

**Niranjan Singh Vs. State**

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**Court :** Delhi

**Decided On :** Apr-30-1986

**Reported in :** 1986(2)Crimes335; 1986(11)DRJ100

**Judge :** M.K. Chawla, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 363

**Appeal No. :** Criminal Appeal No. 140 of 1985

**Appellant :** Niranjan Singh

**Respondent :** State

**Advocate for Pet/Ap. :** G.S. Sharma, Adv

**Judgement :**

**M.K. Chawla, J.**

(1) By order dated 1.6.85 the learned Additional Sessions Judge convicted and sentenced the accused as under : (i) Under Section 363 Indian Penal Code I sentence the accused with R I. for 3 years Along with a fine of Rs. 100.00 . In default of the payment of - fine he will suffer further R.I. for one month. (ii) Under Section 366 I .P.C. I sentence the accused with R.I. for 7 years Along with a fine of Rs. 100.00 . In default of payment of fine he will further suffer R.I. for one month. (iii) Under Section 376 Indian Penal Code I sentence the accused with R.I. for 7

years Along with a fine of Rs. 100.00 . In default of payment of fine he will further suffer R.I. for one month. All the substantive sentences of imprisonment were ordered to run concurrently.

(2) The appellant has challenged his conviction and sentence by way of filing the present appeal.

(3) Unfortunately, learned counsel for the appellant has not cared to put in appearance inspire of the fact that the case remained on the board since 28-4-86 as item No. 1. I have heard the arguments of the learned counsel for the State and with his help gone through the record carefully.

(4) The only grievance of the appellant appears to be that the learned trial court gravely erred in believing the evidence of the child witness who is barely 5 years of age and that even if the statement of the prosecution witnesses is believed to be true, offence under Section 376 Indian Penal Code is not made out. None of the grounds-taken in the grounds of appeal are to the liking of the learned counsel for the State who mainly relies upon the evidence of Hem Lata, the prosecutrix, and Public Witness 1 Sh.Shiv Parshad Singh, an eye witness of the incident.

(5) In order to appreciate the scope of the pleas raised by the appellant, the salient features of the prosecution case have to be kept in mind. On 7-11-83 Hem Lata, who is hardly six years old, was playing with her friends Kusam, Neetu and Bablu when the accused on the pretext of getting her some biscuits picked her up and took her to public toilets. There the accused took off the salwar of Hem Lata and also his own pant. Hem Lata was made to lie on the floor and the accused made an attempt to rape her. At that point of time, Shiv Parshad Singh, who is a watchman, and was taking round of the flats and the public toilets saw the accused making an attempt to rape Hem Lata. He immediately caught hold of the accused and brought him along with the girl to a nearby DD.A. Office. Subsequently while on his way to the Police Station the accused was produced before Sukhbir Singh S.I. who recorded the statement of Shiv Parshad Singh and on that basis got the F.I.R. registered. The accused as well as Hem Lata were got medically examined and after completing the formalities and on the receipt of the report of the C F S.L. the accused was challaned.

(6) Even though the prosecution in support of their case examined as many as 10 witnesses but for the purpose of disposing of the present appeal the evidence of P W.1 Shiv Parshad Singh and that of the prosecutrix Hem Lata Public Witness 2 is material. The learned trial judge has given cogent reasons and relied upon number of authorities in believing the statement of Hem Lata who appears to be six years of age. As a rule of prudence, corroboration was sought from the testimony of Shiv Parshad Singh P W. 1. The net result of the evidence of both these witnesses do indicate that Hem Lata during her testimony remained unshaken and was clear in pointing out to the accused who had taken her to the public toilets while she was playing with her friends, undressed himself and then attempted to rape her. The learned trial judge further observed, with which I have no hesitation to agree, that there was no reason as to why Hem Lata would implicate the accused falsely. Shiv Parshad Singh happened to be by the side of the latrines and caught hold of the accused while he was without his pant and the girl without salwar. I have carefully perused the cross-examination of the witnesses and to my mind they remain unshaken and have lent absolute corroboration to each other in respect of the incident. The only question now that requires going into is as to whether the accused is said to have committed the offence under Section 376 Indian Penal Code or not. Section 375 of the Indian Penal Code defines 'rape'. It lays down that a man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the descriptions mentioned in this Section. Clause sixthly is the relevant provision under which this case falls. It relates to the committing of rape with or without the consent when the girl is under 16 years of age. One of the Explanations attached to this section defines that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. From the perusal of the statement of Hem Lata on this aspect coupled with the evidence of Shiv Parshad Singh it appears that the ingredients of Section 376 Indian Penal Code are not attracted. The relevant part of the deposition of Hem Lata in connection with 'rape' has been reproduced in the judgment. The only conclusion that can be drawn from her statement on this aspect is that the accused removed his pant and bent down on her. She did not feel pain anywhere. Furthermore, Shiv Parshad Singh in his statement under Section 161 Criminal Procedure Code . stated 'TATHA Ladki Ke

Saath Bura Kaam Karne KI Koshish Kar Raha THA'. On the basis of this evidence the learned trial judge has concluded that it was clearly an attempt on the part of the accused to rape Hem Lata. Prima facie, I am not inclined to agree with this conclusion. It is not the case of the prosecution nor it has come in the evidence of any of the witnesses that the accused tried to forcibly put his male organ into the private part of the minor girl. The sub and substance of the evidence of these two witnesses at the most, to my mind, make out a case of 'preparation' and not an 'attempt' on the part of the accused to commit rape on Hem Lata. The ingredients of Section 376 I P.C. are lacking and in these circumstances accused cannot be said to have committed this offence. The offence under Sections 363/366 Indian Penal Code are hereby confirmed.

(7) On the question of sentence I am inclined to take somewhat lenient view of the matter. The appellant is in judicial custody for the last 11 months. He is a married man of 29 years of age and have 5 children to support. The ends of justice will be fully met if his sentence under Section 366 Indian Penal Code is reduced to three years R.I. Along with fine of Rs. 100.00 . In default of the payment of fine, he will further suffer R.I. for one month. Ordered accordingly.

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