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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. 495/2013**

Judgment reserved on : 04th September, 2017
Judgment pronounced on : 14th November, 2017

RAMESH

..... Appellant

Through: Mr. S. S. Ahluwalia and Mr. Jatin Teotia,
Advocates

Versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present appeal has been preferred by the appellant challenging the impugned judgment dated 05.11.2012 and order on sentence dated 09.11.2012, passed by Additional Sessions Judge (hereinafter referred as 'ASJ'), Rohini Courts, Delhi, in Session Case No. 79/2011, arising out of an FIR No. 197/2011, registered at Police Station North Rohini, Delhi, whereby the appellant was convicted under Section 376 of the Indian Penal Code, 1860 (hereinafter referred as the 'IPC') and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.10,000/-, and in default of payment of fine, to further undergo simple imprisonment for six months.

Factual Matrix

2. The factual narration of the prosecution case before the Trial Court, as observed by the ASJ, Rohini Courts, vide its judgement dated **05.11.2012**, is that:-

"On 07.07.2011 from mobile no. 9868704168 a call was made to PCR that at House No 134, N.Pur, Sector-7 at about 5pm that boy has committed rape with a 6 years old girl. The information was conveyed by wireless operator PS North Rohini to duty officer and he recorded DD No. 43A which was assigned to SI Manoj Kumar. SI Manoj Kumar reached at the spot and when he found that the matter is of rape he called SI Nisha who came at the spot and recorded the statement of prosecutrix (her name is withheld being rape case). Rukka was prepared on the basis of which FIR No. 197/2011 was recorded in PS North Rohini. In her statement prosecutrix has stated that she resided at House No.134A, village Naharpur with her parents and two younger brothers who were school going. Her mother and father used to go out for work whereas her brothers go to their school and she remained at home doing household work. On 06.07.2011, at about 6:15 pm when she was alone at home and cleaning utensils, at that time Ramesh son of her parental aunt (Bua) who

was residing in their house since four years came and committed rape with her against her wishes and also gave her beatings and threatened her if she disclosed said fact to anyone, he will kill her but when her mother came to the house after work, she narrated the incident to her. Prosecutrix was taken to BSA Hospital for medical examination where doctor after her medical examination handed over exhibits to IO SI Nisha which were seized by her. She prepared site plan at the instance of prosecutrix and arrested the accused Ramesh at her instance. Accused Ramesh was also medically examined and doctor handed over exhibits which were seized by IO. Prosecutrix was produced before the Ld. MM who recorded her statement under Section 164 Cr.P.C. date of birth certificate of prosecutrix was also collected by the IO, exhibits were sent to FSL, statement of witnesses were recorded time to time and after completion of investigation, charge sheet against accused Ramesh under Section 376/506 and accused was put to trail."

3. The prosecution, to substantiate the charges leveled against the appellant, examined 15 witnesses, in all. The appellant denied the entire incriminating evidence against him and pleaded false

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implication. It was alleged that the appellant and the parents of the prosecutrix had fights prior to the incident, and therefore, in order to take revenge, the appellant was falsely implicated in the present case.

4. After meticulously examining the evidence led by the parties, the Trial Court convicted the appellant and sentenced him as mentioned hereinbefore.
5. Feeling aggrieved, the present appeal has been preferred. By the appeal at hand, the appellant impugns not only his conviction but also the order on sentence.

Arguments addressed on behalf of the appellant

6. Addressing arguments on the present appeal, the counsels for the appellant submitted that the impugned judgment being perverse, based on conjectures and surmises is not properly supported by the evidence/material on record; that there are material contradictions in the statements of the prosecutrix and the Trial Court has erred in relying on the testimony of the prosecutrix which culminated in the conviction of the appellant; that there were several neighbors but none came to the rescue of the prosecutrix when she raised an alarm; that no independent witnesses (neighbors) were examined on behalf of the prosecution; that the statement of PW-14 cannot be relied upon as he stays very close to the place where the alleged incident took place; that the fight took place prior to the incident between the appellant and the parents of the prosecutrix; that the father of the prosecutrix was not examined; that it is not natural for a person who allegedly committed sexual assault to have stayed

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back in the house after the alleged incident took place; that no complaint was lodged for sexual activity as alleged by the prosecutrix to have occurred twice prior to the incident.

Arguments raised on behalf of the State

7. Refuting the submissions of the learned counsel for the appellant, Mr. Amit Ahlawat, learned APP appearing for the State, submitted that the prosecution has been fully able to prove its case against the appellant, beyond any shadow of doubt, as all the witnesses have duly supported the case of the prosecution and there were no discrepancies in their statement. Besides that, the case of prosecution further finds corroboration from the medical and scientific evidence placed on record. Under these circumstances, it was submitted that there is no merit in the appeal and the same deserves to be dismissed.
8. I have given my considerable thought to the respective submissions of the learned counsel for the parties and have perused the material available on record.

The Prosecution Narrative

9. At this juncture, the appreciation of evidence brought on record requires to be appositely scrutinized to adjudge the fact whether the appellant is guilty of his culpability. For this, it is imperative to appreciate the evidentiary value to be attached to the testimony of PW-4/ the prosecutrix and the contentions advanced in this regard by the counsel for the appellant. *Therefore, the first issue which calls for determination by this Court is whether there exists any contradiction in the statements of the prosecutrix and if so*

whether the contradictions are material enough to cast doubt on the veracity of the prosecution narrative. It would be appropriate to reproduce her testimony, deposed during her Examination-in-Chief, which reads as under:-

" ...I used to reside at my house. I am not going to my school. My two brothers are going to school. My mother is a working lady. She goes out of the house for her work as she is doing the job of cleaning the pulses. My father works in a atta chakki shop. She said it was 16th. Then she again said it was 6th. Witness states that she is unable to recollect the date, month or year when the incident took place. On that day at about 6pm accused Ramesh, present in the court today, correctly identified by the witness, committed rape with me. He is son of my Bua who used to reside in Mehrauli had come to our house prior to that day. Accused Ramesh has first threatened to kill me, my mother and father. He hit me with belt and also kept knife on my neck. Accused Ramesh put his hand on my mouth while committing rape upon me. my mother came back at 7:30 pm and I told all the facts to my mother. My father returned back at about 10:30pm. I and my mother told all facts to my father. My father called the police. Police recorded my statement which is ExPW4/A which

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bears my signature at point A. Accused Ramesh was sleeping in our house at that time. Police woke up him and took him to the police station. Accused Ramesh was arrested by the police vide ExPW4/B which bears my signature at point A. Personal search memo ExPW4/C also bears my signature at point A. Police took to police station and thereafter to hospital. Doctor conducted my medical examination. My inner clothes and suit salwar were also taken away by the doctor. I was also taken to the Rohini Courts and my statement was recorded by MM at Rohini Courts."

10. This prosecutrix had further described the entire incident in the court and had also proved her statement **Ex. PW-4/A**, which was recorded by the Investigating Officer at the time of registration of FIR. She was also cross examined at length by the defence counsel but nothing material could be accredited therefrom.
11. The mother of the prosecutrix was examined as **PW-3**. She had also duly supported the case of the prosecution by deposing on similar lines that :

"On 6th July of the last year, I had gone for my duties at about 10 am and I returned at home at about 7:30 pm. My daughter Sangeeta tole me that accused Ramesh committed galat kaam with her. She explains galat kaam as accused committed

sexual intercourse with her daughter. She further told me that Ramesh has taken out her salwar and also put knife (churi) upon her and threatened her. At about 10.30 pm my husband reached at the house and I told him the entire incident. Thereafter my husband made a call to police. Police reached at my house. Police interrogated my daughter and also arrested and took him to police station. Police also took my daughter to the police station first and thereafter to the hospital."

12. After going through the statements of the prosecutrix/PW4 and PW3/Mother of the prosecutrix, it is summarily clear, that the deposition of prosecutrix fully corroborate with the testimony of her mother/PW-3 and has remained consistent, unfettered, invariable and even, throughout the entire process of recoding of her evidence in the present case. There are no lacunae in the entire process of recording of evidence of the prosecutrix which can pin point to any inconsistency and/or contradiction in her deposition. In the present case, the testimony of the prosecutrix inspires confidence and can be totally relied upon.
13. ***The next issue which requires determination is whether the medical and the scientific evidences support the case of the prosecution***
14. The prosecutrix was medically examined by PW-7 vide MLC exhibited as Ex.PW-7/A. The medical opinion of the examining

medical officer/ Dr. Renu Lalharia/ PW-7 in the present case, is hereby reproduced as under:-

"..As per external examination bite marks present on upper, outer right breast, bruise on left middle 1/3 thigh. On local examination, hymen torn, per vagina examination vaginal admitting two fingers."

As the examining medical officer has, during the course of examination, found the prosecutrix to be exposed to recent coitus, her opinion shall well be regarded as definitive to such effect. Therefore, the MLC report (Ex.PW-7/A) which shows various injuries on the body of the prosecutrix leads to affirmation of act of sexual activity upon prosecutrix and clearly connect the appellant with the crime.

15. It is pertinent to mention herein that, the appellant was also medically examined which has affirmed the absence of any indication of incapability of the appellant in engaging in sexual intercourse.
16. The case of the prosecutrix was further supported by FSL report exhibited as Ex.PW15/E and Ex.PW15/F. In FSL Report ExPW15/E it is mentioned that human semen was detected on exhibits:-

- (i) *Exhibit 1e: one cotton wool swab on stick, kept in tube described as 'Cervical Mucus Collection'*
- (ii) *Exhibit 1f1: one cotton wool swab on stick described as 'Vaginal Secretion.'*

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(iii) *Exhibit 1f2 & 1f3 : two microslides having faint smear described as 'Vaginal secretion.'*

(iv) *Exhibit 1g: dirty liquid kept in syringe described as 'washing from vagina'.*

(v) *2a: one dirty salwar*

(vi) *3h1 and 3h2: two micro slides having faint smear described as 'swab'.*

(vii) *31: one dirty underwear.*

17. Having done the survey of the evidence, it is amply clear that the ocular evidence and medical evidence which is eloquent and self-explicit, connects the accused / appellant with the crime. It is clearly stated that the prosecutrix was subjected to sexual assault due to which she suffered injuries on the body and the MLC report was also corroborated with the report of FSL by categorically stating the presence of semen on various exhibits. Simultaneously, it cannot be overlooked that the appellant has committed a heinous crime against a minor girl, whose age is further proved by the testimony of PW-3 and PW-6/ Teacher who submitted the school admission register to the police officials being exhibited as Ex.PW6/A.

18. *Now proceeding further, the next issue involved in the present case is whether reliance can be placed on the case of the prosecution in the absence of any independent witnesses.*

13 Counsel for the appellants contended that when the alleged incident took place, there were several neighbors residing near the house

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but none came to the rescue of the prosecutrix when she raised an alarm and no independent witnesses (neighbors) were examined on behalf of the prosecutrix. The prosecutrix has specifically stated during her recording of evidence(s) that she raised an alarm for help but she was threatened by the appellant that he would kill her and then pressed her mouth. The neighbors came near the door after hearing the cries but the same was not opened as it was bolted from inside. It was further stated by PW-15/SI Nisha that during the course of investigation when she reached at the spot, no neighbors were present there and the other tenants who were residing on the ground floor also denied any explanation to the alleged incident when enquired by her. While dealing with the aspect of reluctance of the public persons to join the public proceedings, in the case of **Jawahar v. State** reported in (2007) **ILR 2 Delhi 146**, it was observed as under: -

"As far as non-association of public witnesses at the time of recovery is concerned, I consider that this is not an infirmity sufficient to throw out the case of the prosecution. It is very hard these days to get association of public witnesses in criminal investigation. Investigation itself is a tedious process and a public witness, who is associated, has to spend hours at the spot. Normally, nobody from public is prepared to suffer any inconvenience for the sake of society. The other reason for the public witness not readily agreeing

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to associate with investigation is harassment of public witness that takes place in the courts. Normally a public witness should be called once to depose in the court and his testimony should be recorded and he should be discharged. But experience shows that adjournments are given even in criminal cases on all excuses and if adjournments are not given, it is considered as a breach of the right of hearing of the accused. These adjournments are specifically taken by counsels for accused persons, when witnesses are present, just to see that witnesses get harassed by calling them time and again. The excuses normally given in the courts are : the counsel having urgent personal work, left the court; death of some near relatives etc; the counsel being busy in arguing other matter in other court or cross examining other witness in some other court. This attitude of the courts of sending witness back is a major cause of harassment which discourages public from associating in the investigation of any case. Since the police is faced with this handicap, the police cannot be blamed for not associating public witness. There is no presumption that the police witnesses are not credible witnesses. The testimony of every witness, whether from public or police,

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has to be judged at its own merits and the court can believe or disbelieve a police witness considering the intrinsic value of his testimony. Police witnesses are equally good witnesses and equally bad witnesses as any other witness and the testimony of police witness cannot be rejected on the ground that they are official witnesses."

In ***Ram Dev v State of NCT of Delhi***(Crl. Appeal No.61/13), it was stated that :

"The next contention of Learned Counsel for the Appellant is that the evidence of the prosecution is not worthy of credence for the reason that the incident allegedly took place in a thickly populated area at the rooftop. Despite that, there is no independent witness to hear the cries of the prosecutrix. The absence of independent witness, in my opinion, is not a reason to discard the testimony of the prosecutrix which is corroborated by the medical evidence as well as forensic evidence, i.e., report of CFSL."

14. Therefore, it is a well settled principle of law that mere non association of the independent witness itself is no ground to throw out the entire case of the prosecution.

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15. Another contention of the counsel for the appellant is that it is not natural for a person who allegedly committed sexual assault to have stayed back in the house after the alleged incident took place. It is to be primarily considered herein that the prosecutrix and the parents of the prosecutrix have clearly stated in their statements that after the alleged incident the appellant slept in their house which is further apparent from the statements of police officials that after the receiving of information they went to the house of the prosecutrix for the investigation, where the appellant was present in the said house, apprehended at the instance of the prosecutrix and thereby arrested by the police officials.
16. After the perusal of the above statements and explanations, it is clear that the prosecutrix version is reliable and fully corroborates with the statements of other witnesses. The Law in relation to the testimony of the Prosecutrix has been settled by the Hon'ble Supreme Court and the Courts of Law, in a catena of judgments. The settled proposition of law in relation to the facts and circumstances of the present case is no more res integra and can thus, be clearly seen from the decision and/ or observation of the Hon'ble Courts of Law. In *State of Madhya Pradesh v. DayalSahu*: reported in (2005, 8 SCC 122), it was held as under:

"it was held that once the statement of the prosecutrix inspires confidence and the same is accepted by the Court, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration of her testimony is required

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unless there are compelling reasons which necessitate the same."

In **Vijay v. State of M.P. : (2010 8 SCC 91)**, it was held as under:

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

In **State of Himachal Pradesh vs. Raghubir Singh (18.02.1993 - SC)**, it was held as under:

"There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record."

The Hon'ble Supreme Court in *State of Rajasthan v. Om Prakash*, reported in (2002) 5 SCC 745, dealing with a similar question in the case of a child rape, while upholding the conviction of the appellant therein and reversing the decision of the High Court therein, relied upon earlier decisions and made the following observations:

"13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In State of Punjab v. Gurmit Singh [SCC 384 : 1996 SCC (Cri) 316], referring to State of Maharashtra v. Chandraprakash Kewalchand Jain: (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that 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. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts

should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

10. A reference deserves to be made to the binding ruling of the Supreme Court in the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983(3) Supreme Court Cases 217*, wherein guidelines with respect to appreciation of the evidence of a minor girl as a victim of the offence punishable under Section 376 of the IPC have been laid down, which are as under:-

“10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural

society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because : - (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect her chastity had ever occurred, (2) she would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours, (3) she would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on

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account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent."

Conclusion

11. There can be no iota of doubt that as the sole testimony of the prosecutrix, is unimpeachable and beyond reproach, conviction can be based solely upon it. The law permits that the testimony of a prosecutrix can be accepted without any corroboration in material particulars, for she has to be placed on a higher pedestal than an injured witness.

12. It is evident from the observations and judgments as quoted above that the testimony put forward by the prosecutrix can be totally relied upon. She remained categorically clear that rape was committed upon her. There is no hesitation to hold that from the sole testimony of PW4 coupled with medical evidence and testimonies of the other relevant witnesses, the prosecution has established its case against the accused beyond a shadow of reasonable doubt. The testimony of the prosecutrix (PW-4) is coherent, cogent and successfully corroborated in the cross examination. Her testimony is further proved by the medical evidence, MLC Ex.PW7/A and the FSL Report exhibited as Ex.PW15/E and Ex.PW15/F. Such crimes not only caused physical harm, but also shattered the privacy, integrity and personality of the victim girl, and caused psychological harm to her, and degraded her very soul.
13. The Hon'ble Apex Court while dealing with the case of *State of Karnataka Vs. Krishnappa*, reported in *AIR 2000 SC 1470* has categorically observed notions that must be borne in mind by a Court of Law while adjudicating upon the quantum of punishment to be accorded to the accused; the relevant paragraph whereof is reproduced as under: -

".....The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the stage and age of sexually

assaulted female and gravity of the criminal act. Crimes of violence upon women need to be severally dealt with. Socio-economic, status, religion, race, caste or creed of the accused or the victim are irrelevant consideration in sentencing the policy. Protection of society and deterring the criminal is the avowed object of law that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in the heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection, therefore, imposition of proper sentence by the court....."

14. In the circumstances, having comprehensive view of the matter, and more particularly, after scrutinizing and re-appreciating the evidence on record, there is no infirmity in the impugned judgment and the order of conviction.
15. As a result, present appeal stands dismissed, and the conviction and sentence imposed upon the appellant/accused, by the impugned judgment and order on sentence, stands confirmed.

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16. Copy of the judgment be sent to the Superintendent, Tihar Jail, for information and to be communicated to the appellant.
17. Trial Court record be also sent back.

NOVEMBER 18, 2017
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SANGITA DHINGRA SEHGAL, J.