

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

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Date of Judgment: 07.7.2015

Crl. Appeal No. 197/2013

MUZAFFAR ALI @ MULLAAppellant
Through: Mr.Sitab Ali Chaudhary, Advocate.

Versus

STATERespondent
Through: Mr.Pramod Saxena, APP for the State.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1. This appeal is directed against the impugned judgment and order of sentence dated 31.10.2012 and 07.11.2012 respectively wherein the appellant had been convicted under Sections 376/506 of the IPC. He has been sentenced to undergo RI for 7 years and to pay a fine of Rs.1000/- for the offence under Section 376 of the IPC. For his second conviction he had been sentenced to undergo RI for 1 month. The sentences were to run concurrently.

2. The version of the prosecution unfolded in the testimony of

prosecutrix (PW-7) is that on the fateful day i.e. on 01.12.2010 at about 5.00 p.m. when her parents had gone for work and she alone and watching T.V. in the house, the appellant Muzaffar @ Mulla living in the neighbourhood had committed rape upon her; he threatened her not to disclose this incident to anyone. She started crying. When her brother Shivam returned home, she did not disclose the incident to him. She disclosed the incident to her father (PW-1) who in turn informed her mother (PW-8). Police complaint was lodged.

3. In view of the version of PW-7 coupled with the version of her mother (PW-8) and her father (PW-1) the accused was convicted. The medical evidence admittedly had not supported the version of the prosecution.

4. On behalf of the appellant, it has been argued that this is a clear case of false implication and the wife of the appellant who was also working as a maid servant in the neighbourhood used to fight with the mother of the prosecutrix which was the bone of contention between the two families and this had led to the false implication of the appellant. Learned counsel for the appellant on this score has drawn attention of

this Court to the testimony of PW-7, PW-8 as also PW-1 and suggestions given to each of these witnesses on this score. It is pointed out that this defence of the appellant has been consistent from the inception and this has also been his stand in his statement under Section 313 Cr.P.C. The second submission of the learned counsel for the appellant is his argument that the clothes of the victim were deliberately not handed over by the victim and her mother for examination and this has come both in the version of PW-7 and PW-8 as also the doctor who has been examined as PW-6. The MLC of the victim Ex.PW-5/A also shows that there were no injuries noted upon the body of the victim; her hymen was also intact.

5. Arguments have been refuted by the learned APP for the State.

6. Record has been perused.

7. Star witness of the prosecution is PW-7. Although in her examination-in-chief, she had stated her aged to be 13 years but since the prosecution was not able to collect any evidence on her age the doctor had opined that ossification test be carried out. Ossification test report dated 07.12.2010 of the victim has opined the age of the victim to

be 15-16 years and giving the benefit of two years she was not considered as a minor.

8. PW-7 had on oath deposed that on the fateful day while her parents had gone for their work she was alone in her house and was watching T.V.; her mother was working in a factory; her father used to do ironing of clothes; her brother had gone to the house of her Bua in the neighbourhood. The appellant entered her room. He forcibly removed her clothes and after clamping her mouth he committed rape upon her. He had thrown a white discharge upon her. She did not disclose this incident to her brother when he came back. She reported the incident to her father when he returned back to the house. Her father informed her mother (PW-8) about the incident. In her cross-examination PW-7 stated that her father normally used to return home from his work at 9.00 p.m. She has two brothers including Shivam. Her mother works in a factory and she normally returns home at about 7.00 p.m. The accused also has a daughter aged about 7 years. PW-7 could not raise an alarm as her mouth had been pressed by the accused. She denied the suggestion that she had not been raped. She also denied the

suggestion that the accused had been falsely implicated at the instance of her parents. She admitted that the wife of the accused was also working as a maid servant. She also denied the suggestion that the accused was not present in his house on the day of the incident as he had gone to attend his work. Testimony of the mother of the prosecutrix (PW-8) has also been perused. She deposed that on the fateful day while she was at her work she was informed that her daughter was crying as the accused had committed rape upon her. She reiterated the incident and disclosed that the accused had made her daughter clean the floor on which he had thrown a white discharge. She admitted that she had not handed over the cloth of the victim to the police. Her statement was that the victim had no other clothes. In her cross-examination, she was confronted with her earlier statement (Ex.PW-8/DA) to point out certain improvements which were largely to the effect that she was informed by her husband on telephone that the act of rape had been committed upon her daughter by Muzaffar. There was also an improvement to the effect that Rakhi has been threatened by Muzaffar not to disclose this incident to any person or he had made her to clean the floor. She was also confronted with her version that she did not had

hand over the clothes of her daughter as her daughter was not having other clothes. All these facts had not found mention in Ex.PW-8/DA. She denied the suggestion that she had a quarrel with the wife of the accused and for this reason the accused had been falsely implicated.

9. PW-1 the father of the victim disclosed that he had two sons and two daughters of whom, the prosecutrix was his eldest child. On the fateful day when he returned home at 6.00 p.m. he was informed by the prosecutrix that the accused has committed rape upon her. Police complaint was lodged. In his cross-examination, he admitted that he did not have any proof regarding the age of his daughter. Police had lifted nothing from the room where the incident had taken place. The room had been cleaned by the prosecutrix under threat. He informed the police after his wife had returned home. He denied the suggestion that his wife and the wife of the accused used to have quarrel over filling up water; this was the reason for the false implication of the appellant. In the statement of the accused recorded under Section 313 Cr.P.C. he stated that he has been falsely implicated because of the strained relationship of his wife with the mother of the prosecutrix.

10. There is no doubt to the settled legal position that a conviction can be based on the sole testimony of a victim of rape; the rider attached being that such a testimony should be credible, cogent, clear and unambiguous. In all cases, it may not be necessary to obtain other corroborative which would include the medical and scientific evidence. However, each case has to be viewed in its own factual matrix.

11. Admittedly in the present case the MLC of the victim (PW-5/B) shows that her hymen was intact. PW-7 was examined at 10.45 p.m. by the concerned doctor. No pallor was noted on her face. Her parameters were normal. No sign of external injuries or any other kind of injury was also noted. Ex.PW-5/B categorically records that the patient and her mother were not willing to hand over her clothes for an examination. This is a material lacuna which has also been noted by the trial judge. Although in one part of her deposition PW-8 stated that she did not hand over the clothes of her daughter for the purpose of investigation as the victim had no other clothes but this does not find mention in Ex.PW-5/B. It is also difficult to believe and imagine a situation that the victim had no other alternate clothing when both her parents were

working. They were four siblings; they all were going to school; both parents also had mobile phone. They were not living in such a state of depravity that the victim had no other clothes to change other than those which were worn by her at the time of the incident. PW-6 Dr.Ruchi Mathur, Senior Gynecologist had also categorically on oath stated that the patient and her mother had refused to give the clothing of the patient for examination. Had it been a case where the victim had no other alternate clothes this would have also found mention in Ex.PW-5/B or in the version of the concerned doctor. As rightly pointed out by the learned counsel for the appellant it could only be reason that there was no evidence of the alleged crime on the clothing of the victim and that is why intentionally the clothes of the victim were not handed over for investigation. The scene of crime could also not be investigated any further as the version of PW-7 was that the white fluid which had been thrown upon her by the accused was wiped away by her under threat. In this background the factum of the investigation of the clothing of the victim would have assumed still greater importance. An adverse inference has to be drawn up against the victim and her family for deliberately not cooperating in this important aspect of the investigation.

The scientific evidence also does not support the case of the prosecution. Semen was detected on the underwear of the accused but that by itself cannot in any manner connect the accused with the offence for which he has been charged.

12. The sole testimony of the prosecutrix is thus not sufficient to convict the accused. Version of PW-7 does not inspire confidence. The incident is reported to have occurred at 5.00 p.m. Although PW-7 had disclosed that her parents had gone for work and her brother Shivam had gone to the house of their Bua, but she did not say anything about her other siblings i.e. her other sister and other brother. In her cross-examination PW-7 stated that her father used to return home normally by 9.00 p.m. On the day of the incident he had in fact left the house at 3.00 p.m. and returned by 6.00 p.m. The day of the incident was Wednesday. It was admittedly a working day. PW-7 also admitted that accused used to go for work in the morning and come back in the night. Monday was his holiday. The day of the incident was thus admittedly a working day for the appellant.

13. The parrot like recitation of PW-7 was reiterated in the version of

PW-8 and dents have been created. Testimony of PW-8 was largely hearsay because the incident had been revealed to her by PW-7. Her categorical version was that her daughter has no other alternate clothing that is why her clothes were not handed over for investigation. This is contrary to the version of PW-7 who has stated that although she has another set of clothing but they were wet at that time and that is why her clothes were not handed over to the police. As noted supra this fact was not recorded in her MLC (Ex.PW-5/B) and the doctor (PW-6) had categorically stated that PW-8 and PW-7 had refused to hand over the clothes for investigation. This creates a serious doubt in the mind of the Court that the clothes of the victim had not been given for investigation and this was for the reason that they would not support the stand of the prosecutrix.

14. Further, PW-1 stated that on the fateful day he had come back at 3.00 p.m. and after lunch he had gone for work and returned back at 6.00 p.m. Version of PW-7 is contrary. She stated that her father had gone for work on the fateful day after taking lunch at 3.00 p.m. PW-1 was also confronted with his earlier statement (Ex.PW-1/DA) and

improvements were noted. On oath he had improved his statement stating that his daughter was threatened by the accused that is why the room was cleaned by his daughter. His daughter was threatened by the accused by pressing her throat and closing her mouth.

15. The testimony of the investigating officer (PW-9) is also relevant. She had prepared the site plan Ex.PW-9/D. This discloses that the place of incident is a house occupied by the victim and her family on the second floor in a building. There are adjoining houses in the same building. The submission of the learned counsel for the appellant that the incident occurred at 5.00 p.m. and none of the neighbours learning about it till the time father of the victim was informed is also an argument which cannot be brushed away lightly.

16. The medical evidence is also not supportive of the version of the prosecutrix. There was no injury on the person of the victim either external or otherwise; her hymen was intact; all her vital parameters were normal and no pallor was noted on her external features. This also corroborates the defence set up by the accused that this could well be a case of false implication.

17. The law on criminal jurisprudence is clear. The prosecution to stand on its own legs must prove its case to the hilt. The accused is entitled to benefit of doubt, if he is able to create a dent in the version of the prosecution; the parrot like recitation of PW-7 does not inspire confidence. There is no reason as to why PW-7 had not given her clothing for investigation. The statement of PW-8 that PW-7 that she had no other alternate clothing was a white lie. The defence of the accused right from the inception was that the mother of the victim and his wife used to quarrel and this was the reason for the false implication of the accused. This was also the stand of the appellant in his statement under Section 313 Cr.P.C. The MLC of the victim also show no injury on her person. Since the credibility of PW-7 is itself suspect, the medical evidence also not supporting the version of the victim, it is clear case where the appellant is entitled to a benefit of doubt as he has been able to dent the version of the prosecution.

18. The submission of the learned P.P. that no parents would bring disrespect to their daughter and falsely implicate her, is answered by the observations of the Apex Court in Radhu Vs. State of Madhya Pradesh

reported in 2007 Cri LJ 4704. This was also a case where an obedient daughter on the persuasion of her parents had false charge of rape. The relevant paragraph is quoted herein below and read as under:

“The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or to extort money or to get rid of financial liability. Where there was rape or not would depend ultimately on the facts of circumstances of each case.”

19. The appellant is accordingly to an acquittal. He is acquitted. He be released forthwith, if not required in any other case.

20. A copy of this order be sent to the Jail Superintendent for intimation and compliance.

INDERMEET KAUR, J

JULY 07th 2015

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