

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

RESERVED ON : 21st January, 2013

DECIDED ON : 14th February, 2013

+ CRL.A. 441/2011 & CRL.M.B.773/2012

MEGH NATH KUMAR Appellant

Through : Mr.S.K.Sethi, Advocate

Versus

THE STATE (GNCT OF DELHI) Respondent

Through : Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Megh Nath Kumar impugns his conviction and sentence in Sessions Case No.37/2008 arising out of FIR No.90/2007 Police Station S.P.Badli by which he was held guilty under Section 342/376 (2) (f) IPC and sentenced to undergo RI for one year under Section 342 IPC and RI for ten years with fine ₹ 5,000/- under Section 376 (2) (f) IPC.

2. Daily Diary (DD) No.82B was recorded at PS S.P.Badli on 25.01.2007 at about 08.35 P.M. on getting information that at Rajeev Nagar, Gali No.4 near Kabir Mandir a boy had attempted to sexually assault (galat kaam) a girl aged 5 or 6 years. The investigation was

assigned to ASI Jai Prakash who with Const.Subhash reached the spot. SI Mohd. Navi took over the investigation and recorded statement of Roop Kanti Devi, victim's mother who disclosed that on 22.01.2007 at about 07.00 P.M. her daughter 'X' (assumed name) aged 6 years was taken away by Megh Nath Kumar to his room on the pretext to give her toffee. When she went to the room after some time, the door of the room was close. She opened the door and found 'X' present in the room. Her daughter's pajami was removed up to her knees. When she objected, Megh Nath started quarrelling with her. She narrated the whole incident to her husband. She did not report the incident to the police as they were threatened by the accused. She prayed to take legal action against the accused as he had teased 'X' by touching her private parts.

3. SI Mohd. Navi prepared rukka and lodged First Information Report. During the course of investigation, the prosecutrix was medically examined. The accused was arrested. Prosecutrix's pajami was seized. Statements of the witnesses conversant with the facts were recorded. The exhibits were sent to Central Forensic Science Laboratory for examination. After completion of the investigation, a charge-sheet was submitted against the appellant. He was duly charged and brought to trial for committing offence under Section 376 (2) (f) IPC. The prosecution

examined fifteen witnesses. In his 313 Cr.P.C. statement, the accused pleaded false implication. DW-1 (Kameshwar Mehto) was examined in defence.

4. Learned counsel for the appellant while assailing the impugned judgment urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The inordinate delay of three days in lodging the First Information Report with the police remained unexplained. PW-2, a child witness was tutored to make the statement. The investigation carried out by the police is shoddy. The witnesses who lived in the premises were not associated. PW-1, prosecutrix' mother and PW-2, have given inconsistent version and have made vital improvements in their deposition in the Court. Throughout, case of the prosecutrix' mother was that an attempt was made to sexually assault the victim and no allegations of rape were made. The counsel further urged that the Trial Court conveniently ignored the defence pleaded by the accused. He categorically stated that prosecutrix's father did not return ₹7,000/- borrowed from him. No injuries were found on the body of the 'X' when she was medically examined. There was no occasion for the mother to permit the child to accompany the accused when he was under the influence of liquor. Learned APP has supported the judgment and urged

that the testimony of the child witness has been corroborated on material aspects. MLC records that on examination, hymen of the child was found ruptured.

5. I have considered the submissions of the parties and have examined the Trial Court record. PW-2 aged about five years is a crucial witness. Learned Additional Sessions Judge put number of questions before recording her statement to ascertain if she was a competent witness and understood the questions put to her and give rational answers. The Trial Court was satisfied that the witness was competent to make statement. In her deposition, she stated that the accused was residing near her house. On that day, when she was present in the stairs of her house, the accused called her by uttering her name 'X'. She accompanied the accused and he took her to his room. He closed the door and removed her pajami and his clothes and did 'galat kaam' with her. He gave one rupee coin after committing 'galat kaam' and told that she would not disclose 'galat kaam' to her mother (*"galat kaam baarey apni mummy ko nahin kahegi"*). She further deposed that her mother opened the door and took her to the house. She told her mother of the incident. She explained that when she was produced before the Metropolitan Magistrate for recording her statement, she was perturbed and was hesitant to speak before him. In

the cross-examination, she categorically stated that she had no fear from anybody that day. Her mummy and papa had come with her. She was not tutored by her parents. Her ‘mausa’ never threatened to make such a statement.

6. On scrutinizing of the whole testimony of the prosecutrix, it reveals that her version has remained unchallenged. The accused did not deny his presence at the spot. He did not challenge her statement that he had allured her to his room and committed rape on her person. The material facts deposed by the child witness remained unchallenged and un-rebutted in the cross-examination. 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.

7. 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.”

8. 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.”

9. The prosecutrix ‘X’ was examined vide MLC Ex.PW-7/A on 25.01.2007 at Babu Jagjiwan Ram Hospital, Jahangirpuri. In the alleged history recorded in the MLC, name of the accused Megh Nath Kumar finds mention stating that he sexually molested the victim on 22.01.2007. As per MLC Ex.PW-7/A, hymen was found ruptured indicating that the prosecutrix was sexually assaulted. Since the MLC was prepared after

three days, non-detection of injuries on the body of the victim, do not discredit prosecutrix' version. Moreover, it is not clear as to what was the degree of penetration. Apparently, the child witness had not resisted the 'act' as she was allured by the accused. In *B.C.Deva Vs.State of Karnataka I (2007) 12 SCC 122* the Supreme Court held as under:-

“The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though, the report of the Gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

10. The defence of false implication does not inspire confidence. In the statement under Section 313 Cr.P.C. the accused stated that his brother had given a loan of ₹ 20,000/- to the parents of the prosecutrix and when they asked for its return, he was falsely implicated in this case. No detailed particulars were given as to when and by what mode the loan of ₹20,000/- was given to the prosecutrix's parents. It was also not revealed from where cash of ₹ 20,000/- was arranged. DW-1 (Kameshwar Mehto), younger brother of the accused deposed that on 22.01.2007, there was a

quarrel with the prosecutrix's father on some money matter. He had given a loan of ₹ 15,000/- to Ram Balak as he was in need of money that time. The accused did not explain the inconsistency about the loan amount. PW-4 (Ram Balak Mehto) in cross-examination denied if he had taken any loan of ₹ 20,000/- from the accused's brother. It is un-believable that parents of the prosecutrix would level serious allegations of rape against the accused to avoid payment of loan amount (if any) and to spoil the reputation of their own daughter. No complaint was ever lodged by the accused for any quarrel with the prosecutrix' father over money dispute.

11. It is true that there is a delay of three days in lodging the FIR with the police. The occurrence took place on 22.01.2007 at about 07.00 P.M. and the statement was made to the police by the prosecutrix' mother on 25.01.2007. However, the delay has been explained. The information about the occurrence was conveyed to the police on 22.01.2007 itself at about 08.35 P.M. when DD No.82B (Ex.PW-8/A) was recorded. PW-8 (ASI Jai Prakash) went to the spot and met Roop Kanti Devi, her husband-Ram Balak Mehto and their daughter 'X'. The name of accused Megh Nath also emerged. He was not found present. The parents did not want any legal action. PW-1 (Room Kanti Devi) in her statement before the Court stated that she was threatened by the accused. When her husband

reached after getting information from her on telephone, the accused fled the spot. Delay in this case cannot be considered fatal as parents for obvious reasons do not intend to highlight the issue at the first instance.

12. 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.”

XXX

XXX

XXX

XXX

“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.”

13. Minor inconsistencies/contradictions highlighted by counsel are not fatal. The statement of the child witness needs no corroboration and can be acted upon.

14. The counsel urged to take lenient view as the appellant is a young man and was aged about 19 years on the date of incident. He belongs to poor strata of the society and has clean antecedents. He is the sole bread earner of his family which comprises of his old aged parents who are suffering from various ailments and are in a very pathetic condition. The appellant's jhuggi was recently burnt and the family is on the verge of starvation. The appellant has already undergone almost seven years of his sentence. His jail conduct is satisfactory. He has worked as a Sewadar in jail.

15. The Court can understand the gravity of the offence whereby an innocent child aged about 5/6 years residing in the neighbourhood of the accused was ravished. Her hymen was found ruptured. The Court can well understand the trauma of the child. The accused allured the innocent child to his room and committed rape on her person. He betrayed the trust of child's parents who in good faith allowed the child to accompany him.

16. Considering the enormity of the offence, no mitigating circumstances are there to reduce the minimum sentence imposed under Section 376 (2) (f) IPC.

17. In the light of above discussion, I find that the conviction of the appellant is based upon fair appraisal of the evidence. The appeal is dismissed. Conviction and sentence are maintained.

18. Crl.M.B.773/2012 stands disposed of being infructuous.

19. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

FEBRUARY 14, 2013

tr