

Pappu Vs. State of Delhi

Pappu Vs. State of Delhi

SooperKanoon Citation : sooperkanoon.com/711116

Court : Delhi

Decided On : May-27-2009

Reported in : 2009CriLJ3342

Judge : Pradeep Nandrajog and; Indermeet Kaur, JJ.

Appeal No. : Crl. A. No. 267 of 2007

Appellant : Pappu

Respondent : State of Delhi

Advocate for Def. : Pawan Sharma and ; Richa Kapoor, Adv.

Advocate for Pet/Ap. : Meera Kaura Patel, Adv

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Noting that none had been appearing for the appellant and vide order dated 6.5.2009, the request of the appellant to be released on bail, after furnishing a personal bond was rejected and the appeal was fast tracked for hearing, and listed today for final hearing, we appointed Ms. Meera Kaura Patel Advocate, as the Amicus Curiae to assist the Court and argue the appeal on behalf of the appellant,

since learned Counsel happened to be in Court to argue another appeal.

2. We fix her fee at Rs. 5,500/-.

3. The paper book was handed over to learned Counsel appointed as Amicus Curiae to enable the counsel to acquaint herself with the record. We requested learned Counsel to inform us whether she would be in a position to argue the appeal today itself, for the reason we find that only 8 witnesses have been examined at the trial. The testimony of the 8 witnesses spans only 18 pages; 8 of them being typed on less than half a sheet i.e. the total testimony actually spans 14 sheets. We proceeded with our Board and heard the miscellaneous matters and after completing hearing in the miscellaneous matters, queried learned Amicus Curiae whether she is in a position to argue the appeal today itself. After going through the record, learned Counsel informs us that she is in a position to argue the appeal.

4. We have heard learned Counsel for the parties.

5. Vide impugned judgment and order dated 29th November 2005, the appellant has been convicted for the offence of having raped Kumari 'M' aged about 6 years.

6. Vide order on sentence dated 29th November 2005, the appellant has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs. 5,000/-; in default of payment of fine to undergo simple imprisonment for one year.

7. Case of the prosecution is that Kumari 'M' aged 6 years, was residing with her parents at House No. 1/40, Khichdipur, taken on rent by her father. At House No. 1/14, Khichdipur, belonging to her father, construction work was going on. She went to her house under construction to play at around 5:00 p.m. on 23.8.2004 and around 5:30 p.m. returned home crying. Her mother, Usha PW-1, saw that her underwear and clothes were stained with blood. To the mother it was apparent that the young daughter had been raped. Kumari 'M', told her mother that the appellant had raped her. This information was conveyed by Usha to her husband and her brother-in-law Shyam Lal PW-7. The appellant who was a resident of the same area was searched for and was apprehended by the neighbours who gave

him a thrashing at the spot itself. The police was informed. On the statement of the mother of Kumari 'M', the FIR was registered. Kumari 'M' was taken to Lal Bahadur Shastri Hospital, where Dr. Uma Mauraya PW-4, examined her at 7:15 p.m. on 23.8.2004 itself and recorded the MLC Ex.PW-4/A. In the MLC it was recorded that the hymen of Kumari 'M' was lorn.

8. Armed with the MLC, Ex.PW-4/A, and relying upon the version of the young child and her mother, the appellant was sent for trial. The charge framed against him was of having committed rape on Kumari 'M' at around 5:00 p.m. on 23.8.2004 at the semi-constructed house bearing Municipal No. 1/ 14, Khichdipur, New Delhi.

9. At the trial, Usha PW-1, mother of Kumari „M. deposed that Kumari 'M' aged 6 years, was her daughter and on 23.8.2004 had gone to play at their house which was under construction. She left at around 5:00 p.m. and came back after 2 hours. She was crying and told her that the appellant had raped her. She saw that the underwear of her daughter and her clothes were blood stained. She lodged the report Ex.PW-1/A with the police.

10. On being cross-examined, she stated that she was residing at House No. 1/140 Khichdipur. She stated that when her daughter had gone to their house which was under construction, no masons were present. She further stated during cross-examination that when her daughter approached her, she was crying, the appellant had followed her daughter. She denied the suggestion that her husband had doubted her fidelity as she suspected that she was having illicit relations with the appellant. She denied that the appellant has been falsely implicated at the instance of her husband.

11. Shyam Lal PW-7, the brother-in-law of PW-1 i.e. the elder brother of her husband, deposed that around 5/5:30 p.m. on 23.8.2004 PW-1 i.e. his sister-in-law, along with her daughter Kumari 'M' came to him and told him that the appellant had done a wrong act with Kumari 'M'. He was residing with his younger brother at House No. 1 /40 Khichdipur, since their house bearing No. 1 / 14 Khichdipur was under construction. He called up the police at No. 100 and searched for Pappu i.e. the appellant who resided in the neighbourhood and found him at the corner of a gali. Pappu was apprehended. Neighbours gathered and

gave beating to Pappu.

12. Dr. Uma Mauraya PW-4, deposed that on 23.8.2004 she was posted at Lal Bahadur Shastri Hospital as a Senior Gynalcologist and had examined Kumari 'M' at 7:15 p.m. and had prepared the MLC, Ex.PW-4/A. She prepared two slides of vaginal swabs and along with the underwear of Kumari 'M', handed over the same to the investigating officer, who sealed the same in two parcels. In the MLC Ex.PW-4/A she recorded as under:

L/E: no injury no BP/L.

PV: hymen torn.

No fresh BP/L present.

13. She further deposed: On examination vitals of the patient were settled. On local examination no injury no bleeding from vagina was seen. On per vaginal examination hymen was found torn and no fresh bleeding per vagina was present.

14. Kumari 'M' PW-5, aged 7 years, when she deposed in Court on 19.11.2005 testified in a cryptic manner as under:

Q: Do you know Pappu, accused present in Court?

Ans. He is Pappu. He is my papa. However, my father is standing outside the house.

Q: What the accused did to you?

Ans. The accused took me to the second floor. He removed my underwear. He put his private part into my private part. Thereafter I cried and then he left me. I had narrated the story to my mother.

15. On being cross-examined Kumari 'M', stated: My mother had asked me to give such like statement.... Labours were working when the house was being constructed. When I cried no labourer approached me.

16. Dr. R. N. Das PW-2, deposed that he had examined the appellant on 23.8.2004 and had taken a blood sample of the appellant and along with the underwear of the appellant had handed over the same to the investigating officer after preparing the MLC Ex.PW-2/A of the appellant. He deposed that as per his examination, and as recorded in the MLC of the appellant, the appellant was capable of performing sex.

17. The investigating officer i.e. SI Sansar Singh PW-6, deposed of having received the complaint from the mother of the prosecutrix and that he learnt that the prosecutrix had already been taken to the hospital by her mother and thus he went to the hospital. That the appellant had already been apprehended by the public and had been given a beating and for said reason he got the appellant medically examined as also to ascertain whether the appellant was capable of performing sex. He prepared the site plan Ex.PW-6/B and received the vaginal swabs and the underwear of the prosecutrix as also the underwear and the blood sample of the appellant and after sealing the same in a parcel, he sent the four articles to the FSL laboratory for a serological test and received the report Ex.PX from the serologist.

18. We note that the report Ex.PX has opined that no blood was detected either on the underwear of the prosecutrix or the appellant; no blood was detected on the vaginal swabs of Kumari 'M' Blood was detected on the gauze cloth i.e. the gauze piece on which the blood sample of the appellant was taken by PW-2.

19. The learned trial Judge has summarized his reasons to convict the appellant in para 22 of the impugned decision which reads as under:

22. The reading of the whole statement of the prosecutrix clearly goes to show that the witness is not tutored one. Nothing material has been cited to discredit her evidence. As a matter of fact, there is enough corroboration to her statement. First of all, her mother and her uncle Shyam Lal has supported the version of rape. Secondly, the medical evidence depicts that hymen of the prosecutrix was torn. Thirdly, her mother stated that immediately after the occurrence, accused had followed the prosecutrix and the evidence on the record, goes to reveal that he was given beating by the public. This is thus clear that the evidence of the

prosecutrix is supported by eloquent evidence. The case stands proved by a web of evidence.

20. We note that the learned Trial Judge has trivialized the evidence of no blood being detected from the vaginal swabs of the prosecutrix and her underwear by writing as under:

It was probable and possible that the accused must have removed the blood upon her private part before leaving her after sexual act.

21. Learned Counsel for the appellant urges that the learned trial Judge has considered the evidence in a most perverse manner, as if the Judge was deciding, come what may, the appellant has to be convicted. To make good the submission, learned Counsel urges:

(i) That Usha PW-1 had categorically stated that when she saw Kumari 'M' she noted that her clothes and underwear were stained with blood. This statement of Usha stands disproved by the FSL report Ex.PX. That the learned trial Judge could not have trivialized evidentiary value of the FSL report Ex.PX for the reason it discredits the version of PW-1.

(ii) That the learned Trial Judge has ignored the fact that on being cross-examined, Kumari 'M' truthfully stated that what she has stated in her examination-in-chief, is as told by her mother today. Counsel urges that she was parroting what was told to her by her mother.

(iii) Third submission made is that the prosecutrix stated that labourers were working in the semi-constructed house where she had gone to play, whereas according to PW-1 no labour was working in the house. Counsel urges that the child witness has spoken the truth of parroting her statement at the behest of her mother as also the truth that the house where she was playing had labours working therein and that, if this is so, there was no question of the appellant raping Kumari 'M' and not being caught by the labourers working in the semi constructed house more so for the reason, Kumari 'M' deposed that when she was raped she cried but no labour working at the site came to her rescue.

(iv) With reference to the testimony of PW-1 which has found favour with the learned Trial Judge that the appellant followed the prosecutrix and was apprehended as a stalker and given a beating by the public being supported by the MLC of the appellant which notes bruise injuries on his elbows, learned Counsel urges that the learned Trial Judge has failed to note the testimony of PW-7, as per which, the appellant had to be searched and on being located at the corner of a gali was apprehended; followed by a thrashing. Counsel urges that the same establishes that PW-1 had spoken yet another lie of appellant having followed her daughter after committing the offence.

22. Fifthly and lastly, in fact, the most powerful submission made by learned Counsel for the appellant, is predicated on the MLC of Kumari 'M' and the testimony of PW-4. Learned Counsel urges that the MLC of Kumari 'M' positively shows the hymen being torn. Learned Counsel urges that the MLC as also the testimony of PW-4 also equally categorically shows that no fresh bleeding was noted in the vagina or near the hymen. No external injury whatsoever was noted in or around the private parts of Kumari 'M'. Referring to Medical Jurisprudence, learned Counsel urges that in adolescent girls, the hymen is situated posteriorly and is placed higher up in the vaginal canal, which is narrow. Counsel urges that unless the male organ makes a forceful penetration, the hymen would remain intact. Since the hymen was found torn, obviously, learned Counsel urges, the same has to be a result of a forceful penetration by a male organ. Referring to the Medical Jurisprudence, learned Counsel highlights that in the case of adolescent girls narrowness of the vaginal canal makes it inevitable that before the hymen is torn, the male organ has to inflict blunt forceful blows on the labia majora. Counsel urges that it is apparent that the hymen of Kumari 'M' was torn much prior and not, at any point of time, between 5:00 p.m. and 7:00 p.m., for had it been so, there had to be fresh injuries at the labia majora and the vaginal canal.

23. We take the last submission first for consideration, for indeed, if the same finds favour, it would obviously be a case where Kumari 'M' was not subjected to any rape as alleged by the prosecution. Her hymen was ruptured much earlier.

24. Kumari 'M' was examined by PW-4, as recorded in the MLC Ex.PW-4/A, at 7:15 p.m. on 23.8.2004. From the testimony of the prosecutrix and her mother she had gone out to play at around 5:00 p.m. Obviously, the assault, if any, had to be between 5:00 p.m. and 7:00 p.m.; more towards 7:00 p.m. because the prosecution claims that soon after the rape the young child returned crying to her house.

25. Medical Jurisprudence (5th Edition) by Dr. R.M. Jhala and V.B. Raju, at page 469, opines as under:

In young girls under the age of 12 years the hymen is situated relatively more posteriorly (in backward position) and higher up in a narrow vaginal canal. This prevents the hymen from coming in contact with the male organ in forceful penetration of the organ. This also saves the hymen from bearing the brunt of the blow and thus it escapes injury. Thus absence of injury to hymen in a girl under 12 years does not rule out the act of rape.

Labia majora - Next to hymen in positive importance but more than that in frequency are the injuries on labia majora. These, viz., labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. In case of girls under 12 years where examination of hymen may not prove useful, examination of labia majora given conclusive evidence. The narrowness of the canal makes it inevitable for the male organ to inflict blunt, forceful blows on the labia. Such blows invariably lead to contusion, because of looseness and vascularity. The interesting feature of such contusion is its vividness especially on the side it forms inner wall of vagina. Against the pink background of the mucous membrane dark red contusion is visible even on initial inspection.

26. We find merit in the last contention urged by learned Counsel for the appellant. Indeed, in the light of Medical Jurisprudence on the subject, it is apparent that Kumari 'M' was not subjected to any sexual assault at the time and on the date as claimed by the prosecution. The reason is obvious. Medical Jurisprudence evidences that in adolescent girls the hymen is situated relatively more posteriorly and for said reason there is a possibility of rape being committed without the

hymen being torn; the converse whereof would be that if the hymen of an adolescent girl is torn due to rape, the penetration has to be a deep penetration. The Medical Jurisprudence guides that the labia majora are the first to be encountered by the male organ and they are subjected to blunt forceful blows, depending on the vigour and the force used by the accused and counteracted by the victim. The narrowness of the vaginal canal makes it inevitable for the male organ to inflict blunt, forceful blows on the labia and such blows lead to contusion because of looseness and vascularity. The feature of such contusion is revealed against the pink background of the mucous membrane dark red contusion being evident to the naked eye. Had Kumari 'M' being raped between 5:00 p.m. and 7:00 PM and the hymen got torn due to said rape, fresh injuries on the labia majora, vaginal canal and around the hymen would have been evidenced as fresh bleeding injuries, and if not bleeding injuries, in the form of a dark red contusion being visible against the pink background mucous membrane.

27. If this be so, it assumes all the more significance that PW-1 has been found to be speaking half truths, as projected in the argument of learned Counsel for the appellant, with which we concur, and hence we did not re-note the same. That no blood was detected on the vaginal swabs of the prosecutrix and on her underwear totally belies the testimony of PW-1 that she saw blood on the underwear and the clothes of the prosecutrix. That the prosecutrix admits that whatever she stated in the Court is at the behest of her mother is also suggestive of her being tutored and thus affords good ground to accept the defence taken by the appellant at the first instance i.e. of false implication; motivated by the father of the prosecutrix to settle scores with the appellant as the father of the prosecutrix believed that he was having an illicit relationship with the mother of the prosecutrix.

28. As noted above, the prosecutrix referred to the appellant as Pappu papa. This also suggests that the appellant was having a kind of a relationship with the mother of the prosecutrix which led the young child to believe that even the appellant is her father, apart from her biological father.

29. That the prosecutrix had stated that labours were working in their house where she was playing is also a factor which belies any rape being committed on the

prosecutrix in the semi constructed house, for the reason, if the appellant did the dastardly act as alleged against him, it is just not possible that the labours working in the house would not have caught the appellant at the spot itself.

30. That PW-1 has lied about the appellant following her daughter to their house is demolished by the testimony of PW-7 who has categorically deposed that when PW-1 informed him that the prosecutrix has been raped by the appellant, he set out looking for the appellant and apprehended him at the corner of the gali and at that time the people in the neighbourhood gave him a thrashing.

31. The reasoning of the learned Trial Judge has ignored the features in the evidence as noted by us herein above.

32. A perusal of the judgment shows that the emotions have overtaken the Judge who has forgotten the judicial oath of deciding matters brought before the Court as per law, meaning thereby, the evidence on record.

33. The appeal is allowed.

34. The impugned judgment and order dated 29.11.2005 as also the impugned order on sentence dated 29.11.2005 are set aside.

35. The appellant is acquitted of the charge of having raped Kumari 'M' as alleged by the prosecution.

36. At this stage, we note that though, on 6.5.2009 the prayer of the appellant to be released on personal bond was declined, report has been received from the Superintendent, Central Jail, Tihar that the appellant has secured bail, as granted to him vide order dated 18.7.2007.

37. Since the appellant has been acquitted, we discharge the personal bond and the surety bond furnished by the appellant.