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IN THE HIGH COURT OF DELHI AT NEW DELHI
Crl. Appeal No. 577/2009

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Reserved on: 6th August, 2012
Date of Decision: 22nd August, 2012

SANJAY KUMAR Petitioner
Through Mr. Anish Dhingra, Advocate.

Versus

STATE OF NCT OF DELHI ...Respondent
Through Mr. Sanjay Lao, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P. GARG

SANJIV KHANNA, J.

The appellant Sanjay Kumar has been convicted under Section 302 and 376 of the Indian Penal Code, 1860 (IPC, for short) arising out of FIR No. 542/03, P.S. Rohini, for murder and rape of the child 'A', aged about 5 years. He has been sentenced to Rigorous imprisonment for life for both the offences and to pay Rs.5000/- each for the two offences, in default to further undergo Simple Imprisonment of 3 months.

2. Homicidal death of Child 'A' is undisputed and stands proved by statements of PW10 Dr. Akhil Vohra, CMO, Saroj Hospital, Rohini Delhi, who had proved MLC (Ex. PW10/A) which records that the child 'A' was brought dead to the hospital at 5.40 PM on 20th August, 2003. She had abrasion mark on left side of forehead, strangulation mark on

front of the neck and a cloth piece was present in the oral cavity. PW3, Dr. Mona Gupta, Consultant Obstetrics and Gynecology, was present with Dr. Renu Sharma, Saroj Hospital and had examined the child 'A' on 20th August, 2003 and declared her 'brought dead'. PW3 recognized and identified the signatures and hand writing of Dr. Renu Sharma.

3. The body of child 'A' was subjected to post-mortem by PW12 Dr. V.K. Jha, Medical Officer-In-Charge, Mortuary, S.G.M. Hospital, Mangol Puri, Delhi. He had stated that the mouth of the child was partially open, tongue was intact and nails were blue. There was blood tinged discharge from mouth. The face was livid and swollen, the conjunctivae showed petechial hemorrhages; linear scratches present over the neck and upper front extending up to chin; lips were abraded and bruised at mucocutaneous junction; on dissection of the neck tissues, the soft tissues lying in front of neck showed hemorrhages and there was pressure marks underlying tissue bruised on the side of the neck. On opening the neck by removal of tongue attached to the structures showed a handkerchief was filling the laryngeal pharynx. The death was caused due to asphyxia consequent to gagging of the respiratory track by foreign material (handkerchief). On the aspect whether the child 'A' was subject to rape, medical evaluation by PW12 confirmed the same as per postmortem report Ex. PW 12/A. Posterior forchette was ruptured showing tear laceration, liquid blood oozing from

the vaginal orifice. Though the hymen, being situated high up was intact, but her vaginal muscles were bruised with swelling. PW12 opined that this was a case of forcible sexual intercourse with introduction of an adult male organ in an infantile vagina. The injuries were ante-mortem in nature.

4. In view of the post-mortem report we are not inclined to accept the submission of the learned counsel for the appellant that there was no evidence or material on record to show that offence under Section 376 was not made out as the MLC (Ex. PW3/A) of Saroj Hospital did not mention that the hymen was torn or records that on medical examination rape was made out. The internal examination and post mortem report (Ex. PW12/A) and opinion of PW12 are clear, lucid and categorical. The aforesaid opinion is also supported by CFSL reports (Ex. PW18/M and PW21/A) which have been referred to below.

5. On the question of involvement and whether the appellant is guilty of committing the said offence, we would like to refer to evidence of PW1 Anil Kumar, PW4 Renu, father and mother of child 'A', PW7 Javed and PW11 Devender Singh. The said witnesses are ad idem on the primary and material facts. Their testimonies are also credible, trustworthy and clearly state the truth.

6. PW1 Anil Kumar has stated that on 20th August, 2003, he along with his brother-in-law Devender (PW 11) and the child 'A' had gone to

the barber shop of PW-7 Javed. The child 'A' had gone to meet her friend Diksha who was residing in the same building/ property but had come back and had told them that Diksha was sleeping. The appellant who was also residing in the same building/property thereafter came and had taken the child 'A' with him to meet Diksha. Diksha was a friend of child 'A' and daughter of Praveen. PW-1 had stated that appellant was related to Praveen (cousin brother). PW-1 and Devender thereafter left the barber shop and went to the house of Diksha but it was locked. They (PW1 and Devender) went to the first floor where he saw his daughter 'A's' chappals lying outside the room which was locked. He could however, hear the stereo playing inside at a very high volume. He knocked the door which was opened by the appellant accused after a long time. The appellant was perturbed and was perspiring a lot. PW-1 and PW-11 enquired about the child but they could not find her in the room. The bed sheet and the mattress were found wet. One side 'palla' of the bed was slightly open. On opening the same, PW-1 saw his daughter in a semi-conscious state. A pyjama of an adult was tied very tightly with her neck. Her lower portion was naked and she was not wearing her underwear. On her private part, blood and semen could be seen. She was picked up and taken to Saroj Hospital where she was declared brought dead.

7. PW-11 Devender is the brother of the mother of the child. He has stated that he and Anil Kumar had cordial relations and were on visiting terms with Praveen Kumar and his family. The appellant accused was son of mama (maternal uncle) of Praveen and residing with Praveen from childhood. On 20th August, 2003, it was Janmashtmi and he had gone to the house of Anil Kumar PW1 and had accompanied him for a haircut at the shop of Javed PW-7. Child 'A' was with them and she had gone to meet and play with her friend Diksha but had come back and told them that Diksha was sleeping and so she was unable to meet her. In the meanwhile, the appellant came and took child 'A' with him stating that he would make her meet Diksha. They did not object as they knew appellant Sanjay and his family. Child 'A' did not come back and they went to the house of Praveen Kumar. The main gate of the house was locked from outside so they went to the room of Sanjay situated on the first floor. His room was locked from inside and chappal of child 'A' was lying outside the door of the room. They could hear the stereo inside the room. They knocked and after five minutes the appellant opened the door. He was perturbed and perspiring a lot. On being questioned about the child, the appellant tried to escape from there. He was caught and alarm was raised. Public gathered. PW-1 made search of child 'A'. A diwan bed box type with gadda and bed sheet was examined. The mattress was wet and cement type substance was found

on the bed. 'Palla' of the bed was slightly open and on opening the same they found the child 'A' in the box of bed. Her neck was strangulated with a pair of gent's pyjama. She was unconscious. Her underwear was missing and blood was oozing from her private part. She was picked up and taken down. His sister i.e. mother of the child PW-4 came. They took the child to the Saroj Hospital.

8. PW-7 Javed in his statement has stated that on 20th August, 2003, Anil, Devender and child 'A' had come to his shop. He knows the appellant who is the son of bua (maternal aunt) of Phool Singh. The appellant was residing in the house of Phool Singh in a separate room. His shop was also located in the same building belonging to Phool Singh, his landlord. He had attended the marriage of appellant and used to visit the room in which the appellant had a diwan. He also knew PW1 and PW11 Anil Kumar and Devender who used to come to his shop for haircuts and shave. The family of the appellant and Anil Kumar were known to each other.

9. PW7 in the testimony has fully supported the statements of PW1 and PW11 that Anil had come there with his daughter on 20th August, 2003. The daughter had gone to the house of Praveen to meet Diksha but had come back as Diksha was sleeping. In the meanwhile, the appellant came to the shop and told her that he will take her to Diksha. The child 'A' went with the appellant. Anil Kumar and Devender left the shop and

after 10 minutes there was a lot of hue and cry. PW7 found that Anil Kumar and Devender had come down to the ground floor. Child 'A' was in the lap of Anil Kumar. Blood was oozing from a side of the head of child 'A'. Blood was also oozing from the head of the appellant who was shouting help..help (bachao-bachao). The child was taken to the hospital. Police also reached there and took the appellant in custody. In the cross-examination, he has accepted that he did not go to the place where the occurrence had taken place.

10. PW4 Renu had stated that on 20th August, 2003 her husband, brother Devender and her daughter child 'A' had at about 5PM gone to the shop of the barber in the neighbourhood. Someone had come and informed that a quarrel had taken place at the house of Praveen, their neighbour. When she reached the house, she found her daughter in her husband's lap in an unconscious condition and together they rushed her to Saroj Hospital. Her husband told her that the appellant had committed rape on their daughter and then concealed her body in the box of the bed. She and her family knew the appellant for the last 13 years. He was related to Praveen and was residing in the first floor of Praveen's house. Her daughter used to visit Praveen's house to play with her daughter Diksha.

11. PW-1, PW-4, PW-7 and PW-11 were cross-examined on behalf of the appellant but we do not find anything in the cross-examination which

taints or raises a doubt about the statements made by the said four witnesses. PW-1 had stated the he did not know if any nursing home called Ganesh or Kohli Nursing Home were operating within 100 Mtrs or 500 Mtrs from the spot or not. Similarly PW-4 Renu in her cross-examination had stated that she did not know whether Ganesh Nursing Home or Kohli Nursing Home existed in the said distance from her house. PW-7, however, accepted the position that Ganesh Nursing Home and Hitesh Nursing Home existed within a distance of 100 mtrs and Kohli Nursing Home was about 500 Mtrs from the shop. Saroj Hospital may be farther away but it was in the radius of about one or one and a half kilometer from the place of occurrence. PW-1 had stated that Saroj Hospital was just one and a half kilometers from the place of occurrence. Three of them i.e. PW1, PW4 and PW11 had taken the child to Saroj Hospital. Keeping in view the small distance, it is not difficult to understand and appreciate that PW-1 and PW-4 would have wanted and preferred to take their child to the best hospital, where appropriate and good medical treatment could be given. Probably they might not have realized that the child 'A' had expired. The denial by PW-11, PW1 and PW4 about the existence of the nursing home is not material and does not cast doubts about their statements implicating the appellant.

12. The presence of the appellant at the site and his beating by the public is also proved and established by his MLC dated 20th August,

2003 (Ex. PW2/A). PW2 Dr. Raj Mohan Trivedi had examined the appellant on 20th August, 2003. The MLC records alleged history of assault, and the injuries suffered by the appellant are also mentioned. PW2 had again examined the appellant on next day i.e. 21st August, 2003 and as per the said MLC (Ex.PW2/B), the appellant was capable of performing sexual intercourse. He had also taken a blood sample and underwear worn by the appellant.

13. The PW-1 has also proved seizure of chappal, bed sheet, pajama, underwear, an empty box of a pressure cooker, piece of ply, and blood stained cotton mattress as PW1/B, PW1/C, PW1/D, PW1/E, PW1/F PW1/G and PW1/H. These seized material were subsequently sent for CFSL examination and CFSL report Ex. PW20/G indicates that blood was detected from Vaginal swab; dirty cotton wool swab one sealed cloth parcel sealed with the seal of “Saroj Hospital”; a piece of wood having light stains described as a Diwan; dirty pyjamas and a handkerchief. Human semen was also detected on the dirty underwear. Blood on the handkerchief was of Group ‘A’. However, there was no reaction on the blood found on the other articles. In the present case, the prosecution had conducted DNA test of the fluid on the underwear of the child ‘A’ and the blood sample of the appellant. The CFSL report is marked PW18/M. As per the said report the DNA profiles of the biological fluid present on the underwear were identical and of a single

male origin when compared with source i.e. the blood sample of the appellant. This implicates and connects the appellant. The data enclosed with the report on the DNA finger printing shows the involvement of the appellant in the commission of the said offence. It excludes and negates involvement of any third person.

14. Statements of PW22 Head Constable Om Prakash, PW5 SI Sultan Singh, and PW16 HC Satbir show that the appellant accused was arrested from the place of occurrence itself.

15. In view of the aforesaid factual position, we have no hesitation in dismissing the appeal. The appellant has been rightly convicted for the offences under Section 302 and 376 IPC. On the quantum of punishment as far as under Section 376 IPC is concerned, we do not see any reason to interfere. The appeal fails and is hereby dismissed. Conviction and sentence are confirmed.

(SANJIV KHANNA)
JUDGE

(S. P. GARG)
JUDGE

August 22nd, 2012
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