

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

RESERVED ON : 15th January , 2013

DECIDED ON : 11th February, 2013

+ CRL.A.No.848/2010 & Crl.M.B.No.1005/2010

DEEPAK

..... Appellant

Through: Thakur Virender Pratap Singh
with Ms.Shushra, Mr.R.P.S.Tomer,
Mr.Pushpender Charak and
Mr.Raj Kumar, Advocates.

Versus

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

..... Respondent

Through: Mr.M.N.Dudeja, APP for the State.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Deepak impugns his conviction and sentence under Section 376/506 IPC in Sessions Case No.914/2006 arising out of FIR No.659/2006 registered at Police Station Saraswati Vihar by which he was sentenced to undergo rigorous imprisonment for seven years with fine.

2. Allegations against the accused were that in the month of January/February 2006 at House No.T-246/3, Railway Colony, Shakur Basi, Delhi, he committed rape upon 'X' (assumed name) and threatened

to kill her. The prosecution examined 17 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. and he pleaded false implication. He stated that 'X' was having love affair with one Narender who lived in the vicinity and when he objected to that, 'X' and her mother falsely implicated him in this case. On appreciating the evidence and considering the contentions of the parties, the Trial Court, by the impugned judgment, convicted and sentenced the appellant. Being aggrieved, the appellant has preferred the appeal.

3. Counsel for the accused challenged the impugned judgment and urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The appellant who was in custody throughout the trial was not given an opportunity to cross-examine material witnesses 'X' and her mother PW-8 (Manju Devi) on the ground that they were not traceable. Application moved by the accused to cross-examine them under Section 311 Cr.P.C. was dismissed. The Trial Court did not examine inordinate delay of about five months in lodging the First Information Report with the police. Adverse inference is to be drawn against the prosecution for withholding Pooja (prosecutrix's sister) who was a material witness. The prosecution further failed to examine Narender with whom 'X' had love affairs. No DNA test was conducted.

It is not clear if the pregnancy was terminated or not. The prosecution did not establish the exact place of the occurrence. Statement of the prosecutrix has not been corroborated.

4. Learned Additional Public Prosecutor while supporting the judgment urged that it does not call for interference. Sole testimony of the prosecutrix 'X' who is a reliable witness needs no corroboration. The accused was the step-father of the prosecutrix and took advantage of the situation when prosecutrix's mother had gone to Faridabad and committed rape upon her. Due to threats extended by the accused, the prosecutrix did not reveal the heinous act to her mother. Pooja was a child, and for that reason she was not examined.

5. I have considered the submissions of the parties and examined the record. The prosecutrix 'X' claimed that her mother (Manju Devi) married the accused after the death of her previous father and that all were residing together in the house. PW-8 (Manju Devi) also testified that after her husband Raj Kishan Gupta expired about eight years back, she married with the accused. She was having three children from her previous husband and prosecutrix 'X' was one of them. The accused in his statement under Section 313 Cr.P.C. denied marriage with PW-8. He, however, admitted that he was residing for the last eight years with her in

her house. He did not explain under what capacity he resided with PW-8 (Manju Devi) and her children. It seems that deliberately the appellant intends to conceal to the factum of marriage with Manju Devi.

6. It is true that there is delay of more than five months in reporting the incident. The delay has been explained. The prosecutrix has stated that she did not inform her mother about the incident due to threats extended by the accused. The explanation seems plausible as the prosecutrix 'X' was a child aged about 15 years on the day of occurrence and was studying in Class IX. The appellant was her step-father. The prosecutrix due to threats and fear did not come open and suppressed the incident without knowing its consequences. When on 13.06.2006 she fell ill and was taken to a doctor, it surfaced that she was having a pregnancy of five and a half months. Only then, the things came out and she revealed that the pregnancy was due to sexual intercourse done by the appellant with her against her wishes. The prosecutrix and her mother Manju Devi had no reasons to falsely blame the appellant for the heinous act and to absolve Narender.

7. In her statement (Ex.Pw-7/A) made to the police at the first instance on 13.06.2006 'X' gave detailed account as to how and under what circumstances the accused committed rape upon her. Her statement

under Section 164 Cr.P.C. was recorded on 24.06.2006 and she implicated the accused for ravishing her. In her statement before the court, she proved the version given to the police and Metropolitan Magistrate without any variation. She deposed that when her mother and brother had gone to Faridabad, at about 06:00 A.M. she was sleeping with her sister Pooja in the house. The accused started molesting her and committed rape on her. He threatened her not to disclose the incident to anyone otherwise he would kill her. Out of fear, she did not say anything to anyone. After five months, she fell ill and at that time told the entire incident to her mother. PW-8 (Smt.Manju Devi) corroborated her version in its entirety. Opportunity was given to the accused to cross-examine both the witnesses. Despite seeking repeated pass overs, the accused failed to ensure the presence of his lawyer. The accused was given the opportunity to cross-examine the witness but he did not avail it. Subsequently, application under Section 311 Cr.P.C. was moved to recall the witnesses for cross-examination. Efforts were made to trace both these witnesses but they were not traceable. It was stated that 'X' was married to someone and was not residing at the given address. The testimony of both PWs 7 and 8 remained unchallenged.

8. Both 'X' and Manju Devei had no ulterior motive to falsely implicate the accused. The accused could not produce any cogent evidence that he was falsely implicated as Manju Devi wanted to grab his property at Faridabad which was purchased by him in her name. No complaint was lodged if any quarrel had taken place between the appellant and Smt.Manju Devi over the property at Faridabad. Moreover, to grab the property, the mother is not imagined to make her own daughter scapegoat and allow her to become pregnant. The defence put by the accused deserves outright rejection. There is no substance that the prosecutrix had love affairs with Narender who resided in the same locality. The accused did not allege if at any time he had objected to the said relationship, if any, or that had lodged any complaint with the police or to the parents of Narender. He was even not aware that the prosecutrix was pregnant. The prosecution was under no legal duty to examine Narender and produce him during trial as a witness. It was the accused who had claimed that the prosecutrix was having love affairs with Narender and he could have produced him or other witnesses to prove his defence. The prosecution was expected to examine Pooja and produce her in the court. However, it is stated that she being child was not examined. Non-examination of Pooja is not fatal to the prosecution case as there is

ample evidence on record to establish the guilt of the accused. It makes no difference that the site plan where the occurrence took place was not ascertained. The occurrence took place in the house where the accused resided. It makes no difference if it took place at a particular place in the house.

9. There is no conflict between the ocular and medical evidence. MLC (Ex.PW10/B) records the alleged history whereby the prosecutrix was sexually assaulted by her step-father. Age of the prosecutrix recorded therein is 16 years. PW-11 (Dr.Gaurav Pradhan) proved the ultrasound report (Ex.PW-11/A) which showed that the duration of pregnancy was 24 weeks, plus minus two months. PW-12 (Sunita Gupta) proved school record where the date of birth of the prosecutrix was recorded as 12.05.1991 to infer that she was aged about 15 years on the date of occurrence.

10. Considering all the facts and circumstances, I am of the opinion that the conviction of the appellant has been recorded on fair appraisal of the evidence and is affirmed.

11. Order on sentence requires no modification as the offence committed by the accused with her step-daughter is heinous. The appellant violated the honour and dignity of the child aged about 15 years

who was unaware about the consequences of the act. Moreover, the appellant has already undergone the whole or substantive part of the sentence as is apparent from the perusal of the nominal roll on record.

12. In the light of the above discussion, the appeal lacks merit and is dismissed. The conviction and sentence of the appellant under Section 376/506 IPC are maintained.

13. Crl.M.B.No.1005/2010 stands disposed of being infructuous.

14. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

February 11, 2013

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