

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 31st January, 2013

DECIDED ON : 18th February, 2013

+ CRL.A. 255/2011 & CRL.M.B.336/2011

ASGAR ALI Appellant

Through : Ms. Stuti Gujral, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Asgar Ali impugns his conviction and sentence in Sessions Case No.113/2008 arising out of FIR No.193/2007 PS Welcome by which he was held guilty for committing offences punishable under Sections 376/506 IPC and sentenced to undergo RI for ten years with fine ₹ 25,000/- under Section 376 IPC and in default of payment of fine to further undergo RI for one year. He was also sentenced to undergo RI for two years with fine ₹ 1,000/- under Section 506 IPC and in default of payment of fine to further undergo RI for two months. Both the sentenced were to operate concurrently.

2. Allegations against the accused were that on 17.03.2007 at about 08.00 P.M. at Fakiri Wali Gali, behind Shanta Colony Police Booth, he committed rape upon 'X' (assumed name) aged about 11 years and threatened her to kill. During the course of investigation, the prosecutrix was medically examined. The accused was arrested. The exhibits were sent to Forensic Science Laboratory. The Investigating Officer recorded statements of the witnesses conversant with the facts. After completion of the investigation, he submitted a charge-sheet against the accused under Sections 376/506 IPC. The accused was duly charged and brought to trial. The prosecution examined as many as thirteen witnesses to prove the charges. In his 313 Cr.P.C. statement, the accused pleaded false implication. He stated that prosecutrix wanted to marry his son and when he objected to that, she falsely implicated him in this case. DW-1 (Habib Khan) stepped in the witness box in his defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment held the accused guilty for committing the aforesaid offences. Being aggrieved, the accused has preferred the appeal.

3. Learned counsel for the appellant challenged the findings of the Trial Court and urged that it did not appreciate the evidence in its true

and proper perspective and fell into grave error in relying upon the testimony of the prosecutrix and her mother without independent corroboration. She pointed out various vital discrepancies and contradictions in the statements of the witnesses. The doctor who medically examined the prosecutrix was not produced. The doctor who appeared in her place deposed facts which were not mentioned in the MLC (Ex.PW-12/A). The prosecutrix was unable to clarify what 'wrong act' was done with her. PW-4 (Saira) admitted in the cross-examination that she had visited the accused in Tihar Jail. Only purpose the prosecutrix's mother to visit Tihar Jail was to persuade him to permit his son Dildar for marriage with her. The exact age of the prosecutrix could not be ascertained. The Trial Court did not give due weightage to the defence version without any valid reasons. Forensic Science Laboratory report did not find any semen and blood. Learned APP urged that the judgment is based upon fair appraisal of the evidence and no interference is called for. The prosecutrix had supported the prosecution in its entirety and her testimony requires no corroboration.

4. I have considered the submissions of the parties and have examined the record. The First Information Report was lodged on the statement of the prosecutrix 'X' (Ex.PW-3/A) and she disclosed how and

under what circumstances, the accused committed rape upon her forcibly without her consent. The occurrence took place on 17.03.2007 at 08.00 P.M. The First Information Report was lodged at 09.35 P.M. without any delay promptly. It rules out possibility of any fabrication. Prosecutrix's statement was recorded under Section 164 Cr.P.C. on 21.03.2007. PW-11 (Sh.Naresh Kumar, ACJ) proved the proceedings recorded under Section 164 Cr.P.C. In her statement, the prosecutrix named the accused for committing rape on her person on 17.03.2007 at 08.00 P.M. in his house.

5. While appearing before the Court as PW-3, she proved the version given to the police and the Metropolitan Magistrate at the first instance without any variation. She deposed when she was returning to her house at about 07.00 P.M. on the day of incident and was crossing through in front of Delhi Wala Hotel, the accused who was known, asked her to make food for him as his daughter was not at home. She cooked rice and dal for him at his house. When she was kneading flour (atta), the accused came from behind, closed her mouth and forcibly made her lie on the floor and raped her (galat kam kiya). He threatened that if she disclosed the incident to anyone, he would kill her. She did not tell out of fear. When she went to her house, she narrated the occurrence to her mother. She took her to the Police Station and her statement (Ex.PW-3/A) recorded. She

was cross-examined at length. In the cross-examination, she elaborated that accused's daughter, daughter-in-law and four sons lived in the house. However, she clarified that at the time of occurrence, none was present. She further disclosed that she sustained injuries on her shoulder. The accused tore her salwar and did the 'act' with her. She identified her torn salwar (Ex.PW-3/Article-1) which she was wearing at the time of occurrence. The Court made observation that the salwar was torn from the front side. She further stated that the accused committed rape with her for five minutes. She had started bleeding after rape. Blood had not fallen on the ground where rape was committed. She volunteered to add that the blood had fallen on the ground at the Police Station. She received bruises on her legs during the 'act'. She handed over her clothes to the doctor in the hospital. She denied that her mother intended to marry the accused's son Dildar. She denied that the statement was tutored by her mother. She volunteered that she stated whatever had happened with her.

6. The prosecutrix is a child victim. Her ossification test was conducted and her age was ascertained 11 to 13 years. She had no ulterior motive to falsely implicate the accused in the incident. The accused had allured the innocent child to his house on the pretext to prepare food for him and thereafter, ravished her when none of his family member was

present in the house. Despite searching cross-examination, no material discrepancies emerged in the statement to discard her version. She stood the test of cross-examination. Her conduct is quite reasonable and natural as soon after reaching house, she narrated the entire occurrence to her mother. Her conduct is relevant under Section 6 of the Indian Evidence Act. There is no inconsistency in the version given by her in her statements under Sections 161, 164 Cr.P.C. and in the Court.

7. PW-4 (Saira), X's mother has corroborated her version in its entirety. When the occurrence was revealed to her by the prosecutrix soon after the incident, she took her to the Police Station and lodged the First Information Report without any delay. She fairly admitted that she had visited the accused in Tihar Jail. She offered plausible explanation that she was compelled to visit jail under pressure from accused's two sons.

8. Ocular testimony of the prosecutrix is in consonance with medical evidence. In the MLC (Ex.PW-12/A) proved by PW-12 (Dr.Geetika Goel) scratch marks were noticed on the nose and face of the prosecutrix. The alleged history recorded in the MLC reveals that she was sexually assaulted by the accused Asgar Ali on 17.03.2007 at 08.00 P.M. It also records that clothes of the prosecutrix were stained over blood. She was examined soon after the occurrence at 11.30 P.M. at GTB Hospital.

As per FSL report (Ex.PW-13/A) human semen was detected on Ex.2a (salwar) and Ex.4 (underwear). In '*State vs. Dayal Sahu*', AIR 2005 SCC 2471, the Supreme Court even held that non-examination of doctor and non-production of medical report would not be fatal to the prosecution case if the evidence of prosecutrix and other witnesses is worthy of credence and inspire confidence.

9. From the very inception, the prosecution case was that rape was committed upon the prosecutrix. The counsel for the appellant did not seek any clarification in the cross-examination as to what was meant by 'galat kam'. The Trial Court specifically noted that 'rape' was committed upon the prosecutrix. Minor contradictions or discrepancies highlighted by counsel are not enough to discredit the cogent and reliable testimony of the child victim. The prosecutrix in the cross-examination claimed that her mother used to treat the accused like her father. The accused did not produce any credible evidence to establish that PW-4 (Saira) intended to marry his son Dildar. Dildar was not examined in defence. PW-4 (Saira) explained that she visited Tihar Jail to meet the accused once. She volunteered to add that her husband was missing. She was pressurized by the accused's sons to get the accused released from jail otherwise she would face dire consequences. She named Nazim and Dildar who

pressurized her. She further told that even after meeting the accused in jail, they continued to pressurize her whenever they met her on the way. She left Delhi and went to her in-laws' house at Badaiyun. Her husband was missing at that time. He has since returned. In these circumstances, visit of the prosecutrix's mother cannot be encashed by the accused. Besides it, it is unbelievable that PW-4 (Saira) would level false allegation of rape with her unmarried child/daughter to cast a stigma on her for the rest of her life. It is relevant to note that PW-4 (Saira) had four children and the prosecutrix was aged about 11 years. There was least possibility of her to marry accused's son as alleged. The defence deserves outright rejection.

10. The conviction is based upon fair appraisal of the evidence and requires no interference. Regarding order on sentence, the accused was awarded minimum sentence as he committed rape with a child. No reduction in substantive sentences is called for. Regarding fine ₹ 25,000/- under Section 376 IPC, it is reduced to ₹ 5,000/- and in default of payment of fine, he shall undergo SI for two months. Fine ₹ 1,000/- under Section 506 IPC is maintained. However, in default of payment of fine ₹1,000/-, he shall undergo SI for fifteen days.

11. The appeal is disposed of in the above terms. The Trial Court record be sent back forthwith. The CrI.M.B.336/2011 stands disposed of being infructuous.

(S.P.GARG)
JUDGE

FEBRUARY 18, 2013

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