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Rape conviction on belated complaint dangerous: court

J. Venkatesan

NEW DELHI: It will be dangerous to convict a man charged with rape of a woman, on her complaint filed belatedly and when the whole case depends on her sole testimony. Giving this ruling, the Supreme Court acquitted an accused, who was sentenced to three years' imprisonment on the charge of raping a 17-year old girl.

A fast track court in Kozhikode convicted and sentenced Vijayan to undergo five years' rigorous imprisonment. The girl preferred a complaint seven months after the alleged rape and after she was delivered of a child in the eighth month. On appeal by Vijayan, the Kerala High Court, while maintaining the conviction, reduced the sentence to three years.

Allowing his appeal against this judgment, a Supreme Court Bench, consisting of Justices A.K. Mathur and Dalveer Bhandari, pointed out that the case "wholly depends upon the testimony of the prosecutrix. The alleged incident took place seven months prior to the date of her lodging a complaint on a realisation that she had been subjected to rape by the accused-appellant. No complaint or grievance was made either to the police or the parents soon after the alleged incident. It was submitted by

the prosecutrix that the delay in her lodging a complaint was because the accused promised her to marry her."

The Bench said that in cases where the only testimony of the prosecutrix was available, "it is very dangerous to convict the accused, especially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless."

The Bench agreed with the submission by senior counsel K. Radhakrishnan, who appeared for the appellant, that had the prosecutrix lodged the complaint soon after the incident there would have been some supporting evidence such as a medical report or injury on her body.

The Bench said: "If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR, it will be very hazardous to convict [the accused] on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the accused-appellant was responsible for the child. In the face of lack of any other evidence, it is unsafe to convict the accused."

The court set aside the impugned judgment and ordered Vijayan's release forthwith.