducted on 24.08.2011, she specifically accused the respondent to have committed rape upon her. Again, the learned Presiding Officer did not put question as to why this version was not earlier narrated in her examination-in-chief on 19.07.2011. For remissness of the prosecution agency / Court, statement of the victim cannot be discredited or disbelieved.

19. Well settled position is that if the totality of the circumstances appearing on record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. The Court must be alive to its responsibility and be sensitive while dealing with cases involving Crl.A.29/2015 Page 9 of 12 sexual molestation. Testimony of the prosecutrix must be appreciated in the background of the entire case. The Court must, while evaluating evidence remain alive to the fact that in a case of rape, no self respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape upon her. Unless an offence has really been committed a girl child would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity.

20. The Trial Court did not believe commission of rape merely because the victim did not disclose the factum of commission of rape to the examining doctor. This approach is disgusting. The child was found abandoned at a secluded place and was shifted by PCR officials to the hospital. The alleged history was given by the PCR officials whereby he informed that injuries were due to fall from a train. This information was without any basis. In the presence of the PCR officials, the victim aged around 4 /5 years suffering from mental trauma was not expected to give the details of the commission of rape to the examining doctor positively. She was not expected to understand what was the meaning of rape. No valid reasons were given by the Trial Court to disbelieve the victims statement about commission of rape. It was not discussed as to how else the victim had sustained injuries on her private parts. After convicting the respondent for commission of offence punishable under Section 363 IPC, no justifiable reasons prevailed to disbelieve the other part of the statement of the prosecutrix about commission of rape. The findings of the Trial Court exonerating the respondent under Section 376 IPC being perverse cannot be sustained. Crl.A.29/2015 Page 10 of 12 21. In 313 Cr.P.C. statement, the respondent did not give plausible explanation to the incriminating circumstances proved against him. He even denied to have taken the child on his rickshaw on the day of occurrence. He came up with the plea that he had left Delhi four months prior to 14.11.2009 as his brother Farooq had met with a railway accident. No witness to prove this defence was however examined.

Farooq did not appear in the witness box to claim if he had met with an accident, and if so, when and where. It was also not proved as to when and by what mode the respondent had gone to attend his injured brother Farooq and for how many days had remained in his company. No such defence was put to PW-9 (Om Pal) in the cross-examination. Plea of alibi has not been proved by any cogent evidence on record.

22. In the light of above discussion, appeal filed by the State is accepted. The appellant is held guilty under section 376(2)(f) IPC.

23. Crime committed by the respondent is horrendous. Not only the little child was kidnapped but was ravished by the respondent in a secluded place. The gravity increases as after commission of crime the respondent left the innocent child alone in the deserted place endangering her life.

24. Considering the gravity of the offence and the age of the child, the respondent is sentenced to undergo RI for ten years with fine `10,000/-; default sentence being SI for two months for commission of offence under Section 376(2)(f) IPC. The period already undergone in custody in this case shall be counted and adjusted under Section 428 Cr.P.C. Sentences under Sections 363 IPC and Section 376(2)(f) IPC shall operate concurrently. CrI.A.29/2015 Page 11 of 12 25. The respondent shall surrender before the Trial Court to serve out the remaining period of sentence on 17th April, 2017.

## **ORDER**

27. Trial Court record be sent back forthwith with the copy of the Intimation be sent to the Superintendent Jail. MARCH31 2017 / tr (S.P.GARG) JUDGE CrI.A.29/2015 Page 12 of 12