

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

RESERVED ON : March 06, 2013

DECIDED ON : March 14, 2013

+ CRL.A. 869/2011

SURENDER KRISHAN SETH Appellant
Through : Ms.Anu Narula, Advocate.

versus

THE STATE Respondent
Through : Ms.Fizani Husain, APP.
SI Deepak, PS Narela.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellant-Surender Krishan Seth impugns judgment dated 07.12.2010 and order on sentence dated 20.12.2010 in Sessions Case No.270/2007 arising out of FIR No.451/2007 registered at Police Station Narela by which he was held responsible for committing rape and sentenced to undergo RI for seven years with fine ₹5,000/-.

2. Allegations against the appellant were that on 17.08.2007 in between 01.00 to 02.00 P.M. at House No.A-159, Phase-1, Metro Vihar, he committed rape upon 'X' (assumed name), aged 30 years. The prosecution examined 11 witnesses. In his statement under Section 313

Cr.P.C. the accused alleged that the complainant wanted to grab his plot of land and falsely implicated him. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant for the offence under Section 376 IPC. Being aggrieved, the appellant has filed the appeal.

3. Counsel for the appellant urged that the Trial Court did not appreciate the evidence in its proper perspective and fell into grave error to base conviction upon the sole testimony of prosecutrix 'X' without independent corroboration. Major discrepancies and improvements in the testimony of the prosecution witnesses were ignored without valid reasons. The prosecutrix alleged that she was dragged by the accused to his house but no injuries were noticed on her body in the MLC. The prosecutrix was a mentally challenged girl. No proper preliminary inquiry was conducted by the Trial Court to ascertain if she was competent to give evidence. She admitted to have given statement on the direction of her mother. The prosecutrix was major and vagina admitted two fingers (as noted in MLC) which indicated that the incident in question was not her first encounter. The prosecutrix did not disclose name of the rapist to the doctor. No injuries external or internal were found on her body. The prosecution witnesses gave inconsistent version whether she was fit to

make statement; whether it was an attempt to commit rape or whether she had menstrual period. The Forensic Science Laboratory report did not establish appellant's involvement as no human semen on the clothes of the prosecutrix was found. Learned Additional Public Prosecutor urged that there was no delay in reporting the incident to the police. The prosecutrix categorically indicted the accused for committing rape upon her. The medical evidence corroborates her version. Her hymen was found ruptured.

4. I have considered the submissions of the parties and examined the record. Daily Diary (DD) No.21 (Ex.PW-2/A) was recorded on 17.08.2007 at 02.20 P.M. at Police Station Narela, Police Post Metro Vihar on getting information that an individual had committed rape upon a girl. The investigation was assigned to SI Sanjay Nagpal (PW-10) who with Constbale Jasmer went to the spot. The prosecutrix was taken to Satyawadi Raja Harish Chander Hospital, Narela, and her MLC (Ex.PW-6/A) was prepared at 03.45 P.M. MLC (Ex.PW-6/A) records alleged history of sexual assault. She was not fully oriented. She was declared unfit for statement by PW-8 (Dr.Neeraj Kumari). Statement of X's mother was recorded. First Information Report was lodged vide endorsement (Ex.PW11/A) on the statement of 'X's mother (Ex.PW-3/A).

In her statement (Ex.PW-3/A) Smt.Raj Rani, 'X's mother gave vivid details as to how and under what circumstances her daughter 'X' was raped by the accused. There was no delay in lodging the report to the police. The accused was specifically named to be the perpetrator of the crime. The prompt and early reporting of the occurrence with all its vivid details gives an assurance regarding truth of the prosecution version. It eliminates chances of embellishments. It inspires confidence that it was not the outcome of any consultation or deliberation.

5. The prosecutrix appeared in the court for examination. She was a partially mentally challenged girl. The Trial Judge conducted preliminary examination to satisfy himself in regard to the competence under Section 118 of the Evidence Act. He put number of questions to ascertain her extent of intelligence, her capacity and understanding and the way she was able to give the rational answers. The Trial Court was satisfied that she had sufficient understanding to be qualified as a witness and her statement was recorded thereafter. She was able to disclose her name, father's name. She was also able to tell that she had appeared before a judge and it was always good to speak truth. She further stated that she had come with her 'mummy'. She, however, was unable to tell her age. Counsel urged that since the witness was unable to tell her age,

she was not competent to give statement. I find no merit in the submission. There is no good reason to doubt the 'satisfaction' of the Trial Court. The decision rests with the Trial Judge who sees the proposed witness, notices his/her manner, his/her apparent possession or lack of intelligence. The manner 'X' faced searching cross-examination reveals that she was competent to understand questions put to her and give rational answers. It is an admitted position that 'X' was partially mentally challenged girl. She was aged 30 years and was unmarried. PW-3 (Smt.Raj Rani) categorically stated that she was little bit mentally retarded. She elaborated that she did not take medicines and understood the nature of things. Intellectual weakness cannot be a ground to hold that she was incompetent to give evidence. The sole test is whether the witness has sufficient intelligence to depose or whether he/she can appreciate the duty of speaking truth. In her deposition, she categorically deposed that on the day of incident, the accused (Surender Kishan Seth) known as 'Punjabi' had called her inside his house during day time. She did not wish to go. He dragged her inside the house, bolted the door and removed her clothes. He also shut her mouth with hand. He removed his clothes and had sexual intercourse with her. Blood started oozing out from her vagina and thereafter, he left her and ran away. She put on

clothes, came back to her house and apprised her mother about the incident of rape. The police was informed. She identified blood stained clothes including salwar (Ex.P-1) which she was wearing at the time of incident. In the cross-examination, she stated that none else was present in the house when she was dragged by the accused. She denied that she was tutored by her mother to depose against the accused. She reiterated that the accused forcibly removed her clothes. She fairly admitted that she was having menstrual period. During the incident the blood of menstruation also stained her clothes.

6. On scrutinizing the testimony of the prosecutrix, it reveals that material facts deposed by her remained unchallenged and uncontroverted in the cross-examination. The accused did not deny that he was not known as 'Punjabi'. He did not claim if at the time of occurrence any of his family members was present inside the house and there was no possibility of committing rape upon the prosecutrix. He did not deny his presence in the house that time. There are no good and sufficient reasons to discard the statement of the prosecutrix. Her conduct is reasonable and natural. If a statement or disclosure is made by the ravished girl, either to the members of her family or others, it is an evidence of conduct as admissible as the corroboration by Section 8,

illustration (i). She narrated the entire occurrence to her mother after returning from the place of occurrence at the first reasonable opportunity. The accused was apprehended and was beaten. PW-3 (Raj Rani) acted promptly and took her daughter to police station Metro Vihar. She proved the version given to the police at the first instance without any variation. In the cross-examination, she elaborated that 'X' was in the house till 01.00 P.M. At 02.00 P.M. She returned with her clothes soaked with blood. When she inquired as to where she was, she told her that the accused had committed rape upon her. No material discrepancy emerged in her cross-examination to doubt her version. Her statement to the effect that the prosecution narrated the entire episode immediately when she arrived at home can be held to be a corroborated piece of evidence.

7. MLC (Ex.PW-6/A) was prepared by Dr.Neeraj Kumari Aggarwal (PW-6) and 'X' was referred to gynae department. PW-8 (Dr.Neeraj Kumari) noted in the MLC that hymen was ruptured and vagina admitted two fingers. In the cross-examination, she stated that patient had not told her the name of the rapist. She clarified that she did not ask her any question about sexual assault.

8. From the statement of the prosecutrix corroborated with medical evidence, it stands established that she was sexually assaulted.

Minor discrepancies highlighted by the counsel are not sufficient to discredit her otherwise cogent and reliable testimony. Neither the prosecutrix nor her mother had any prior animosity with the accused to falsely implicate him in the incident. They were acquainted with each other for the last eight or ten years and were workers of the same political party. The accused came up with the plea that the complainant wanted to grab his plot and was falsely implicated. He, however, did not explain as to how and in what manner the complainant attempted to grab his plot. He did not produce any document showing ownership of any specific plot with him. He did not lodge any complaint against the complainant for alleged attempt to grab his plot. No such suggestion was put to the complainant in her cross-examination. The defence deserves outright rejection. A mother is not expected to tender false evidence against an innocent in her attempt to grab the plot and spoil the reputation of her unmarried young daughter. She was not aware as to where the prosecutrix had gone after 01.00 P.M. She searched her. When she returned at 02.00 P.M. her clothes were smeared in the blood and she informed the incident to her. 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 victim.

9. 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.”

10. 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 claim 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.”

11. The victim partially mentally retarded girl made a positive statement that she was sexually assaulted by the accused against her wishes and it is corroborated by the medical evidence and the evidence of her mother, her evidence inspires confidence. Mere statement that according to doctor, the victim's vagina admitted two fingers and she could on earlier occasion have had sexual intercourse, rules out rape by accused once, as argued, in no way casts doubt on victim's evidence. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to the accused to rape her. It is the accused who was on trial and not the victim.

12. In *State vs. Ramdev Singh AIR 2004 SC 1290*, the Supreme Court observed that even if the victim in a given case has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone or everyone.

13. The conviction of the appellant is based on fair appraisal of the evidence and needs no interference. In the light of the above

discussion I find no merit in the appeal. The appeal is dismissed.

Conviction and sentence of the appellant are maintained.

14. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

March 14, 2013

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