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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 340 of 2003

MOHD. YUNUS Appellant.
! through: Mr.Sachin Chopra, Advocate.

VERSUS

\$ STATE Respondent
^ through: Mr.Ravinder Chadha, Advocate.

% DATE OF DECISION: 24 October, 2003

CORAM:

* Hon'ble Ms.Justice Usha Mehra.

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? *yes.*
3. Whether the judgment should be reported in the Digest? *yes.*

: **PRADEEP NANDRAJOG, J.**

1. Appellant stands convicted under Section 376 IPC for having committed rape upon the person of Sultana, aged 7 years. It being a case of second conviction for having committed the offence under Section 376 IPC, appellant has been sentenced to

life imprisonment and a fine of Rs.50,000/-. In default of payment of fine to undergo simple imprisonment for 2 years. Benefit under Section 428 Cr.P.C. has been given to the appellant.

2. Briefly stated, appellant is the cousin of one Abdul Rehman. Rukki is the wife of Abdul Rehman. The prosecutrix Sultana is the younger sister of Rukki. As per the case of the prosecution, Abdul Rehman was residing at jhuggi No.1001, H-4, Jahangir Puri. Appellant was residing at jhuggi No.164, H-4, Jahangir Puri. On 19.2.2001, Sultana went to the jhuggi of the appellant at about 10 A.M. to watch television when she was ravished by the appellant. On hearing the screams of Sultana, her sister Rukki rushed to the jhuggi of the appellant and saw him committing rape on Sultana. On seeing Rukki, appellant ran away. Sultana, who was bleeding from her private parts was taken by Rukki to her jhuggi where she was washed. Her under garment was also washed. In the evening when Rukki's husband came home, they went to the police station and the FIR in question was lodged at about 7.30 P.M.

3. After the FIR was lodged, SI Ajmer Singh was handed over the investigation. He, along with Rukki, her husband Abdul

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Rehman and a lady constable went to the jhuggi complex where the appellant was found present. He was arrested. Sultana was taken to Babu Jagjivan Ram Memorial Hospital, Jahangir Puri at 10 P.M. on 19.2.2001. She was examined by the doctor. As per the medical examination conducted, it was found that the hymen was ruptured and was bleeding. A small tear (1 Cm. in size) was found on the posterior margin of the hymen. Bleeding was the consequence of the rupture of hymen.

4. The accused was likewise got examined at Babu Jagjivan Ram Memorial Hospital at 9 P.M. on the same day. As per the report, the appellant was found to be capable of performing sexual act.

5. The clothes of the accused were seized and the under garment worn by the prosecutrix was also seized. They were sent for forensic examination. Reports were obtained. On completion of the investigation, the appellant was sent to trial. Charge was framed on 26.7.2001. At the conclusion of the trial, vide judgment dated 17.2.2003, appellant was convicted. Sentence was pronounced on 19.2.2003.

6. Case of the prosecution hinges on the testimony of Rukki, examined at PW-2 and testimony of the prosecutrix, Baby

Sultana examined as PW-3.

7. As per the testimony of Rukki, Sultana aged about 7 years was her younger sister and was brought by her from Calcutta. Appellant, Yunus was the cousin of her husband and was living near their jhuggi. On the day of the incident, Sultana had gone to the jhuggi of Yunus at 10 A.M. to watch television. She was present in her jhuggi. She heard screams of Sultana and ran towards the jhuggi of the appellant where she saw the appellant having forced himself onto Sultana doing sexual intercourse. On seeing her, the accused ran away. Sultana was lying in a pool of blood and therefore she could not apprehend the accused. She picked up her sister in her lap and took her to her jhuggi. She washed the private parts of her sister and the underwear and waited for her husband to come. When her husband came home in the evening, they went to the police station and lodged the FIR at about 6.30 P.M. The police accompanied her husband and herself to the jhuggies where appellant was arrested. Sultana was taken for medical examination and she took the washed underwear with her which she handed over to the doctor. In cross-examination, she admitted that she had taken a loan of Rs.600/- from the wife of

the accused but stated that she had returned the loan amount. She stated that earlier also the accused had committed rape of two other girls, for one he was sent to jail, but in another case, family members of the girl gave beating to the appellant but did not lodge a complaint with the police. We may note that far from discrediting the testimony of Rukki, no cross-examination has been conducted to even suggest to her that she was not present in her jhuggi or that she had not witnessed the offence committed by the appellant.

8. Sultana, who appeared as PW-3 was examined by the court and from the answers, the court was satisfied that she was able to understand the questions properly and answer them. Her statement was recorded without oath. In her statement, Sultana stated that she knew the appellant as he was residing near her jhuggi. Her family consisted of 7 sisters and a brother. She was brought from Calcutta by her sister Rukki. On the day of the occurrence, she had gone to the jhuggi of the appellant to watch television. The appellant removed her underwear and had sexual intercourse with her. While doing so, he tried to gag her mouth but she screamed. She felt pain in her private parts. On hearing her shrieks, her sister came and saved her. Her sister

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took her to her house and washed her. In cross-examination, she stated that at the time of the occurrence, the children of the appellant had gone to school and his wife was not there. She denied that she was deposing falsely.

9. PW-4, Abdul Rehman, husband of Rukki stated that on the day of the occurrence when he came home in the evening, his wife told him as to what had happened. He took his wife to the police station whereupon the FIR was lodged.

10. PW-7, lady constable Meena, stated that on 19.2.2001, she took Baby Sultana to the Babu Jagjivan Ram Memorial Hospital for medical examination and collected the MLC. PW-8, Constable Satpal likewise deposed that on the day of the occurrence, he took the accused for medical examination at Babu Jagjivan Ram Memorial Hospital and obtained the medical examination report. PW-10, SI Ajmer Singh, who was the investigating officer, in his deposition stated that after the FIR was registered, investigation was handed over to him. At the pointing out of the complainant, he arrested the accused from his jhuggi. He collected all the reports including the report of FSL, Malviya Nagar pertaining to the serological tests. The reports being Ex.PW-10/E and PW-10/L.

11. As per the report of the Forensic Science Laboratory, blood was detected on exhibits 2 and 3 being a sealed injection vial and the underwear. No blood was found on exhibit 4 being a pant.

12. Learned counsel for the appellant contended that on the evidence on record, the learned Additional Sessions Judge erred in returning a finding of guilt. He contended that admittedly, the under garment of Sultana was washed, and therefore, no reliance could be placed on the CFSI Report which had detected blood on exhibit B, being the underwear. Learned counsel further contended that the appellant had been framed because he had loaned money to Rukki which she was not returning and to avoid return of the loan, got the appellant falsely implicated in the case.

13. Both the contentions raised by the appellant hardly merit any consideration. From the medical examination of the prosecutrix, it is apparent that on the day of the occurrence, she was indeed sexually assaulted. As noted above, the hymen was found torn and was bleeding. The testimony of PW-2 and PW-3 clearly establishes that it was the appellant who had sexually assaulted Sultana. Both the witnesses have stood the test of

cross-examination and as noted above, PW-2 Rukki was hardly cross-examined in respect of a testimony that on hearing shrieks of her younger sister when she ran into the jhuggi of the appellant, she saw the appellant performing sexual intercourse with her sister. We have no reasons to disbelieve the testimony of Rukki or the testimony of the prosecutrix. Merely because Rukki happened to wash her sister and also washed the underwear which she was wearing would not in any manner dilute the case against the appellant. As regards the alleged motive, the appellant has failed to bring on record anything to substantiate that the relations between Rukki, or her husband qua the appellant were strained or hostile. The alleged theory of non-return of the loan amount is a mere ploy, raised by the appellant to create a smoke screen. Admittedly, Sultana was the victim of a sexual assault on 19.2.2001 and there is no reason as to why she or her sister would falsely implicate the appellant, if indeed the assailant was someone else.

14. The learned Additional Sessions Judge has considered the aforesaid facets of the case and we concur with the findings arrived at. As regards the sentence imposed, it was not disputed by counsel for the appellant that this was the second conviction

sustained against the appellant in a rape case. We, therefore, find no infirmity in the sentence imposed upon the appellant.

15. We find no merit in the appeal. The same is accordingly dismissed. Since the appellant is in judicial custody, he shall be informed of the present judgment through the Superintendent, Central Jail, Thar.



PRADEEP NANDRAJOG, J.



USHA MEHRA, J.

OCTOBER 29, 2003

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