

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

DECIDED ON : FEBRUARY 09, 2015

+ CRL.A. 83/2012

HOSHIYAR SINGH Appellant
Through : Mr.Ajay Verma, Advocate with
Ms. Neha Singla, Advocate.

VERSUS

STATE Respondent
Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J. (ORAL)

1. This appeal has been preferred by the appellant-Hoshiyar Singh to challenge the legality and correctness of a judgment dated 10.03.2011 of learned Additional Sessions Judge in Sessions Case No.60/2010 arising out of FIR No.67/2010 under Sections 376/506 IPC registered at Police Station Bhajanpur, Delhi by which he, victim's father, was held guilty for committing offences punishable under Sections

376/506 IPC. By an order dated 15.03.2011, he was awarded RI for ten years with fine ₹7,000/- under Section 376 IPC and RI for two years with fine ₹3,000/- under Section 506 IPC. Both the substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case, as projected in the charge-sheet was that on 06.02.2010 at about 11:00 p.m. and thereafter during night till 10.02.2010, at house No.401, gali No.20, Bhajanpura, Delhi-53, the appellant sexually assaulted 'X' (assumed name), aged 14 years, her daughter, and criminally intimidated her. 'X' was a student of 9th standard in GGSSS No.2, B Block, Yamuna Vihar and her class teacher was PW-1 (Smt.Sarita Sharma). 'X' and her two younger siblings used to live with the appellant in the house after their mother had left to stay at her parents' house about one year before the occurrence due to quarrel with the appellant. 'X' did not attend classes from 6th February, 2010 to 10th February, 2010. On 11th February, 2010 when she went to her school, she gathered courage and reported the incident of sexual harassment by her father to her class teacher Smt.Sarita Sharma (PW-1). PW-1 took her to the Principal PW-3 (Dr.Neeraj) and before whom also, she gave the complaint in writing (Ex.PW-3/A) against her father.

Intimation was given to the police and maternal uncles of the prosecutrix. The investigation was taken over by W/SI Anuradha (PW-12). She recorded 'X's statement (Ex.PW-9/A) and lodged First Information Report after making endorsement (Ex.PW-12/A). The prosecutrix was medically examined. The accused was arrested and statements of the relevant witnesses were recorded. After the completion of investigation, a charge-sheet was submitted against the accused in the court. The prosecution examined 14 witnesses to substantiate the appellant's guilt. In his 313 statement, the appellant denied his involvement in the crime and pleaded false implication. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being dissatisfied, the appellant has come in appeal.

3. During the course of arguments, learned counsel for the appellant, Mr.Ajay Verma, Advocate fairly admitted that there were no valid submissions to assail the findings in view of overwhelming evidence against the appellant. He, however, pointed out that the police had not recorded X's statement under Section 164 Cr.P.C. The appellant had lodged complaint against the prosecutrix's mother who had illicit relations with Balbir Gujar and with whom she had started residing after deserting him and the children. He further urged that the prosecutrix lodged a false

case at the behest of her maternal uncles who intended to grab his property. The prosecutrix has given a most improbable and unacceptable version of events that the appellant continued to rape her for a number of days in the presence of her brothers in the house. Learned APP urged that there are no valid reasons to disbelieve the prosecutrix, appellant's own daughter.

4. Admitted position is that 'X', the appellant's daughter lived with him in the house even after her mother had left the matrimonial home. 'X' disclosed that the appellant was in the habit of consuming liquor which was not liked by her mother and that was the bone of contention. Contrary to that, the appellant urged that 'X's mother was having illicit relations with Balbir Gujjar and she used to meet him at the matrimonial home which was disliked by him and that was the reason of their separation. The appellant, however, did not examine any witness to substantiate the allegations. Nothing has emerged if any action, whatsoever, was taken by the appellant against Balbir Gujjar or his wife for the alleged objectionable relations or he lodged any complaint to her brothers or convened any meeting of respectables to expose her. It has come on record that when intimation was conveyed to the maternal uncles of the prosecutrix by the Principal of the school, they immediately

travelled to Delhi and were given the custody of the prosecutrix. They had no complaint, whatsoever, against the conduct and behaviour of their sister who stayed with them. In the cross-examination, nothing was suggested to them if appellant's wife had stayed any time with Balbir Gujjar at a definite location. Similarly, the appellant did not produce on record any document to show if he was the owner in-possession of any particular immovable property which was being allegedly grabbed by his wife and her brothers. Moreover, PW-9 ('X'), a child witness had no concern with all these matters and was not expected to falsely rope in her own father. The defence deserves outright rejection and cannot be believed.

5. Appellant's conviction is primarily based upon the sole testimony of 'X' who mustered courage to report the indecent behaviour of her father to her class teacher PW-1 (Smt.Sarita Sharma) when she had gone to school on 11th February, 2010. She was ravished by the appellant from 6th February, 2010 to 10th February, 2010 and for obvious reasons had not attended the school during that period. PW-1 (Smt.Sarita Sharma) who had no prior animosity with the appellant, in certain terms disclosed that on 11.02.2010 'X' had come to her weeping. When she inquired as to why she was weeping, she informed that for the last 4/5 days, she was

being sexually harassed by her father. She took her to PW-3 (Dr.Neeraj) who corroborated her version. She also questioned 'X' about the complaint lodged by her. The prosecutrix reiterated her version and in addition gave the complaint in writing (Ex.PW-3/A). Both PWs-1 and 3 who had performed their duties being well wishers of the student had no extraneous consideration to make false statements.

6. PW-6 (Vijay Singh) and PW-7 (Jitender), X's maternal uncles in village Shrikishan Nagar, District Alwar, Rajasthan, wasted no time to reach Delhi after coming to know from PWs-1 and 3 about the horrible incident. They had no grudge, whatsoever, against the prosecutrix or her mother and took the custody of the child 'X'. Admitted position is that at present the appellant's children are staying with them. Nothing was suggested to them regarding the character of their sister in cross-examination. PWs-6 and 7 were not expected to support the prosecutrix's mother in case she had illicit relations with Balbir Gujjar, as alleged. PW-9 ('X') proved the police version given at the first instance without any variation. She implicated the appellant, her father, for sexual assault. She gave detailed account as to how and under what circumstances on 6th February, 2010 at about 11:00 p.m. when her brothers were sleeping in the room, the appellant sexually ravished her for

the first time. She elaborated that on the next day also, the appellant repeated the act. On the third day, though appellant attempted to establish physical relations, she saved herself while sleeping with her brothers. On the fourth day, again he succeeded in committing rape. On the fifth day i.e. 11th February, 2010, she reported the incident to her class-teacher. In the cross-examination, she disclosed that the appellant was in the habit of consuming liquor. She denied the suggestion that her father was not present in the village from 6th February, 2010 to 15th February, 2010 and had gone to his brother Mukhram's village for participation in election for 'Sarpanch'. She further denied that a false complaint was lodged by her at behest of and on the instigation of her mother and maternal uncles who wanted to grab his property. Despite, lengthy cross-examination, no vital discrepancies or infirmities could be elicited in her statement. Material facts stated by her in chief remained unchallenged and uncontroverted. No ulterior motive was assigned to the child witness to falsely implicate him. Implicit reliance can be placed on her testimony.

7. Statement of the prosecutrix is in consonance with medical evidence. She was medically examined by PW-8 (Dr.Lipi Sharma) on 11.02.2010 vide MLC (Ex.PW-8/A). In the alleged history recorded therein it is specifically mentioned that 'X' was raped by her father

Hoshiyar Singh since 6th February, 2010 every night; last time, she was raped on 10th February, 2010 under force. On local examination, mild swelling of Labia majora was noticed. Hymen was found torn. Nothing was suggested to the doctor in cross-examination as to how and under what circumstances 'X' had got swelling on her private part. Seemingly, there is no conflict between the ocular and medical evidence.

8. Exhibits were sent for Forensic Science Laboratory for examination. Biological examination report (Ex.PW-10/A) and serological report (Ex.PW-10/B) further confirm the victim's version. As per these reports, 'blood' was detected on the underwear. Semen stains were also found on the underwear of both the prosecutrix and the appellant. No explanation has been offered by the appellant in this regard.

9. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. He took contradictory and inconsistent defence. He set up the plea of alibi and claimed his presence at village Ismail Pur from 3rd February, 2010 to 11th February, 2010 when he had gone there in connection with the election of his brother for the post of 'Sarpanch'. Earlier in the cross-examination, suggestion was put by the appellant to PW-9 ('X') that he was away to his brother's village from 6th February, 2010 to 15th February,

2010. He did not produce any evidence in this regard to show his presence in the said village during the relevant period. So much so, he did not examine his brother if he had called him to assist him in the election. There is no substance in the appellant's contention that the prosecutrix was under influence of her mother and has falsely implicated him. It has come on record that 'X' was not in touch with her mother and had not visited her during her stay in the house with the appellant. On 11.02.2010 in usual course, the prosecutrix had gone to attend her classes in school dress. However, she was unable to bear the burden and opted to take her class teacher into confidence to unearth the appellant's guilt.

10. The impugned order is based upon fair appreciation of the evidence of the relevant witnesses and needs no interference. Since the appellant is the perpetrator of the crime; being father, he deserves no leniency. Sentence order dated 15.03.2011 requires modification regarding default sentence only. While maintaining the conviction and sentence, the sentence order is modified to the extent that default sentence for non-payment of total fine of ₹10,000/- shall be Simple Imprisonment for one month. Other terms and conditions of the sentence order are left undisturbed.

11. The appeal stands disposed of in the above terms. Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 09, 2015

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