

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

% *Date of decision: November 25, 2014*

+ **CRL.A. 1443/2013**

SHANKAR SINGH

..... Appellant

Represented by: Mr.Krishna Kumar R.S.,
Mr.Raj Kumar Prasad,
Mr.Naved, Advs.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP
with SI Vandana, PS Kirti
Nagar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Shankar Singh challenges the judgment dated September 06, 2013 whereby he has been convicted for offence punishable under Section 376 IPC and the order on sentence dated September 07, 2013 directing him to undergo imprisonment for life and to pay a sum of ₹50,000/- and in default thereof to undergo rigorous imprisonment for a period of one year. It was also made clear that life meant the remainder of the convict's natural life. Govt. of NCT was directed to pay an appropriate compensation to the victim, 75% of which amount was to be deposited in the fixed term deposit in terms of Rule 7 of the Scheme in a nationalized bank for 3 years and the

remaining 25% to be available for utilization and initial expenses by the victim/ prosecutrix.

2. The arguments of the learned counsel for the appellant were that since there was no penetration, no offence under Section 376 IPC was made out and that the alleged eye-witnesses cannot be relied upon as they made their statements belatedly. The appellant pleads innocence and false implication in his statement under Section 313 Cr.P.C.. Shankar Singh led defence evidence and examined Amrit Lal DW-1, Pankaj Singh DW-2 and Ms.Rubi DW-3.

3. Amrit Lal deposed about the general good character of Shankar Singh and that on the said night Shankar Singh had dinner and came back to his shop located on the ground floor at about 12.45 AM, demanded a tobacco from him which he gave and thereafter he went to sleep on the road outside the jhuggi and Amrit Lal closed his shop and slept. He deposed that he did not know what happened thereafter at night. Thus this witness is not an eye-witness and his testimony is of no relevance to Shankar Singh. Pankaj Singh DW-2 deposed that on April 15, 2013 after finishing the work he along with Shankar Singh came back to their jhuggi at about 10.30 PM where after Shankar went to his jhuggi for having meals. After dinner Shankar slept outside his jhuggi on the footpath and he went to sleep under Mayapuri flyover. He was sleeping at a distance of about 200 meters away from Shankar and on the next morning at about 8.30 AM he came to know that Shankar had been taken away by the Police. Ms.Rubi DW-3 also deposed about the general good character of Shankar and nothing about the incident. It is thus apparent that the three defence witnesses had not

witnessed the incident and are of no avail to Shankar Singh to prove his innocence.

4. The prosecution case is that Ms. 'P' an old lady aged 80 years suffering from dementia would often sleep on a cot outside her house. On the intervening night of April 15/16, 2013 at about 1.00-1.30 AM Bittu PW-1 who was running a tea shop was lying on a cot outside his shop. His elder brother Tittu who had gone to Chatarpur Mandir since 8.00 PM had not returned and thus he was waiting for him to come back. He noticed that Shankar was sitting on the cot of 'P' who was sleeping on a cot outside her house at a distance of about 4-5 steps from Bittu's cot. Bittu heard Shankar Singh asking prosecutrix whether she had taken her food or not. Thereafter Shankar lay himself on the cot of 'P' and covered himself with the bed sheet. He noticed Shankar moving up and down. He called his friends Amit, Anil, Raj Kumar and others due to which Shankar got up hurriedly. He noticed that private part of Shankar was visible and his underwear was lowered and not at the proper place. Exposed legs of 'P' were also visible outside the bed sheet. As it was night time, Bittu did not take any action by informing the Police, however in the morning a family member of Ms.'P' made a phone call to the Police. Police reached at the spot and recorded the statement of Bittu vide Ex.PW-1/A as noted above and registered the FIR. 'P' was taken for medical examination to DDU hospital.

5. The doctor found the patient not well-oriented in time, place, etc. and was found responding to verbal commands inappropriately. Her vaginal swabs were taken and clothes were seized. Pursuant to arrest blood sample of Shankar Singh was taken and they were sent for DNA analysis to the

FSL. As per the FSL report semen was detected on Ex.'2a' and '2b' i.e. clothes of the prosecutrix and DNA profile (STR analysis) performed on exhibits '2a', '2b' and '3'(blood gauze of accused) and as per the opinion it was sufficient to conclude that allelic data from the source of Ex.'3' was accounted in the allelic data from the source of Ex.'2a' and '2b'. Though the prosecutrix could not speak but the FSL report spoke about the act of Shankar Singh loud and clear.

6. Bittu appeared as PW-1 and deposed in sync with his statement on the basis of which rukka was recorded. The only ground to assail his testimony is that he reported the case late. The incident took place at around 1.00-1.30 at night. Bittu who was sleeping nearby did not call the Police at night but informed the family members in the morning when they got up and immediately Police was informed. Thus statement of Bittu was recorded at 10.00 AM on April 16, 2013. This conduct of Bittu informing the family late can neither be called unnatural nor warrants that his testimony be discarded simply on this ground.

7. Similarly Amit Kumar PW-2 also deposed that when Bittu woke him up at night he saw Shankar Singh on the cot of Ms.'P'. Similarly Bittu even woke up Anuj the grandson of Ms.'P'. Anuj deposed that Shankar Singh who was apprehended at the spot was beaten by the public, however since it was night time they did not go to the Police Station to lodge the report and in the morning they all decided to lodge complaint against the accused, so he telephoned the Police at 100 number at 8.30-9.00 AM. Thus, the delay in recording of FIR is explained by the witnesses.

8. Ms.Ramshree PW-13 daughter-in-law of Ms.'P' deposed that on

coming to know she accompanied her mother-in-law to the hospital. Her mother-in-law was an old lady and unable to respond to anything. It was sought to be suggested to her that there was some previous enmity between Shankar Singh and thus Bittu falsely implicated him which suggestion was denied. She stated that since their jhuggi was quite small, in summer her mother-in-law used to sleep outside.

9. The other contention of learned counsel for the appellant is that there was no penetration. 'P' suffering from dementia was not in a position to speak or react and thus her statement could not be recorded. However, from the evidence of Bittu it is apparent that he noticed Shankar Singh committing the sexual act as he witnessed Shankar's body movement and called the people who were sleeping by the side. Version of Bittu is duly corroborated by the fact that semen was detected on the clothes of the prosecutrix which stands proved beyond reasonable doubt by the report of the FSL.

10. We thus uphold the conviction of the appellant for offence under Section 376 IPC and the order on sentence directing him to undergo imprisonment for life, however the direction of the learned Trial Court that life would mean the remainder of the convict's natural life is set aside for the reason whilst it may be true that the appellant took advantage of the old age and dementia of the victim which are aggravating circumstances justifying a sentence of imprisonment of life, but not the further rider that 'life' would mean the 'remainder of the natural life'. The order of the learned Trial Court regarding compensation is maintained.

11. Appeal is disposed of.

12. T.C.R. be returned.

13. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 25, 2014
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