

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

% *Judgment Reserved on : May 20, 2016*
Judgment Delivered on : May 24, 2016

+ **CRL.A. 177/2015**

PRADEEP Appellant
Represented by: Mr.Harsh Prabhakar, Advocate with
Mr.Anirudh Tanwar, Advocate

versus

STATE (NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP with
ASI Azad Kumar, PS Adarsh Nagar

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. Being a case of rape, I shall be referring to the victim not by her real name. I name her : 'Quincy'.
2. It all commenced when Babita PW-15, the mother of Quincy, working in Azadpur Mandi to segregate chillies, left her three children at home on November 01, 2012 at the usual time : 6.00 AM and returned home, as usual, around 10:00 AM and found her eldest child Quincy missing, and her two younger siblings present at home. She was told that Quincy had gone to the house of her sister and thus she proceeded to her sister's house and found Quincy - scared, perplexed and not responding to her. The child, aged around 8 years, told her that she was having pain in her legs. Massaging Quincy's legs gently, and apprehensive of the worst,

Babita coaxed Quincy, who confided that the appellant, whom she referred to as uncle, took her to his room - made her lie down on the bed; removed her clothes, inserted his finger in her vagina. Put his penis in her mouth and ejaculated.

3. Babita immediately rang up the police control room resulting in DD No.12A, Ex.PW-17/A being registered at PS Adarsh Nagar by W/HC Santosh PW-17.

4. Investigation was handed over to W/SI Upkar Kaur PW-18 who, proceeded to Azadpur because the place of the crime disclosed was Gali No.2, Azadpur and met Babita who disclosed that she was residing at B-90, Dhobi Wali Gali, Azadpur and further facts which I have noted hereinbefore regarding what her daughter told her. Babita's statement Ex.PW-15/A was recorded by SI Upkar Kaur who, made the endorsement Ex.PW-18/A beneath the same, and got the FIR Ex.PW-1/A registered at the police station for an offence punishable under Section 377/506 IPC, which baffles me a little, because Babita's statement Ex.PW-15/A makes no reference to Quincy telling Babita that the appellant had committed unnatural sex with her. Being of the vintage when the Criminal Law (Amendment) Act, 2013 had not been inserted into the statute book and concept of digital rape did not exist, the FIR ought to have been registered for offences punishable under Section 354/506 IPC.

5. Be that as it may, Quincy was taken by the investigating officer to Babju Jagjeevan Ram Hospital where Dr.Niyati, working as a Senior Gynaecologist, examined her and wrote the MLC Ex.PW-3/A, proved at the trial by Dr.Seema PW-3 who had worked with Dr.Niyati and could identify her handwriting and signatures. The MLC notes no injury on the

body of Quincy. The hymen was intact. There was no perennial tear nor was any abnormality noted in the anal region. Vaginal and anal swabs of Quincy were taken. The clothes which she was wearing were also seized by SI Upkar Kaur along with the vaginal and anal swabs.

6. The appellant, residing in the neighbourhood was apprehended and was medically examined. As per MLC Ex.PW-4/A the appellant was opined to be sexually active. His blood and semen sample was taken by Dr.Jasneet and along with the MLC the two samples were seized by the investigating officer.

7. At slight variance with what her mother disclosed in her statement Ex.PW-15/A, Quincy said in her statement under Section 161 Cr.P.C. recorded by the investigating officer that the appellant tried to have anal sex with her but since she shrieked, he left it and instead inserted his penis in her mouth.

8. The blood sample of the appellant, the anal and vaginal swab of Quincy as also her clothes, which were seized by SI Upkar Kaur were sent for FSL examination and the report is that human semen was detected on the vaginal secretion and cervical mucus as also the underwear and t-shirt of Quincy. Partial male DNA generated therefrom could therefore not be connected with the DNA generated from the blood of the appellant due to inhibition/degradation of DNA.

9. No issue being raised in the appeal concerning purity and preservation of the seized exhibits, my task of adjudicating the appeal is simple. Keeping in view the DNA report, which conclusively opines human semen detected in the vaginal secretion, cervical mucus, underwear and t-shirt of Quincy, but inconclusive to establish the source as that of the appellant; with the

evidentiary value being - it establishing human semen, which obviously is secreted by a male, being detected on the underwear and the t-shirt of Quincy and in her vaginal secretion and cervical mucus; to test the veracity of the statement of Quincy when she deposed in Court and before that when her statement was recorded under Section 164 Cr.P.C. by Ms. Shefali Bernala, PW-6, the learned Metropolitan Magistrate.

10. In her deposition in Court Quincy established her acumen as a bright child (and therefore I have given her the pseudo name Quincy) when she successfully answered the questions put by the learned Trial Judge to test whether she was comprehending what was put to her. Besides, I find that she drew a sketch and coloured the same with crayons, on a sheet of paper given to her by the learned Judge. It depicts a child standing outside a house, with the door closed. The drawing is at page 211 of the Trial Court Record. She had captioned it as her house. Indeed a very beautiful house. A single room with a door and a window. The painting shows her observatory skills because in her deposition she said that the latch of her house could be used to tap the wooden planks of the door and I find that in the drawing of her house she has so depicted the latch. The colouring shows the steady hand of young Quincy. She deposed in Court that after her mother left to sort out chillies, the appellant came to their room and knocked the door by tapping the latch on the door. She opened the door. Appellant lifted her and took her to his house and stripped her and then himself. He first tried to insert his penis in the vaginal region and then in the anal region and finally in her mouth. After he ejaculated in her mouth, the appellant cleaned himself using her underwear and told her not to tell anyone. She identified the appellant as the uncle to whom she was referring to.

11. Babita PW-15 has stood by her statement Ex.PW-15/A and has deposed in sync.
12. Both have successfully withstood the test of cross-examination.
13. The learned Trial Judge has convicted the appellant of the charge punishable under Section 363, 376(2)(f), 377 and Section 506 IPC. Sentence imposed is to undergo RI for 10 years for the offence of rape, lesser sentences for the others; all to run concurrent. Quincy has been compensated a sum of ₹1 lakh.
14. Faced with the FSL report evincing human semen being detected on the underwear, t-shirt, vaginal and cervical secretion of Quincy, argument advanced to discredit Quincy's and her mother's testimony was, that as per the mother the child told her that the appellant inserted his finger in her vagina and to satisfy his lust inserted his penis in her mouth and therefore it is unexplainable as to how human semen could be detected in the vaginal and anal swab of Quincy, who as noted above said that before inserting his penis in her mouth the appellant tried to have vaginal and anal sex with her.
15. The argument overlooks the fact that when Quincy first disclosed what had happened to her, as deposed to by the mother and as recorded in the statement Ex.PW-15/A, Quincy was perturbed, perplexed and lost. She may not have disclosed everything. But in her statement under Section 161 Cr.P.C. recorded on November 02, 2012 she has said that the appellant tried to satisfy his lust by attempting anal sex with her.
16. MLC Ex.PW-3/A of Quincy rules out vaginal or anal penetration, but that does not mean that none was attempted. Testimony of Quincy's mother that when she saw her child traumatized she was complaining of pain in her leg and she massaged oil on her daughter's legs is indicative of the fact that

a weight or a pressure was put on the legs of Quincy and that obviously was the weight of the appellant pressing himself down on the unfortunate child. Human semen detected on the t-shirt of Quincy corroborates Quincy when she says that when the appellant ejaculated in her mouth she spat the semen out. She has deposed that after the appellant ejaculated and took out his penis from her mouth she wiped it from her underwear and FSL report corroborates her because human semen has been detected in the underwear as well. Pre-ejaculation discharge from the penis of a male is a biological fact and this explains the DNA report vis-a-vis the vaginal swab and anal swab of Quincy.

17. The argument advanced that DD No.12A records the caller disclosing the address as Gali No.2, Village Azadpur wherefrom the caller called and the address of the caller i.e. Babita, who gave the call, is B-90, Dhobi Wali Gali, Azadpur and thus how come SI Upkar Kaur reached Babita's house is noted to be rejected because this question could have been answered by SI Upkar Kaur or possibly by Babita. None of them were questioned on this. To none was the address disclosed in DD No.12A shown.

18. But, the fact of the matter remains that SI Upkar Kaur met Babita at her house in Dhobi Wali Gali, Azadpur. The address is in an urbanized village and possibly Gali No.2 could also be known as Dhobi Wali Gali.

19. Similarly, the argument advanced concerning an overwriting of the date and the time : the date '3' being overwritten with '2' and 'AM' being converted into 'PM' is noted and rejected because this aspect of overwriting, which possibly could be a correction in the time and the date, had to be put to the investigating officer seeking an explanation. None has been done. No argument can be built on sand.

20. Finding no infirmity with the view taken by the learned Trial Judge I dismiss the appeal maintaining the conviction as also the sentence.
21. Copy of this order be sent to Superintendent, Central Jail Tihar for updation of records and to be supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 24, 2016
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