

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

**RESERVED ON : 6th JANUARY, 2018
DECIDED ON : 15th JANUARY, 2018**

+ CRL.A. 270/2014

**PRAMOD MANDAL Appellant
Through : Mr.M.L.Yadav, Advocate.**

versus

**STATE (GNCT OF DELHI) Respondent
Through : Mr.Kewal Singh Ahuja, APP.**

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG
HON'BLE MR. JUSTICE C.HARI SHANKAR**

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 25.11.2013 of learned Addl. Sessions Judge in Sessions Case No.07/2013 arising out of FIR No. 225/2012 registered under Sections 376/377 IPC at PS Adarsh Nagar by which the appellant – Pramod Mandal was held guilty for commission of offences punishable under Sections 376(2)(f) and 377 IPC. By an order dated 28.11.2013, the appellant was sentenced to undergo imprisonment for life with fine ₹10,000/- under Section 376(2)(f) IPC and RI for ten years with fine ₹5,000/- under Section 377 IPC. Both the sentences were to operate concurrently.
2. The perpetrator of the crime in this case is none else but the biological father of the victim 'X' (assumed name) aged around 9

years. The victim used to get her primary education at Janhit Society for Social Welfare, Lal Bagh, Azadpur, Delhi. PW-14 (Devki Sharma), Teacher at the said institution chanced upon injury marks on the victim's body. Finding something amiss, she inquired from the child and came to know that she was being abused by her father. Victim's mother was contacted and informed about the child's plight. Asha Devi - X's mother lodged complaint (Ex.PW-13/A) and FIR (Ex.PW-1/B) came to be recorded at PS Adarsh Nagar. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. To establish its case, the prosecution examined sixteen witnesses in all and relied upon several documents. In 313 Cr.P.C. statement, the appellant denied his complicity in the crime and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. We have heard the learned counsel for the parties and have examined the file minutely. Victim's mother - Asha Devi put the police machinery into motion and lodged complaint (Ex.PW-13/A) on 13.09.2012. In her complaint, she gave detailed account as to how and in what manner the appellant - her husband used to sexually assault her daughter 'X' aged around 9 years in her absence. Specific and definite role was assigned to the appellant in the crime. In 164 Cr.P.C. statement (Ex.PW-4/B) recorded on 15.09.2012, the victim reiterated the version given by her mother in complaint (Ex.PW-13/A). She

accused the appellant for committing sexual assault upon her in the absence of her mother. She was threatened not to disclose the incident or else she would be killed. She further informed that the occurrence was narrated by her to her tuition teacher.

4. In her Court statement as PW-10, she supported the version given to the learned Presiding Officer without any variation. Before recording her statement, the learned Presiding Officer had put various questions to her to ascertain if she was a competent witness and she was able to give rational answers to the questions put to her. After recording satisfaction that the child witness was able to depose without any fear or pressure, her statement was recorded without oath in a congenial atmosphere in question answer-form. She was made comfortable and was provided with colours and white papers. During this period, she was able to draw two beautiful drawings (Ex.P-1/Colly). Her statement reads :

“Q. Aap ke Papa ka kya naam Hai?

Ans. Parmod.

Q. Aap ki mummy ka kya naam hai?

Ans. Asha.

Q. aap ke papa kya kaam karte hai?

Ans. Factory me machine chalate hai.

Q. Aap ki mummy kya karti hai?

Ans. Mummy kam karti hai. (The witness though for a while and after a pause states that) mummy factory me kaam karti hai, (The witness is unable to tell what work her mother is doing in the factory.)

Q. Aap ko papa se koi shikayat hai?

Ans. Papa gandhi bat karte the. Meri behein ko pas sulate the aur patak dete the. Mere muh me dalte the. Mere piche bhi dalate the aur aage bhi.

Q. Beta piche aur aage kaha par ?

Ans. (The witness has pointed towards her anal region and then her vaginal region to show what she means by piche lagate the aur aage lagate the.)

Q. Woh kya lagate the?

Ans. Woh jo unke aage hota tha, the witness has pointed towards her vaginal region to indicate that it was from that region of her father's body that he did something to her.

Q. Tab aap kya karte the?

Ans. Papa rat me jagate the. Tab mummy so jati thi. Mujhe uthate the aur phir karte the.

Q. Aur kya karte the ?

Ans. Mere Papa mujhe mana karte the, maine kisi ko nahi bataya. Mummy ko bhi nahi.

Q. Aap ke papa aur kya karte the ?

Ans. Merese kaddi nahi banati thi, toh mujhe marte the, main baki sab khana bana leti hua.

Q. Yeh baat apne kisi ko batai thi ?

Ans. Apni tuitionwali madam ko batai thi.

Q. Unko kaise batai thi ?

Ans. Me kiraye par rehati hua, hamare upar ek ladaki rehti hai. Usko pata tha ki mere papa galat baat karte hai. Usne madam ko bataya aur madam ne mere se pucha.

Q. Us ladki ko kisne bataya ?

Ans. Uski behein mere ghar aati thi. Darwaja bhida hua (half closed) tha. Usne mere papa ko dekha tha.

In response to questions put to her in her cross-examination, the prosecutrix deposed that :

Q. Aap ke papa savere factory jate the ?

Ans. Ha. Jab late ho jate the toh nahi jate the. Kabhi kabhi raat me bhi kam par jate the.

Q. Aap ki mummy kab kaam par jati hai aur kab kaam se aati hai?

Ans. Mummy nau (9) baje jati hai aur nau (9) baje aati hai, aate aate sade nau (9:30) baj jate hai, mein badi hua khana mein banati hu.

Q. Apke chote bhai behein kis ke paas rehte hai ?

Ans. Woh mere paas rehte hai.

Q. Aap toh school jati thi, toh unko kaun dekhta tha ?

Ans. Pehle nahi jati thi, mummy naam nahi likhati thi.

Q. Aap tuition kab jati thi ?

Ans. 3 – 4 baje.

Q. Tab bhai behein ko kaun dekhta tha ?

Ans. Mere bhai behein bhi jate the.

Q. Aap ke ghar me kitne kamare hai ?

Ans. Ek.

Q. Aap sab kaha sote ho ?

Ans. Hum sab kamare me jamin par sote hai.

Q. Aap ko aaj kya kehana hai kisi ne bataya tha ?

Ans. Nahi.

Q. Aap jo kaha mummy ke kehne par kaha ?

Ans. Nahi.

*Q. Jo aunty aap ko aaj layi hai unhone bataya hai
aapko kya kahana hai ?*

Ans. Nahi.”

5. On scrutinising the testimony of the child witness in its entirety, it stands established that it was the appellant who defiled the prosecutrix, his own daughter, taking advantage of the absence of his wife. The material facts deposed by the victim in examination-in-chief remained unchallenged and uncontroverted in the cross-examination. No ulterior motive was assigned to the child witness to make a false statement against her own father upon whom she was dependent economically. It was not an easy task for the child to implicate her own father for the heinous offence. She did not dare to lodge any complaint against him for long and suffered in silence. Only when PW-14 (Devki Sharma), her teacher in the institution noticed some blue marks of beating on her back and she enquired about it from the child, she came to know the entire incident. She was informed by the prosecutrix, “papa mere sath ganda kaam karte hai”. When asked “kaisa ganda kaam karte hai”, she responded “Din main, Mummy job par chali jati hai, papa apni chaddi utar dete hai, aur meri chaddi bhi utar dete hai, aur galatkam karte hai”. She further told “papa bathroom wala hissa mere muh me dalte hai, piche bhi dalte hai aur aage bhi dalte hai.” The prosecutrix pointed towards her anus and vaginal region while explaining the terms “aage piche”. It led PW-14 (Devki Sharma) to contact her mother PW-13 (Asha Devi).

6. PW-14 (Devki Sharma) has corroborated victim's version without any material improvement. She also deposed that the victim had disclosed to her about the sexual assault by her father. When she contacted the victim's mother, she showed ignorance; she was counselled and taken to police station. No extraneous consideration was imputed to this independent witness for falsely implicating the appellant in the crime. The witness had no axe to grind and did not nurture any animosity against him to concoct a false story. The prosecutrix was not expected to be instigated or tutored by this witness without any rhyme or reason. It is not believable that the child would implicate her own father on PW-14 (Devki Sharma)'s behest.

7. Statement of PW-13 (Asha Devi) is in consonance with the testimony of the prosecutrix and PW-14 (Devki Sharma). The Trial Court has discussed in detail the statements given by them. Similar is the statement of PW-5 (Rajesh Kumar), Welfare Officer at Janhit Society; he came to know about the sexual assault by the appellant upon his daughter from PW-14 (Devki Sharma). After finding the truth in the story, they took the prosecutrix and her mother to the police station and got the case registered.

8. The ocular testimonies of the witnesses referred above are supplemented by medical evidence too. Soon after the lodging of the report, 'X' was medically examined. PW-8 (Dr.Seema) has proved the victim's MLC (Ex.PW-8/A) prepared by Dr.Gopal Krishna and Dr.Poonam. Dr.Poonam in the MLC observed "hymen broken, admitted one finger, no fresh bleeding per vagina, anal opening shows no cuts, benign bleeding". She further opined at point 'Z' "sexual

assault, hymen broken”. The witness was not cross-examined. Apparently, the child had lost her virginity. The appellant who was expected to take care the child did not explain as to who else was responsible for defiling his daughter. Similar is the testimony of PW-9 (Dr.Gopal Krishna).

9. In 313 Cr.P.C. statement the appellant did not furnish any explanation to the incriminating circumstances proved against him. He did not divulge as to what had forced the prosecutrix and her mother to level serious allegations of sexual assault against him. In the absence of any prior dispute or quarrel in the family, the child ‘X’ was not expected to involve her own father to bring herself in disrepute. Her statement is consistent throughout; her evidence inspires complete confidence. It can be relied upon without seeking further corroboration. Nothing has emerged on record to suspect if victim’s statement is at the behest of someone else. The Court is conscious that a child is susceptible to be swayed by the others and can be an easy prey to tutoring. But it is not the case in the instant case. The child was under fear and did not disclose the occurrence to her mother and anyone else. Only when PW-14 (Devki Sharma) chanced upon something amiss, she was able to extract real cause. The child apprised her plight and ordeal to her.

10. The impugned judgment based upon fair appreciation of evidence warrants no intervention. Conviction is affirmed.

11. Regarding sentence, the appellant does not deserve any leniency. Being the father of the child of tender age, it was his duty to secure her welfare and to protect her from the evil eyes of others.

Contrary to that, he himself indulged in a dehumanizing act and violated the privacy and sanctity of his own daughter. Sentence Order needs no modification.

12. The appeal lacks merits and is dismissed.

13. Trial Court record be sent back forthwith with the copy of the order.

14. Intimation be sent to the Superintendent Jail.

S.P. GARG
(JUDGE)

C.HARI SHANKAR
(JUDGE)

JANUARY 15, 2018 / tr