

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

RESERVED ON : 3rd January, 2013.

DECIDED ON : 30th January, 2013.

+ CRL.A. 1149/2012

LAL BABU SAHNI Appellant

Through : Mr.A.J.Bhambhani, Advocate with
Ms.Nisha Bhambhani & Ms.Bhavita
Modi, Advocates.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal is directed by the appellant- Lal Babu Sahni against the judgment dated 18.04.2012 and order on sentence dated 30.04.2012 in Sessions Case No.47/2011, FIR No.79/2011 registered at PS Chhawla by which he was convicted for committing offence under Section 366/376 IPC and sentenced to undergo RI for five years with fine ₹ 2,000/- under Section 366 and RI for seven years with fine ₹ 5,000/- under Section 376 IPC. Allegations against the accused were that on 21.04.2011 at about 09.30 A.M. on a vacant plot, after kidnapping minor girl 'X' (assumed name) aged 11 years with an intention to force to have

illicit intercourse, he committed rape upon her. The prosecution examined fifteen witnesses. In his statement recorded under Section 313 Cr.P.C., the accused pleaded false implication.

2. 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 testimonies of PW-9 and PW-10 who were interested witnesses. The prosecution witnesses gave inconsistent version and made vital improvements in the Court. The prosecutrix was major. No injuries were found on her body in the MLC. Her statement in the Court regarding identification of the accused is wavering. Independent public witnesses PW-6 (Chetan Kumar) and PW-12 (Satish) did not support the prosecution and turned hostile. Mother of the prosecutrix resiled from her statement under Section 161 Cr.P.C. and denied if any such occurrence had taken place.

3. Learned APP urged that the prosecutrix, a minor child, fully supported the prosecution and categorically identified the accused to be the perpetrator of the crime. There was no delay in lodging the First Information Report. In the MLC of the prosecutrix, hymen was found ruptured.

4. I have considered the submissions of the parties and have examined the Trial Court record. The appellant was arrested at the spot and was medically examined at Rao Tula Ram Memorial Hospital on 21.04.2011 at 02.22 P.M. Daily Diary (DD) No.14A was recorded at 10.25 A.M. on getting information that a boy had committed rape with a girl and was apprehended. SI Prakash Chand with Const.Ramesh reached the spot and took the custody of the accused.

5. Testimony of prosecutrix 'X' (PW-9) is very crucial. She is a child witness aged about 12 years and is a victim. She had no prior acquaintance with the accused. Learned Presiding Officer put number of questions before recording her statement to ascertain if she was competent witness and understood the questions and give rational answers to them. After recording satisfaction that the witness had sufficient maturity and understanding, her statement was recorded. In the statement, she categorically deposed that at about 09.00 A.M. she was playing outside her house. The accused came on a cycle and took her in jungle and committed rape on her. In the mean time, her mother came there and the accused tried to run away but was apprehended by public. Someone called the police. The police came and took her and the accused to the police station and her statement Ex.PW-9/A was recorded. To a leading question

put to her, she stated that before taking, the accused had offered ₹ 100 to her and thereafter, he took her from there. In the cross-examination, she stated that the Investigating Officer had told him to identify the accused as the person who committed rape on her person. The Court was vigilant/active to get required clarification by putting the following questions :

“Court Question : Did you indentify the accused as the person who raped you only on basis of direction of IO or he had actually raped you?

Ans. The accused is the same person who had actually committed rape with me on that day and he was pointed out to me by the IO also today.

Court Question : Why did you state earlier that he is not the person who had raped you?

Ans. I was confused.”

6. The prosecutrix was categorical in identification of the accused in the Court. She denied that statement made by her was tutored or that no such occurrence took place.

7. There are no good reasons to discard the testimony of the prosecutrix. Law relating to the testimony of prosecutrix is discussed in the case of ‘Wahid Khan Vs. State of Jharkhand’ (2010) 2 SCC 9 :

“19. The law on the point is now too well settled. No doubt, it is true that Dr.B.Biswas, who had initially conducted the medical examination of the prosecutrix, has not appeared on behalf of the prosecution to depose. But,

that alone is not sufficient to discard the prosecution story. Corroboration is not the sine qua non for conviction in a rape case.

20. In this regards, the most celebrated observations of Justice Vivian Bose in the case of 'Rameshwar vs. State of Rajasthan' AIR 1952 SC 54 may be quoted :

The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...

21. 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.

22. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible."

8. In the case of '*Bhupinder Sharma vs. State of Himachal Pradesh*' AIR 2003 SC 4684, it was held :

"12. 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 Vs. Chandra Prakash Kewalchand Jain, AIR 1990 SC 658). Why should 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. PW-9 ‘X’ was medically examined and her MLC (Ex.PW-14/B) was prepared on 21.04.2011 at 02.21 P.M. It is mentioned that the girl ‘X’ was brought by IO and her mother with the complaint of sexual assault at around 09.30 A.M. by an unknown person. Hymen of the prosecutrix was found ruptured. Ocular testimony of PW-9 is in consonance with the medical evidence.

10. Statement of the prosecutrix was also recorded under Section 164 Cr.P.C. on 22.04.2011, soon after the incident. In the statement Ex.PW-9/B, she had given detailed account of the incident as to how she was allured after giving ₹ 100 by a cyclist when she was playing in the street and thereafter, rape was committed on her person. She also stated that two motorcyclists apprehended the culprit. There is no conflict in the statement recorded under Section 164 Cr.P.C. and the one recorded in the Court.

11. PW-6 (Chetan Kumar) though turned hostile, nevertheless deposed that when he reached the spot at about 09.30 A.M. on his motorcycle, he heard a noise and the people were saying '*galat kam ho gaya*'. It lends corroboration to the testimony of the prosecutrix that the motorcyclists had reached the spot and the occurrence took place at about 09.00 A.M. PW-12 (Satish) also admitted his presence at the spot when he stopped his motorcycle. In the cross-examination by APP, he admitted that the arrest memo (Ex.PW-1/C) and personal search memo (Ex.PW-1/D) contained his signatures.

12. It is true that PW-10 (Meera Devi), prosecutrix's mother did not support the prosecution on material facts. Nevertheless, she was certain that on 21.04.2011 at about 09.30 A.M. when she returned from her work her daughter 'X' raised alarm that someone was taking her forcibly. She further admitted that public persons apprehended one person and the police was called. Police took her and her daughter to the police station where the statement of her daughter was recorded. She was medically examined. She further stated that the police took her daughter to the Court to record her statement. She however, denied the contents of the statement marked as P-10/1 recorded under Section 161 Cr.P.C. It appears that the witness has not presented true facts. She has completely denied

occurrence of any such incident which is falsified by the documents on record including the MLC where her presence has been recorded and it is mentioned that 'X' was sexually assaulted. It is unclear why she opted to resile from her statement. For that reason, the innocent version given by the child witness cannot be discredited or faulted.

13. Minor discrepancies, variations and improvements highlighted by the counsel for the appellant are not fatal. The prosecutrix has not deviated from the core issue that the accused committed rape upon her. There was no inordinate delay in lodging the First Information Report. Conviction can be based upon the sole testimony of the prosecutrix. There is no conflict between the oral and medical evidence.

14. In the light of above discussion, the appeal lacks merit and is dismissed. The conviction and sentence of the appellant are maintained. The Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

JANUARY 30, 2013

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