

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

RESERVED ON : 18th February, 2013

DECIDED ON : 4th March, 2013

+ CRL.A. 301/2012

RAM SUNDER Appellant

Through : Mr.S.K.Sethi, Advocate.

versus

THE STATE (N.C.T. OF DELHI) Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant- Ram Sunder impugns judgment dated 01.09.2010 and order on sentence dated 03.09.2010 in Sessions Case No.105/2008 arising out of FIR No.201/2008 PS Aman Vihar by which he was convicted for committing offences punishable under Sections 376/506 IPC and sentenced to undergo RI for ten years with fine ₹ 5,000/- under Section 376 IPC and in default of payment of fine to further undergo SI for five months. He was further 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 SI for one month. Both the sentences were directed to operate concurrently.

2. Allegations against the accused were that on 01.04.2008 at about 08.00 A.M., at House No.Q-75, Prem Nagar II, he committed rape upon prosecutrix 'X'(assumed name) against her will and without her consent. He intimidated and threatened to kill her. During the course of investigation, statement of the prosecutrix was recorded under Section 164 Cr.P.C. She was medically examined. The accused was arrested. The exhibits were sent to Forensic Science Laboratory. Statements of the witnesses conversant with the facts were recorded. On completion of the investigation, a charge-sheet was submitted against the accused. He was charged and brought to Trial. The prosecution examined eleven witnesses. In his 313 Cr.P.C. statement, the accused pleaded innocence and stated that due to dispute over arrears of rent, he was falsely implicated by the prosecutrix's parents. DW-1 (Ram Anjor) and DW-2 (Satyadev Shukla) stepped in his defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment, held the appellant perpetrator of the crime and sentenced him accordingly. Being aggrieved, he has preferred the appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of prosecutrix

without corroboration. Inordinate delay of two months in lodging First Information Report remained unexplained. The alibi plea of the appellant was ignored without any valid reason. The appellant had gone at the relevant time to see off his family members at the railway station. Testimony of defence witnesses DW-1 and DW-2 is in consonance with his defence. In the MLC, no injury was noticed on the prosecutrix's body. Forensic Science Laboratory report did not establish the appellant's involvement. Material discrepancies and contradictions in the statements of prosecution witnesses were not considered by the Trial Court. The prosecution witnesses gave divergent version as to the time, place and manner of arrest of the appellant. The prosecutrix's version is inconsistent with her 164 Cr.P.C. statement. In the alternative, counsel pleaded for lenient view as the appellant has already suffered incarceration for more than five years. Learned APP urged that 'X' is a child victim and there is no good reason to discard her cogent and reliable testimony. She had no ulterior motive to falsely implicate the accused.

4. I have considered the submissions of the parties and have examined the record. The police machinery came into motion when 'X' lodged statement (Ex.PW-1/A) on 17.06.2008 and informed that on 01.04.2008 when she was alone in the house, the accused committed rape

upon her, against her wishes and threatened to kill if she disclosed the incident. She did not inform anyone due to fear. When the accused again came on 17.06.2008 at her house, she cried on seeing him. When her mother enquired as to why she had cried, she narrated the incident to her. The accused was apprehended by the public and was beaten. Apparently, in Ex.PW-1/A, 'X' gave vivid details as to how and under what circumstances, the accused committed rape upon her when she was alone in the house and her parents had gone to deliver invitation cards for the marriage of her brother. She also offered reasons for delay in lodging the report as she was under threat. Her statement under Section 164 Cr.P.C. was recorded on 26.06.2008. Learned Metropolitan Magistrate put number of questions to her to ascertain if she was able to give rationale answers to the questions. The Metropolitan Magistrate was satisfied that 'X' was a competent witness and understood the questions put to her and was able to give rationale answers. She in her 164 Cr.P.C. statement named the accused to be the perpetrator of the crime and disclosed that on 01.04.2008 when she was alone, the accused who was the tenant on the first floor committed rape upon her at 08.00 A.M. In her statement as PW-1 in the Court, she proved the version given by her to the police and the Metropolitan Magistrate without any variation. She deposed that on

01.04.2008, she was studying in 5th class in Raj Laxmi Convent School, Nangloi, Delhi. She was alone in the house as her parents had gone to deliver marriage invitation cards. At about 08.00 A.M., the accused entered in her room and tied dupatta on her mouth. He forcibly removed her clothes. The accused was wearing underwear and baniyan at that time. He removed his underwear and raped her. Thereafter, he threatened to kill her if she disclosed the incident to anyone. Due to threat of the accused, she did not disclose the incidence to her parents. After the incident, the accused vacated the rented room and started residing somewhere else. After about two months, when he again came to her house, she cried on seeing her. When her mother enquired as to why she had cried, she narrated the incident of rape to her. The accused attempted to flee the spot but was apprehended. She with her mother went to the police post, where her statement (Ex.PW-1/A) was recorded. In the cross-examination, she admitted that the accused lived in the rented room with his family. She reiterated that she was alone in the house during the night prior to the occurrence. She informed her mother same day in the evening. She denied that on the day of incident, the accused had gone to see off his family members at the railway station.

5. On scrutinizing the testimony of the prosecutrix, it reveals that no material discrepancies have emerged to disbelieve her version. The accused did not attribute ulterior motive to the child witness to falsely implicate him in the incident. The accused lived as a tenant, on the first floor, was aware that the prosecutrix was alone in the house and her family members were away to deliver invitation cards. He exploited the situation and established physical relation with the prosecutrix. There are no good reasons to disbelieve the prosecutrix. Her statement is in consonance with medical evidence. MLC (Ex.PW-6/A) was prepared by Dr.Lakhvinder Kaur who referred her for gynae opinion. It records the alleged history of sexual assault. She admitted that no fresh external visual injury was noticed on her body. PW-8 (Dr.Renu Manchanda) deposed that as per MLC (Ex.PW-6/A), hymen was found torn. There was evidence of candidial infection. There is thus no conflict between ocular and medical evidence.

6. PW-7 (Harpal Singh), Principal, Raj Laxmi Convent School, Nangloi, appeared and deposed that in 2008, 'X' was studying in class 6th and her recorded date of birth was 02.07.1996 vide certificate Ex.PW-7/A. It reveals that the prosecutrix was below sixteen years on the day of

incident. Even if there was consent of the prosecutrix to have physical relation with the accused it was of no consequence.

7. PW-3 (Chaman Devi), X's mother testified the circumstances in which the accused was apprehended and given beatings. PW-10 (Dr.Sameer Pandit) medically examined the accused vide MLC (Ex.PW-10/A) and noticed that there were multiple linear bruises on chest and back. It corroborated PW-3's versions that after the accused were apprehended, he was beaten.

8. The discrepancies and contradictions highlighted by the counsel for the appellant are not glaring to discredit the cogent and reliable testimony of the prosecutrix. It is true that there was delay of two months in lodging the First Information Report with the police. However, the delay has been duly explained. The prosecutrix was unable to disclose the incident to her parents due to fear. She kept mum for two months. When the accused attempted to approach her again, she become afraid and cried. This prompted her mother to enquire as to why she had cried and she revealed the truth.

9. In '*Satpal Singh Vs.State of Haryana*', 2011 (2) ACR1387 (SC), the Supreme Court held as under :

“In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences.”

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“So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.”

10. The defence put by the accused deserves outright rejection. He did not elaborate as to on what account, there was dispute with X's parents. He did not produce any rent receipt. He did not elaborate the months for which he had not paid the rent. The premises were vacated by the accused before his arrest. Moreover, for a trivial dispute the parents of the prosecutrix would not level serious allegations of rape with their own daughter to malign her.

11. Statement of the prosecutrix needs no corroboration. No ulterior motive was assigned to the witness to make false statement. The Court has no reasons to discard the innocent version given by the child victim.

12. In the case of ‘*Wahid Khan vs. State of Madhya Pradesh*’, (2010) 2 SCC 9, the Supreme Court held :

“It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.”

13. Again in ‘*Bhupinder Sharma Vs.State of Himachal Pradesh*’, AIR 2003 SC 4684, the Supreme Court observed :

“To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult

womanhood. It would be adding insult to injury to tell a woman that her chain of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. (See State of Maharashtra v. Chandra Prakash, 1990 ACR 212 (SC) : AIR 1990 SC 658) Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.”

14. In the present case, the victim was a child and had no apparent reason to falsely implicate the accused to spoil her own prestige and honour. Conviction of the appellant is based upon fair appraisal of the evidence and requires no interference.

15. Regarding order on sentence, it transpires that the appellant was sentenced to undergo RI for ten years with total fine ₹ 6,000/-. He has already undergone more than five years incarceration. Nominal roll dated 14.02.2013 reveals that he had already undergone four years, seven months and twenty nine days as on 16.02.2013. He had also earned remission for nine months and eleven days. His jail conduct is satisfactory. He is not involved in any other criminal case. He has suffered injuries when given beatings by the public. He is the only earning member of his family and is to support his wife and four children. Taking into

consideration all the facts and the mitigating circumstances, order on sentence is modified and the substantive sentence of the appellant is reduced to seven years. Other sentences are left undisturbed.

16. The appeal stands disposed of in the above terms.

(S.P.GARG)
JUDGE

MARCH 04, 2013

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