

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

**RESERVED ON : 13<sup>th</sup> February, 2013**

**DECIDED ON : 22<sup>nd</sup> February, 2013**

**+ CRL.A.458/2006**

**MANOJ** .....Appellant

Through : Mr.Bhupesh Narula, Advocate.

versus

**THE STATE OF NCT OF DELHI** ....Respondent

Through : Ms.Fizani Husain, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. The appellant- Manoj impugns judgment dated 08.02.2006 and order on sentence dated 14.02.2006 of learned Additional Sessions Judge in Sessions Case No.21/2005 arising out of FIR No.743/2004 PS Sangam Vihar by which he was convicted for committing offence punishable under Section 376 IPC and sentenced to undergo RI for ten years with fine ₹ 2,000/- and in default of payment of fine to further undergo RI for three months.

2. Allegations against the appellant were that on 12.10.2004 at about 06.00 or 07.00 P.M. in his jhuggi near Jain Mandir, Suraj Kund road he committed rape upon prosecutrix 'X' (assumed name) aged about 9

years. During investigation, the prosecutrix was medically examined. The accused was arrested. The exhibits were sent to Forensic Science Laboratory. The statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was submitted against the accused for committing offence punishable under Section 376 IPC. The accused was duly charged and brought to trial. The prosecution examined twelve witnesses. In his 313 Cr.P.C. statement, the accused pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant responsible for the crime. Being aggrieved, the appellant 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 in relying upon the testimony of the prosecutrix and her parents without insisting independent corroboration. There was delay of three days in lodging the report with the police and the Trial Court did not give due weightage to it. The accused was implicated falsely as there was property dispute with the complainant's parents in the village. Moreover, the accused had threatened to expose the mother of the prosecutrix for having illicit relations with one 'Sardar Ji'. In the MLC, no vital injuries

were found on the person of the prosecutrix. The FSL report does not establish appellant's involvement. Learned APP while supporting the judgment urged that it does not call for interference. It is based upon cogent testimony of the prosecutrix and requires no corroboration. The delay in lodging the First Information Report has been explained.

4. I have considered the submissions of the parties and have examined the record. Present case was registered on the statement of 'X' (Ex.PW-4/A) on 15.10.2004. In her statement, 'X' revealed that on 12.10.2004 at about 06.00 or 07.00 P.M. she was spreading a cot outside her jhuggi to study. The accused Manoj took her inside his jhuggi and committed rape upon her. She went to her jhuggi after the rape and narrated the occurrence to her mother- Kailash Devi. Efforts were made to find out the whereabouts of the accused but he absconded. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 18.10.2004. PW-11 (Sh.Sudesh Kumar, MM) put several questions to the child witness to ascertain if she was capable to give rational answer to the questions put to her. After recording satisfaction that 'X' was competent to answer the questions, her statement (Ex.PW-11/A) was recorded. In her statement, she reiterated the version given to the police at the first instance and named the accused for committing rape upon her. She appeared in the

Court as PW-4. After satisfying that 'X' was a competent witness and was able to give rationale answers, her statement was recorded. In her statement, she deposed that the accused was his uncle (chacha) and lived in the adjacent jhuggi. On the day of occurrence when she was sitting outside her jhuggi, the accused took her to his room, removed her underwear and committed rape upon her. She started bleeding from her private parts. The accused ran away after leaving her there. She came to her home and narrated the occurrence to her mother. The accused was not traceable thereafter. Her statement (Ex.PW-4/A) was recorded by the police. In the cross-examination, she denied that there was any dispute between her father and the accused over any immovable property in the village. She stated that they were on visiting terms with each other. The accused was a married person but his wife did not live with him. One elder brother and one younger brother used to live in the room. She however, clarified that none of the brothers was present in the room at the time of incident.

5. Scrutinising the testimony of the child victim, it reveals that no material discrepancies have been elicited in her cross-examination to disbelieve her. No ulterior motive was attributed to the child to make false statement against the accused who was her uncle in relation. There was no

hostility with the accused who lived in the adjacent jhuggi. The prosecutrix 'X' gave detailed account as to how and under what circumstances the accused committed rape and absconded. Conduct of the witness is reasonable and natural as soon after the incident she narrated the occurrence to her mother. Her conduct in informing the mother immediately is relevant under Section 6 of the Evidence Act. She was medically examined on 15.10.2004. PW-2 (Dr.Meenakshi) proved her MLC (Ex.PW-2/A). It was prepared on 15.10.2004 at about 01.30 A.M. (mid night). It records that the prosecutrix aged 9 years was brought with the alleged history of sexual assault three days back at about 06.00 or 07.00 P.M. at home. While she was studying, she was forcibly taken to the room where she was sexually assaulted by the accused. There was history of bleeding from the vagina. On local examination, hymen was torn and it easily accommodated one finger. In the cross-examination, she was of the opinion that at the age of 9 years if hymen is torn and easily accommodates one finger, there is possibility of sexual assault. There is thus no conflict / inconsistency between the ocular and medical evidence.

6. PW-5 (Kailash Devi) is the mother of the prosecutrix and has corroborated X's version in its entirety. She also deposed that on 12.10.2004 at about 06.00 P.M. 'X' informed her that the accused had

taken her to his room and sexually assaulted her after removing her underwear. She was bleeding. The accused fled the spot. After two days, he came to the jhuggi and was apprehended. PW-1 (Bhageshwar Yadav), X's father has corroborated the statement of the prosecutrix. He deposed that PW-5 (Kailash Devi) narrated the incident as revealed to her by his daughter. The underwear of her daughter and skirt were blood stained. She was bleeding. There were blood spots on her legs also. The accused ran away from the jhuggi. He searched the accused but in vain. On 14.10.2004, when the accused came to the jhuggi to take his clothes and utensils at 10.00 P.M., he with the help of his brother and other relatives caught hold of him and handed over to the police. In the cross-examination, he disclosed that his father and accused's father were real brothers.

7. The version given by the prosecutrix in her statement under Sections 161 Cr.P.C, 164 Cr.P.C. and in the Court is without any variation. In the absence of any material discrepancies or inconsistencies/ infirmities there are no good reasons to disbelieve her. In '*Mohd.Imran Khan vs. State (Govt. of NCT of Delhi)*', 2012 CrI.L.J. 693, the Supreme Court observed :

*"The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her."*

8. Similarly, in ‘*Wahid Khan v. State of Madhya Pradesh*’, (2010) 2 SCC 9, the Supreme Court observed :

*“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 at 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 ostracised 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.”*

9. Statement of the prosecutrix requires no corroboration and conviction can be based on the uncorroborated evidence of the prosecutrix.

10. Again in ‘*Wahid Khan v. State of Madhya Pradesh (supra)*’, the Supreme Court held that it is well settled that a finding of guilt in a

case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a rape if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent.

11. It is true that there is delay in lodging the First Information Report. The occurrence took place on 12.10.2004 and the First Information Report lodged on 15.10.2004. However, the prosecution witnesses have fairly explained the reasons for the delay in lodging the FIR. They deposed that efforts were made to find out the accused but he could not be traced. When on 14.10.2004 at about 10.00 P.M. the accused went to the jhuggi to take his utensils and clothes, he was apprehended. Thereafter, the matter was reported to the police. It appears that anxiety of

the family members of the prosecutrix was to first apprehend the accused and then lodge report with the police. For delay in lodging the report, the credible and reliable testimony of the prosecutrix cannot be discredited. The accused was a close relation of the victim and before implicating him it was necessary to confront him about the facts disclosed by the prosecutrix 'X'. In '*State of Himachal Pradesh vs. Gian Chand*', (2001) 6 SCC 71, the Supreme Court observed :

*"It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and, therefore, there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the Court. A cool thought may precede lodging of the F.I.R."*

12. The accused did not explain as to why he absconded after the occurrence. Abscondance from the spot without any reason & hiding thereafter are incriminating circumstance against the accused to connect him with the crime. As per FSL report (Ex.PW-10/D) human semen was detected on Ex.4 (underwear of the prosecutrix). The accused did not give plausible explanation to the incriminating circumstances proved against him. In his 313 Cr.P.C. statement, his defence was that due to dispute over immovable property in the village, he was falsely implicated. In his 313 Cr.P.C. statement, he changed the defence and introduced a new story that

X's mother had illicit relations with one 'Sardar Ji' and when he threatened to expose her to her husband, she falsely implicated him in this case. The accused did not elaborate as to with whom X's mother had illicit relations or when he had seen them in compromising position. No such incident was revealed earlier by him to X's father. The defence deserves outright rejection. It is unbelievable that a mother would level false allegations to bring her own daughter in disrepute.

13. The judgment is based upon fair appraisal of the evidence and requires no interference. The appeal lacks merits and is dismissed. The conviction and sentence of the appellant are maintained.

14. The Trial Court record be sent back forthwith.

**(S.P.GARG)**  
**JUDGE**

**FEBRUARY 22, 2013**

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