

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

% *Judgment Reserved on: September 7, 2016*
Judgment Delivered on: September 15, 2016

+ **CRL.A. 850/2001**

RAJESH @ TINKU Appellant

Represented by: Mr. Ravindra Narayan and
Mr. Raghav Narayan, Advs.

Versus

STATE OF N. C. T. OF DELHI Respondent

Represented by: Mr. Kewal Singh Ahuja, APP
for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Rajesh @ Tinku challenges the impugned judgment dated October 20, 2001 convicting him for offence punishable under Section 376(2)(f) IPC and the order on sentence dated October 23, 2001 directing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹1,000/-.

2. Assailing the conviction learned counsel for Rajesh @ Tinku contends that PW-8 the prosecutrix, PW-9 mother of the prosecutrix and PW-7 father of the prosecutrix were tutored witnesses as they stated verbatim whatever was stated before the police. As per the serology report of FSL, the blood sample of the appellant did not match with the semen found on the introitus of the prosecutrix. Lastly, it is contended that the learned Trial Court failed to appreciate the testimony of PW-6 Dr. Alka Sinha who had medically examined the prosecutrix and as per the MLC prepared by her there was no

injury on the genitals nor even bruising.

3. Learned APP for the State on the other hand contends that as per the evidence of PW-6 Dr. Alka Sinha, though the hymen was found intact and there were no external injuries however some discharge was found at the introitus and as per the FSL report, it was human semen. Furthermore, when the appellant was confronted by PW-9 mother of the prosecutrix, the appellant ran away and was arrested later on. The conduct of the appellant in running away shows the guilt of the offence committed by him.

4. FIR No. 232/2000 was registered under Section 376 IPC at PS Kalkaji on the complaint of the PW-9 mother of the prosecutrix, who stated that on March 31, 2000 around 2:30 P.M., the prosecutrix, aged 4 years, had gone out after lunch. Around 4:30 P.M. the prosecutrix returned home crying and told her, by pointing towards her private parts, that '*Tinku ne kuch kar diya hai, dard ho raha hai*'. Thereafter, she along with PW-7 father of the prosecutrix went to Tinku's place who admitted his mistake. When PW-9 asked him to come to the police station along with her, Tinku pushed her and ran away. This statement of PW-9 was recorded by PW-11 HC Tara Chand vide Ex. PW-9/A. Thereafter, the prosecutrix was taken for medical examination to AIIMS. On April 11, 2000, Rajesh @ Tinku was arrested from his house i.e. House No. A-117, Transit Camp, Govindpuri on the basis of secret information received.

5. PW-9, Smt. Kaushalya deposed in sync with her statement made before the police. She further deposed that she and PW-7 had noticed swelling on the vagina of the prosecutrix. They also noticed semen on the vagina. During her cross examination, she stated that after the incident, they left Delhi and started living in Agra because of the threats given by the

mother of Rajesh @ Tinku. Mother of Tinku started threatening after 3-4 days of the incident and she still extends threats at Agra. She denied the suggestion that she was falsely implicating Tinku in this case because he had seen her with some other person. She also deposed that no blood was noticed on the vaginal part of the prosecutrix but only semen was noticed. Semen was noticed on different parts of the body of the prosecutrix.

6. After being satisfied that the prosecutrix was able to give rational answers and capable of understanding the questions put to her, the prosecutrix was examined as PW-8. She deposed that *'tinku ne apne ghar mein mere saath gandhi baat ki thi'* and pointed out towards her vagina. She further stated that *'jaha par tinku ne gandhi baat ki thi vaha par dard hua tha. Maine yeh baat mummy papa ko batayi thi. Jis jagah par gandhi baat ki thi mere saath vaha se main bathroom karti hoon'*.

7. PW-7 father of the prosecutrix corroborated the testimony of PW-9. During his cross examination, he stated that when the prosecutrix informed him about the incident, she was not wearing the underwear at that time.

8. PW-6, Dr. Alka Singh, Senior Resident, AIIMS had medically examined the prosecutrix and prepared the MLC Ex. PW6/A. She stated that there was no history of bleeding and no obvious sign of external injury. On local examination, it was found that there was no bruising. Hymen was intact and there was some discharge at the introitus. No obvious stains were observed on the clothes. During her cross examination, she deposed that the discharge at introitus could dry up within 3 to 4 hours and no discharge was seen on any other part of the body. She deposed that it was not necessary that the discharge would have fallen when the prosecutrix was brought to the hospital as the introitus area is enclosed between the labia folds. She further

stated that if there is full penetration by a fully developed man into the vagina of a child, the hymen is likely to be torn and there may be evidence of bruising and other parineal injuries. She deposed that the prosecutrix had not complained of pain in her genital parts.

9. As per the FSL report exhibited as Ex. PW-10/A, human semen was found on three microslides having thin whitish smear which were taken when the prosecutrix was medically examined. Though as per the FSL report blood group of Rakesh @ Tinku was opined to be 'O' Group but no blood grouping of semen detected on the slides prepared from the vaginal smear had been given. In the absence of a contrary report the plea of Rajesh that the semen did not have the same blood group cannot be accepted. As held by the Supreme Court in the decision reported as (2010) 10 SCC 259 (para 39), ocular version is given primacy over medical report and only if the medical report totally contradicts the ocular version, then only it is to be rejected.

10. Further even if there was no injury or bruises on the private parts of the prosecutrix, the same does not indicate that no offence of rape took place. To constitute the offence of rape even partial penetration is sufficient. The slides prepared from the vaginal smear of the 4 year old prosecutrix were found to contain semen. Soon after the incident she complained to her parents and was medically examined. The same is sufficient to corroborate the version of the prosecutrix even in the absence of the hymen being torn or injuries not being noted on private parts.

11. Thus, there is considerable evidence on record to prove beyond reasonable doubt the offence of rape committed by Rajesh on the 4 year old prosecutrix and the appellant has not been able to probablise his defence of

false implication even after leading the defence evidence. The impugned judgment of conviction and order on sentence are upheld. The appeal is dismissed. The appellant who is in custody pursuant to the non-bailable warrants will undergo the remaining sentence.

12. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 15, 2016

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