

**Samey Singh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/696543](http://sooperkanoon.com/696543)

**Court :** Delhi

**Decided On :** Apr-02-1998

**Reported in :** 1998IIIAD(Delhi)721; 1998(3)Crimes35; 73(1998)DLT238

**Judge :** Dalveer Bhandari, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 376

**Appeal No. :** Criminal Appeal No. 251 of 1977

**Appellant :** Samey Singh

**Respondent :** State

**Advocate for Def. :** Mr. M.S. Butalia, Adv.

**Advocate for Pet/Ap. :** Ms. Neeta Thakur, amices Curia

**Judgement :**

**Dalveer Bhandari, J.**

1. The appellant was initially charged for an offence under section 376, IPC. but ultimately the trial court convicted the appellant under section 376 read with section 511 IPC.

The brief facts necessary to dispose of this appeal are recapitulated in the succeeding paragraphs:-

2. The case of the prosecution is that the appellant, the prosecutrix and her family lived in the same building. The appellant worked with the father of the prosecutrix in the Delhi Milk Scheme. The prosecutrix was about 6 years of age at the time of this unfortunate incident. The case of the prosecution is that on 12.9.1975, when the prosecutrix was alone in her apartment, the appellant approached and asked her to bring a bidi packet for him but she declined. Thereafter, the appellant took her to his room and opened by her pyjama and had sexual intercourse with her. The prosecution story further reveals that there was bleeding from her vagina and her pyjama became blood stained and the accused tried to wipe out the blood and thereafter placed the pyjama behind a trunk in her house. The appellant also made the prosecutrix wear another pyjama. In her statement, she stated that she had narrated the entire incident to mother after three days. The First Information Report in this case was lodged on 16.9.1975 though the alleged incident had taken place on 12.9.1975.

3. The prosecution examined 17 witnesses. The trial court noted a significant fact that according to the medical evidence, the doctor who examined the prosecutrix Sunita, could not be produced as he had left the services of the hospital. The medical report, however, revealed that 'her hymen was intact and there was no mark of injury on the vagina.' There as thus no actual penetration or complete sexual intercourse. The trial court observed that in these circumstances, the appellant cannot be held guilty of the offence under section 376 IPC, and instead convicted the appellant under section 376 IPC read with section 511 IPC, and sentenced him to one year's R.I.

4. The appellant aggrieved by the judgment of the learned Additional Sessions Judge, New Delhi, preferred this appeal. Initially, the appellant was represented by Mr. M.L. Srivasastva, Advocate, at the admission hearing of the appeal but thereafter, no one appeared. therefore, this court appointed Ms. Neeta Thakur, Advocate, as amicus curiae in this case. Ms. Thakur submitted that the entire case hinges on the testimony of the minor girl Sunita. It was submitted that her evidence suffers from material infirmities and contradictions, and it would not be safe and sound to base conviction on the sole testimony of such a child witness. She further submitted that Sunita's testimony does not find any corroboration from any quarter.

5. Ms. Thakur submitted that according to the medical report, no offence has been committed. According to the medical report, hymen was found intact and there was no mark of injury on her vagina'. In view of the medical report, the entire prosecution version has to be discarded, particularly when according to the F.I.R. Kumari Sunita, was just 6 years of age, when the alleged offences were committed. It was submitted that any rape or intercourse would have ruptured her hymen and caused injuries on her private part.

6. Ms. Thakur submitted that the prosecutrix in her cross-examination, clearly indicated in answer to a specific question, that her mother had seen her private part on the date of the incident. In case the mother had learnt about the incident on 12th September, 1975, then it is beyond comprehension as to why the F.I.R. was lodged on 16th September, 1975, i.e. more than 4 days after the incident? She submitted that the possibility of false implication of the appellant cannot be ruled out particularly when there was some enmity regarding money transaction between the appellant and the father of the prosecutrix. Ms. Thakur further submitted that from the testimony of Kumar Sunita, it is clearly borne out that she was tutored and had given a parrot-like version. According to Ms. Thakur cross-examination of the prosecutrix demolishes the entire prosecution story. To substantiate her argument, Ms. Thakur had drawn my attention to the following two questions and their answers. The two questions and their answers are reproduced as under:-

Q. Was it your mother who told you to mention the name of the accused?

A. Yes.

Q. Was that Nahar Singh, Kanwar Singh and my parents told you mentioning the name of the accused?

A. Yes.

7. Ms. Thakur submitted that from the answer aforesaid questions, this is clearly borne out that she was fully tutored and her cross-examination totally demolishes the entire prosecution version, and no reliance can be placed on the testimony of

such a witness. It would be quite dangerous to convict the appellant on the sole testimony of a child witness like Sunita.

8. She has placed reliance on some of the decided cases of the Supreme Court, and of this court to buttress her arguments that the court must be extremely cautious and careful in placing reliance on the testimony of a child witness. She has referred to the decision of the Apex Court reported as State of Assam Vs . Mafizuddin Ahmed, : 1983 CriLJ426 . In this case, the Supreme Court approved the observations of the High Court. Those observations read as under:-

'...the evidence of a child witness is always dangerous unless it is available immediately after the occurrence and before there were any possibility of coaching and tutoring.'

9. She had also placed reliance on para 17 of the said judgment in which the court came to the conclusion that the fact that he was tutored is fully borne out by his own statement, as well be clear from the following portion of his deposition:

'Nana' accompanied me when I came to depose in the lower court, but stayed outside. I stated in that court that I had stated what 'Nana' asked me to. The day before I came to depose, I had told 'Nana' what I would say.

10. Ms. Thakur submitted that this case is fully applicable to the facts of this case. In the instant case, instead of Nana, the mother and father of the prosecutrix coached and tutored her and her statement is the outcome of that tutoring and coaching.

11. She has also placed reliance on Arbind Singh v. State of Bihar, 1994 SCC 1418. In this case, the court observed.

'Having taken a careful look at the evidence of this child witness, we are of the opinion that implicit faith and reliance cannot be placed on her testimony since it is not corroborated by any independent and reliance evidence,'

12. It is well settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly when the evidence betrays traces of

tutoring. We, therefore, think that appellant 1 was entitled to a benefit of doubt.

13. Ms. Thakur also placed reliance on Division Bench judgment of this Court *Vijay Kumar v. State*, ILR (1981) 2 Delhi 449. In this case, the well settled principle of law has been reiterated. The court observed that if a person is to be convicted on the testimony of a child, it has to be ensured that the child had not been tutored and there is some corroboration available. Ms. Thakur submitted that this case also had great bearing on the facts of this case because in the instant case, the prosecutrix has been coached and tutored and there is no corroboration of her testimony. The entire conviction is based solely on the testimony of this minor girl Sunita.

14. I have heard the learned counsel appearing for the appellant and I find considerable force in the submission of the learned amices curiae. The learned counsel for the State could not support the prosecution story. The testimony of baby Sunita gives a clear impression that she was coached and tutored before she gave the statement and it is also clear from the number of the questions she had answered in the cross-examination. Her cross-examination runs counter to her examination-in-chief. The medical evidence also proves the innocence of the accused. There is not plausible Explanationn for undue delay in filing the first information report in this case. On consideration of all these factors, the benefit of doubt must go to the accused. The appeal is accordingly allowed and disposed of. The appellant is acquitted of all the charges. The bail bonds are cancelled.

15. Before I part with this case, I would like to record my deep sense of appreciation for the very able assistance provided by Ms. Neeta Thakur, the amices curiae in the case.