

R-30

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

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Judgment reserved on :22.05.2014
Judgment delivered on : 27.05.2014

CRL.A.No.786/2002 & Crl.M.A. No.2624/2002

SURINDER KUMAR Appellant
Through: Mr. B.S.Chaudhary and Ms.Chitra
Goswami, Advs.

Versus

STATE Respondent
Through: Ms. Fizani Hussain, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Appellant is aggrieved by the impugned judgment and order of sentence dated 19.9.2002 and 20.9.2002 respectively. He had been convicted under Section 376 read with Section 511 of the IPC as also under Section 366A of the IPC and has been sentenced to undergo RI for 3 years and 6 months and to pay a fine of Rs.20,000/- in default of payment of fine to undergo SI for six months for the offence punishable under Sections 376/511 of the IPC; for the offence under Section 366A of the IPC he had been sentenced to undergo RI for 3 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 4

months. Sentences were to run concurrently and benefit of Section 428 of the Cr.P.C. was granted to the appellant.

2 Version of the prosecution is that on 18.10.1999 at about 12.49 p.m. an information was received in the PCR that a man aged 30-32 years had brought a 5 year old girl at the DDA park near Jaipur Golden Hospital and he was committing a wrong act with her. He had been apprehended and taken into custody. This DD was marked to SI Gulab Singh (PW-15) who reached the spot and found Jain Narain (PW-5) who was on patrolling duty at the park. Version of PW-5 being that he had seen the appellant with the victim in a compromising position; the girl was sitting on his knees and she was crying; the appellant was doing a wrong act with the girl behind the bushes.

3 Statement of the victim (aged 7 years of age) was recorded. She was examined as PW- 1. Statement of her grandmother Krishna Wanti (PW-2) was also recorded. As per her version she had seen her grand-daughter last in the company of the appellant and she used to call him as Surinder uncle; she had forbidden her grand-daughter to accompany the appellant. She had seen the appellant sitting at a tea shop where her grand-daughter was also present; when she returned back again she saw

that her grand-daughter was missing and so also the appellant. On search her grand-daughter was recovered from the park behind the Jaipur Golden Hospital.

4 The medical examination of the victim was conducted by Dr.Seema Jain (PW-4). No external injury was noted and also no bleeding. Her hymen was not intact. Her vaginal swab was taken. MLC of the victim was proved as Ex.PW-4/A. As per report of the CFSL Ex.PW-1/A human semen was detected on the underwear of the victim.

5 In the statement of the appellant recorded under Section 313 Cr.P.C. he pleaded innocence. His submission was that he had been falsely implicated. He admitted that the victim was recovered from him possession on the fateful day but he had denied that he had done any wrong act with her.

6 In defence no evidence was led.

7 On the basis of the evidence collected by the prosecution the appellant had been convicted and sentenced as aforenoted.

8 On behalf of the appellant arguments have been addressed Mr.B.S.Chaudhary, Advocate. It is submitted that the impugned
Crl.A. No.786/2002

judgment suffers from an illegality. It is pointed that it a clear case of false implication as the testimony of the victim is wholly unreliable. Attention has been drawn to various parts of the version of PW-1 wherein she had stated that the accused had done nothing with her. Further submission being that she stated in Court as had been told to her by her grand-mother and her mother. Further submission being that the version of PW-2 who is the grand-mother of the victim cannot be relied upon as she is admittedly a hearsay witness and she was not a witness to the alleged offence. Testimony of PW-5 on this count is also doubtful. Last submission of the learned counsel for the appellant being that the MLC had noted no bleeding or injury meaning thereby the offence had not been committed as has been alleged by the prosecution.

9 Arguments have been refuted by learned public prosecutor. It has been pointed out that on no count does the impugned judgment suffer from any infirmity. It is stated that the victim was a minor child aged less than 7 years and even if there are minor contradictions in her version given in Court qua her earlier version recorded under Section 164 of the Cr.P.C., they have to be ignored. Further submission being that testimony of PW-1 is fully corroborative of the testimony of PW-5

who was an independent witness so also the version of PW-2 who was her grandmother and who had last seen the victim in the company of the appellant. It is pointed out that even in the statement under Section 313 Cr.P.C. the appellant has admitted that the victim had been recovered from his possession. It has been submitted that on all counts FSL report had also advanced the version of the prosecution and on no count does the impugned judgment call for any interference.

10 Arguments have been heard and record has been perused.

11 PW-1 is the victim. She was less than 7 years of age at the time of the incident. The appellant was known to her. She used to address him 'Surinder uncle'. He often used to visit the shop of her grandfather and at that point of time PW-1 was studying in class Ist. She has on oath stated that she was asked by the accused to accompany him for a stroll to a park; he took her at a distant place; thereafter he bate her; at that point of time one uncle came (PW-5). PW-1 was not coherent on her entire version. She had been permitted to be cross-examined by the learned public prosecutor. In this cross-examination, she admitted that she had stated in her statement under Section 164 Cr.P.C. that the accused had put his penis in her vagina without taking off her

underwear. This version on oath in Court is fully corroborative of the version of the prosecutrix in Ex.PW-1/A which was her statement recorded under Section 164 of the Cr.P.C. by the then learned M.M. In another part of her deposition PW-1 has stated that the accused took her behind the bushes and started talking with her in indecent manner. The version of PW-1 was reiterated again in her cross-examination. PW-1 admitted that she used to address the accused as 'uncle'.

12 Deposition of PW-1 qua her version Ex.PW-1/A (statement recorded under Section 164 Cr.P.C.) shows that she is fully corroborative of her statement which she had first given to the M.M. The victim was of tender years. Incident is dated 18.10.1999. She had come into witness box in September, 2000 almost one year later. Memory lapses are but natural and especially for a girl who had suffered a trauma of such a nature—physical, emotional as also psychological. In her cross-examination by learned public prosecutor she admitted that the accused without taking off her clothes had put his penis into her vagina. The medical examination of the victim (MLC Ex.PW-4/A) evidences no injury and no bleeding and that is obviously for the reason that it was only an attempt of rape for which the appellant had been

CrI.A. No.786/2002 Page 6 of 8

convicted. The FSL report Ex.PW-15/F has advanced the version of the prosecution; there was human semen on her underwear. PW-5 was also an independent witness. He was a constable who was on the patrolling duty at the park where the offence had taken place. His deposition is also cogent and coherent. He has stated that he had seen the accused in a compromising position with the victim. She was sitting on his knees and crying; this act was being done behind the bushes.

13 The appellant in his statement recorded under Section 313 Cr.P.C. had also admitted that he was with the victim at the park and the victim was recovered from his possession but he did not do any wrong act with her. This version is wholly untrustworthy in view of the cogent version of PW-1 who being a child witness yet had with clarity described the incident. PW-5 also had no reason to depose against the appellant. PW-2 had last seen the appellant with her grand-daughter. FSL in its report detected human semen on the underwear of the victim fully corroborating the statement of the victim that the accused had tried to commit the act of rape upon her while her clothes were on.

14 On no count does the impugned judgment call for any interference. This Court also notes with pain the nature of the offence

and the fact that the victim has been traumatized not only at the time when this act had been committed upon her but probably this trauma will remain with her throughout her life. Sentence imposed upon the appellant also calls for no interference.

15 Appeal is without any merit. Dismissed.

16 Bail bond cancelled. Surety discharged. Appellant be taken into custody to serve remaining sentence.

INDERMEET KAUR, J

MAY 27, 2014

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