

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

Judgment Reserved on: May 27, 2016

% *Judgment Delivered on: May 31, 2016*

+ **CRL.A 766/2015**

RAJU YADAV

..... Appellant

Represented by: Mr.Sitab Ali Chaudhary,
Advocate.(DHCLSC).

versus

STATE

..... Respondent

Represented by: Mr.Ravi Nayak, APP for the
State with ASI Azad Kumar,
PS Adarsh Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the instant appeal, the appellant challenges the impugned judgment dated 25th March, 2015 whereby he has been convicted for the offence punishable under Section 376 IPC in FIR No.142/2012 registered at PS Adarsh Nagar and the order on sentence dated 30th March, 2015 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/- in default to undergo simple imprisonment for a period of three months.
2. Process of law was set into motion on 15th June, 2012 around 3:30 PM when DD No.16A was recorded by HC Ramesh Kumar, PW-2 informing that a 12 year old girl was found abandoned at Britannia Chowk, Ring Road, Jhuggi No.48, B-Block near Railway Line. After receiving the information SI Krishan Lal, PW-7 went to the spot where he met two ladies, that is,

Smt.Gainda and Smt.Phoolmati, who produced the prosecutrix, original resident of West Bengal, and informed that the prosecutrix who appeared to be a minor was roaming around aimlessly in the Jhuggi cluster and therefore, they had given her shelter for the night. These ladies also informed that they tried to search for the parents of the girl but they were unable to understand her language and hence they called the PCR. Thereafter PW-7 took the ladies and the prosecutrix to the Police Station.

3. On 16th June, 2012 SI Krishan Lal PW-7 recorded the statement of the prosecutrix. The prosecutrix stated that she is a resident of village Damuriya, West Bengal and is an illiterate. Her Bua Munni w/o Rajeev brought her to Azadpur, Delhi last Diwali during the days of durga puja. She does not know the address of her bua. After four-five days of her coming to Delhi, her bua had sent her to Model Town to work at a Kothi. She also stated that when she was at Azadpur, a friend of Rajeev had sexually assaulted (galat kaam) her at night without her consent and she can identify him. When she used to work at that Kothi, she was thrown out as she was careless. She stated that she does not know the address of the kothi. While roaming she reached a temple and from there two ladies brought her to Police Station. She sought legal action against the boy whom she can identify.

4. On the basis of the statement of the prosecutrix, FIR was registered. During the investigation, PW-7 SI Krishan Pal accompanied the prosecutrix to locate the address of her bua but the same could not be located. However, on 18th June, 2012, SI Upkar Kaur, PW-16 traced her aunt (bua) at Malikpur, Delhi and at her instance the appellant was apprehended from his house.

5. Charge was framed under Section 376 IPC against the appellant

whereafter the statements of the prosecutrix and the witnesses were recorded.

6. Learned counsel for the appellant contends that the bua of the prosecutrix was dropped as witness as nothing material emerged from her testimony to incriminate the appellant. Furthermore, Archana, the wife of the appellant was not cited as prosecution witness to extract the fact whether the prosecutrix was dropped at their home by her bua or not. It was further contended that the story of the prosecutrix is untrustworthy because the allegation against the appellant cropped up after an inordinate delay of six months. Refusal by the prosecutrix to undergo internal medical examination makes the allegation of the prosecutrix baseless as internal medical examination is essential to confirm sexual ravage upon a lady.

7. Prosecutrix PW-12 during her examination-in-chief narrated the whole incident. She deposed that one day in the evening when her bua was going to the railway station she left the prosecutrix at the house of her friend Archana who is the wife of Raju (the appellant). She further stated that Archana was not at home but her bua left her with the appellant at night and went away whereafter the appellant did galat kaam with her. On a question being put by Court as to “*what do you mean by galat kaam?*” the prosecutrix stated “*Raju removed my clothes and also removed his own clothes and lay down on me and put his penis inside my vagina on which I started screaming after which he left me.*” She further stated that when her bua picked her up next day in the morning she told her what the appellant did to her, but her bua did not do anything, instead put her to work in a Kothi somewhere in Model Town. After working for six months in the Kothi, she was removed from service and while wandering she reached the jhuggi

cluster where she met those ladies i.e. PW-9 and PW-10.

8. PW-12 further stated that she did not get her internal examination conducted because she was scared. On a Court question being put regarding meeting with bua, the prosecutrix deposed that her bua told not to go by what was being told to her otherwise she will be trapped more. Bua also told the prosecutrix that she would leave her at the village (*Usne kaha ki inki baton main mat aana nahi to aur fansegi. Mai tujhe gaon bhej dunggi*). In cross-examination, the prosecutrix denied the suggestion of being tutored by her bua to depose against Raju Yadav. She denied the suggestion that she did not raise any alarm. She stated that she had raised alarm but there was nobody in the adjoining rooms.

9. Mrs.Gainda, PW-9 stated that at about 10.00 PM she found the prosecutrix near jhuggis, Seven Sea Banquet Hall and the prosecutrix told her that she had come to the house of her bua and she has forgotten the way to the house of her bua. She further stated that she inquired about the prosecutrix from many people but the address of her bua could not be traced. The prosecutrix remained at her house during the night and on the next morning, that is, on 15th June, 2012 they again tried to locate the house of her bua but the same could not be traced. Thereafter at about 3.00 PM Mrs.Gainda made a call to police at 100 number and handed over the custody of the prosecutrix to the police. During cross-examination she stated that the prosecutrix told her the name of her bua as Munni but did not tell her about any commission of rape on her. She further stated that she could not understand the language of the prosecutrix except the words Azadpur and Munni which the prosecutrix told in Hindi.

10. Mrs.Phool Kumari, PW-10 corroborated the testimony of PW-9.

11. Dr.Niyati Srivastava, SR Obst. Gynae, BJRM Hospital who was examined as PW-13 deposed that the prosecutrix did not allow for internal examination.

12. Dr.Shipra Rampal, Radiologist, BJRM Hospital, PW-14 deposed that after examining the prosecutrix physically, dentally and radiologically, they gave the age estimate of the prosecutrix to be between 16 -18 years vide their report Ex.PW-14/A.

13. It is trite law that conviction can be based on the sole testimony of the prosecutrix without any corroboration. Even in the absence of medical evidence, the appellant is liable to be convicted since the evidence of the prosecutrix is reliable. Delay in lodging the FIR has been explained by the prosecutrix. Supreme Court in the decision reported as AIR 1996 SC 1393

State of Punjab vs. Gurmit Singh & Ors. held:

“7..... The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be

overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

14. In view of the discussion aforesaid I find no merit in the appeal. The appeal is dismissed upholding the impugned judgment of conviction and order on sentence.
15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
16. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 31, 2016
‘vn’