

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

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Date of Judgment :09.09.2015

+ CRL.A. 836/2013
SARWAN KUMAR

..... Appellant

Through Mr. Imran Khan, Adv.
versus

STATE (GNCT OF DELHI)

..... Respondent

Through Ms. Neelam Sharma, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal is directed against the impugned judgment and order on sentence dated 18.10.2011 and 21.10.2011 respectively wherein the appellant stands convicted under Section 376 (2)(f) of the IPC. He has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo SI for 6 months.

2 The version of the prosecution is that the victim who was a three years old girl had been subjected to the lust of the appellant; on the fateful date, i.e. on 03.10.2009 while the victim was playing in the courtyard, the accused had taken her to his jhuggi where he had

committed rape upon her. The version of the prosecution was unfolded in the testimony of the mother of the victim who has been examined as PW-10 (Chanchun). Her father Kailash was examined as PW-9. The learned MM in the course of investigation had made efforts to record the statement of the victim but being a three years old girl after putting preliminary round of questions, the Court had noted that the witness does not appear to answer the question and as such her statement was not recorded. The MLC of the victim had been prepared by Dr.Sumitra and this medical document (Ex.PW-3/A) had evidenced a torn hymen and abrasion over her lower velva as well as injuries on her face, chest, abdomen and legs.

3 In the statement of the accused recoded under Section 313 of the Cr.PC, he has pleaded innocence stating that he has been falsely implicated in the present case.

4 On the basis of the aforementioned evidence collected by the prosecution, both oral and documentary, the appellant was tried, convicted and sentenced as aforementioned.

5 On behalf of the appellant, learned amicus curiae submits that this appears to be a case of false implication; there appears to be no reason

whatsoever for the appellant to have committed the crime; a suggestion had been given to both PW-9 and PW-10 that this is a case of earlier enmity; if the accused had committed the crime, he would not have stayed in his jhuggi; he would have absconded. In the alternate, submission is that since the appellant is a first time offender, he be granted leniency in the sentence.

6 Needless to state that these arguments have been refuted.

7 The mother of the victim examined as PW-10 was the complainant. She had on oath deposed that her husband used to drive TSR and on the fateful day in the afternoon when her husband had gone for duty, the accused who was living in the adjoining jhuggi took her daughter who was playing in the courtyard on the pretext of playing. When her daughter did not return for sometimes, PW-10 got suspicious and she went to the jhuggi of the accused. The jhuggi was bolted from inside. She knocked the door. There was no response. She pushed open the door, she found the accused in naked position and underwear of her daughter was removed. The accused was committing wrong act upon her. On seeing her, the accused fled away from the spot. She put on the clothes of her daughter and brought her back to her jhuggi. She

informed her husband (PW-9) about the incident. Her daughter was medically examined. Her MLC was conducted.

8 In her cross-examination, she stated that there is one jhuggi between her jhuggi and the jhuggi of the accused. She knew the accused for the last 5-6 years who was also living in the neighbouring jhuggi. Her daughter was bleeding from her private parts. Her daughter was not in a position to speak. She denied the suggestion that the accused has been falsely implicated due to prior enmity.

9 The husband of PW-10 was examined as PW-9. He had also toed the version of PW-10 and had disclosed that when he returned home at 04:00 pm, he was told by his wife (PW-10) that his daughter had been raped by the appellant. She had detailed the incident to him.

10 In his cross-examination, PW-9 stuck to his stand. He admitted that the accused used to live with his family members. He denied the suggestion that because of the earlier enmity, the accused has been falsely implicated.

11 The medical record of the victim evidences that her hymen was torn and there was penetration by admitting one index finger. Ex.PW-3/A was prepared by Dr. Sumitra (PW-3). Abrasion and injuries were

also noted on other parts of her body i.e. her chest, cheeks and face. It is this glaring evidence which has stare in the face of the Sessions Judge to convict the appellant.

12 Learned counsel for the appellant has not been able to create any dent in the version of the prosecution. Testimony of PW-10 and PW-9 is clear, cogent and coherent. There was no reason for false implication of the accused. A bald suggestion that because of earlier enmity (details not discussed) the accused has been falsely implicated is neither here and nor there. Moreover, this defence has not been adopted by the accused while getting his statement recorded under Section 313 of the Cr.PC where the only statement was that he was innocent. The medical record speaks volumes. Obviously an unholy crime had been committed upon the victim. There was no reason on the part of PW-10 & PW-9 to have falsely implicated the accused.

13 The impugned order does not call for any interference.

14 Even on the question of sentence, there can be no modification as the sentence imposed upon the appellant is already a minimum. The Legislature (under the Un-amended Act) has prescribed a sentence of 10 years for an offence of rape on a child below the age of 12 years. In the

instant case, the victim was of 3 years of age. The physical, mental, psychological and emotional trauma suffered by the victim cannot be described in words. On no ground, the appellant deserves any leniency.

15 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 09, 2015

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