

\$~

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

RESERVED ON : OCTOBER 01, 2015
DECIDED ON : DECEMBER 23, 2015

+

CRL.A. 97/2007

SUBHASH CHHABRA

..... Appellant

Through : Mr.Vishal Sharma with Mr.Anish
Shrestha, Advocates.

versus

STATE

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP.
SI Vinod Kumar, PS Mehrauli.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 23.12.2006 of learned Additional Sessions Judge in Sessions Case No.65/06 emanating from FIR No.269/02 registered at Police Station Mehrauli by which he was convicted under Sections 376/354/506 IPC, the appellant Subhash Chhabra has filed the instant appeal. By an order dated 08.01.2007, he was awarded RI for ten years with fine ₹25,000/- under Section 376 IPC; RI for one year with fine ₹5,000/- under Section 354 IPC and RI for one

year with fine ₹2,000/- under Section 506 IPC. All the sentences were to run concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that in January 2001 at about noon time at 886/B, Mehrauli, the appellant outraged the modesty of her daughter 'Y' (assumed name). He also committed rape on her other daughter 'X' (assumed name) several times since the age of five years during the period from 1990 to 2000 in the said house and criminally intimidated Manju Chhabra, 'X' and 'Y'. FIR was lodged on 31.05.2002 on the basis of written complaint (Ex.PW-1/A) given by 'X' on 24.05.2002 to the police. 'X' was medically examined. Statements of the witnesses conversant with the facts were recorded. The appellant could be arrested only on 11.03.03. Certain documents executed amongst the parties were seized. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of various offences mentioned previously. The prosecution examined eleven witnesses and relied upon several documents to establish the appellant's guilt. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. DW-1(Usha Chhabra), DW-2(Suresh Kumar Chhabra) and DW-3 (Pawan Arora) appeared in his defence. After considering the rival contentions of the

parties and on appreciation of the evidence, the Trial Court by the impugned judgment held the appellant guilty under Sections 376/354/506 IPC. Being aggrieved and dissatisfied, the appellant has preferred the appeal in question.

3. I have heard the learned counsel for the parties and have examined the record. Learned counsel for the appellant strenuously urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Counsel pointed out various contradictions, omissions and inconsistencies emerging in the statements of the prosecution witnesses which have seriously affected the prosecution case. He contended that material improvements have been made by the prosecutrix ('X') and her sister ('Y'). There is inordinate delay in lodging the FIR. The only motive of the prosecutrix and her mother to implicate the appellant in the crime was to grab his property. Documents (Ex.PW6/1, Ex.PW1/DX and Ex.PW1/DY) were never read by the appellant before putting signatures over them. 'X's mother had objectionable relations with one S.S.Chand and lived separate in his company. The appellant was falsely implicated so that he and his sons would not know about their activities. 'X' was also in relationship with one Prakash and when the appellant objected to that, in revenge, 'X' lodged the FIR in conspiracy with him. Medical

evidence does not support the prosecutrix's version; no injuries were found on her body including private parts. The Trial Court ignored the defence version without cogent reasons. Reliance has been placed on *State Vs. Ramesh* 1998(1) JCC (Delhi) 130; *Samay Singh Vs. State* 1998 (1) JCC (Delhi) 217; *Ronald Kiprono Ramkat Vs.State of Haryana* 2001 (2) JCC (SC)181; *Devender Singh & Ors.Vs.State of Himachal Pradesh* 2003 (4) RCR (CrI.)(SC) 363; *Ram Ratan Vs.State of Haryana* 2005 (3) C.C.cases (HC) 171; *Suresh Vs.State of Maharashtra* 2004 (1) PCR (CrI.)910; *Hukkar @ Ismile & Ors.Vs.State of Haryana* 2003 (3) PCR (CrI.) 794; *State of Rrajasthan Vs.Kishan Lal* 2002 (2) RCR (CrI.) (SC) 852; *Ajit Kumar Vs.State* 1998 (1) JCC 36 (Delhi); *Dilip & Anr.Vs.State of MP* 2001 (2) JCC (SC) 236; *Kanhai Mishra @ Kanhaiya Mishra Vs.State of Bihar*, 2001 (2) JCC (SC) 5; *Ram Rai Vs.State of Rajasthan* 2002 (2) Criminal Code cases 238; *Ota Ram Vs.State of Rajasthan* 2002 (1) Crimes 771; *State of Punjab Vs.Gurdeep Singh* 199(2) JCC (SC) 485; *Subhakar & Anr. Vs.State of Maharashtra* 2002 (6) SCC 671; *Mania @ Manoj Kumar Behera Vs.State* 2001 (1) Crimes 554; *Subhash Chand Vs.State of Rajasthan* 2001 (2) JCC (SC) 332; *Bhup Singh Vs.State of Haryana* 2005 (3) CC Cases (HC) 76; *P.Mani Vs.State of Tamilnadu*

2006(1) JCC (SC) 447 and *Nasir Sikandar Sheikh Vs.State of Maharashtra* 2005 CrI.LJ(SC)2621.

4. Refuting the contentions, learned APP for the State urged that there are no valid reasons to disbelieve the prosecutrix and her sister. The appellant had confessed the crime before the 'Panchayat' and this finds reflection in the documents executed amongst the parties. The learned APP further submitted that the accused has taken a sham ground that 'X' was of promiscuous character and was having an affair with one Prakash. These are mere allegations, not proved by any evidence.

5. Undisputedly, marriage between the appellant and Manju Chhabra took place on 19.07.1983. Four children including two daughters 'X' and 'Y' were born to them out of this wedlock. It appears that subsequently relations between the parties became strained. 'Y' lodged complaint at 100 for an incident that had taken place on 17.03.2002. However, the said complaint was withdrawn by Manju Chhabra due to intervention of their family members. Ex.DW-2/A is the application given by Manju Chhabra to the police for not taking any action on the complaint lodged at 100 as the matter was settled due to intervention of the relatives. It also bears signatures of Suresh Kumar Chhabra-appellant's brother.

6. Since there was no change in the appellant's behaviour and mental and physical torture/harassment continued, Manju Chhabra lodged a written complaint (Ex.PW-6/2) in CAW Cell on 25.04.2002. She also disclosed that the appellant had sexually assaulted her daughter when she was around five years and continued to ravish her after extending threats. She further disclosed that subsequently, he attempted to outrage the modesty of her younger daughter. When this complaint was pending before CAW Cell, 'X' lodged written complaint (Ex.PW-1/A) on 24.05.2002. In this complaint, she gave detailed account as to how and under what circumstances, the appellant-her father used to sexually abuse her since the age of five. She further informed the police that the appellant had also attempted to rape her younger sister 'Y'.

7. In her court statement as PW-1, the prosecutrix 'X' proved the version given in her complaint (Ex.PW1/A) without any major variations. She divulged that when she was aged around five years, the appellant attempted to develop sexual relations with her by putting his finger. After two years, he established physical relations with her. It continued till the age of 13 years. She further revealed that after the first intercourse at the age of seven, she had become unconscious. She further deposed that one day, finding her father doing similar act with her sister

‘Y’, she informed her mother. Thereafter, she, ‘Y’ and her mother were threatened by her father and she lodged complaint (Ex.PW-1/A). In the cross-examination, she disclosed that there were no fixed timings of her father to return to the house and he used to establish physical relations with her in the absence of her mother. She reiterated that she was seven years old and was in 1st standard when for the first time the accused established physical relations with her. Court observation was recorded to the effect that witness had replied the said question while ‘weeping’. She admitted that the incident was not reported to her mother as the atmosphere in the house was bad and there used to be quarrels all the time with her mother. The accused used to beat her mother and threaten to kill her and her mother. She admitted that no police complaint was lodged during the period of seven years. She reasoned that the complaint was not lodged by her as she thought that it would not help anyone and also to protect the dignity of the family. She volunteered to add that the complaint was lodged as an ultimate resort to save themselves as the accused used to give them severe beatings. She further stated that the matter was revealed to the elder brothers of the accused and they requested to sit together and arrive at a settlement. She denied if her mother had any objectionable relations with S.S.Chand and he used to

come to meet her in her father's absence. She elaborated that when her mother came to know about the incident, the appellant started giving lot of beatings to her and even tried to kill her. She further disclosed that the matter came to the knowledge of appellant's elder brothers and he confessed about the crime in their presence. All the four brothers of the accused namely Suresh Chhabra, Deepak Chhabra, Satish Chhabra, Anil Chhabra, mother of accused, husband of accused's sister, one Mr.Pawan Arora, friend of Suresh Chhabra and her grandfather were present in the said meeting. It was arranged by Suresh Chhabra, accused's brother. An agreement (Ex.PW1/DX) was arrived at in the said meeting. Signatures of other family members also appear over it. It was in the hand writing of a security guard provided to Pawan Arora. She denied that signatures of the accused on (Ex.PW-1/DX) were obtained on the pretext that all the disputes would be finished for ever. She denied to have any illicit relations with Prakash. She further informed that prior to the agreement (Ex.PW-1/DX), another compromise (Ex.PW1/DY) had taken place on 26.01.2002. That compromise was made at the house of her maternal grandfather where her Mausi, S.S. Chand, maternal grandfather and mother, her mother and sister and the appellant were present. She denied that the contents of the said settlement were not revealed to the appellant.

She denied if a false complaint was lodged against the appellant at her mother's behest to strengthen her case lodged in CAW Cell or that the appellant was not the perpetrator of the crime any time.

8. On scrutinizing the whole statement of the prosecutrix, it reveals that no material infirmity or discrepancy could be extracted in cross-examination to suspect her version. No ulterior motive was assigned to the minor witness to level serious allegations of sexual abuse against her own father. Nothing has come on record to show if 'X' had illicit relationship with Prakash or the appellant had objected to that. It was not elaborated as to when 'X' was seen in illicit relationship with Prakash or what action was taken by the appellant against him. No complaint, whatsoever, was lodged to implicate Prakash whose detailed particulars have not surfaced on record. The allegations being vague and uncertain cannot be believed. Again, nothing emerged on record to infer if Manju Chhabra had any objectionable relations with S.S.Chand or he had prompted 'X' and 'Y' to implicate their father. No complaint was ever lodged against S.S.Chand. 'X' and 'Y' categorically stated that S.S.Chand was appellant's friend and he used to bring him to their house many times. Apart from this, mere assistance (if any) rendered by S.S.Chand to the appellant's wife in setting up a play school is

inconsequential. Minor inconsistencies highlighted by the appellant's counsel do not affect the core of the prosecution case. 'X' was sexually abused since the age of five. She did not bring it to the notice of her mother and other family members to protect the honour of the family. She was threatened repeatedly by the appellant. It also deterred her to inform her mother. In large number of cases, children are abused by persons known to them or who have influence over them. Victims/witnesses of many such crimes often keep mum due to social stigma, community, pressure, total dependency on perpetrator emotionally and economically etc. If the tormenter is the father, the victim needs to gather courage to expose him. Thus delay in lodging the FIR is not fatal.

9. Another crucial witness is PW-5('Y'), appellant's other younger daughter. She testified that in January, 2001 she was sleeping in the room on the first floor after returning from school. At about 4.00 p.m. the appellant arrived there and started misbehaving with her. He pressed her breast and tried to pull her by holding her hands as a result of which she woke up from her sleep. She pushed the appellant and ran out of the room. She started 'weeping' on seeing the appellant's conduct as it was unbecoming of a father. She narrated the incident to her elder sister 'X'. When her mother came back from school, the incident was reported to

her. She talked to the appellant and his elder brothers. 'X' also narrated her ordeal to them. The family members advised them that since it was a family matter and related to the future of the girl, they should all keep quite. However, thereafter, there used to be quarrel in the family. Everyday her father used to give beatings to her, her sister and mother. Thereafter, her mother lodged a complaint. In the cross-examination, she elaborated that the accused had tried to touch her private parts. She fairly admitted that they were living separate from the appellant for about three or four months before lodging the complaint. She denied that S.S.Chand and her mother were fast friends. She denied that they had separated from the appellant as the appellant and his brothers used to object close friendship of her mother with S.S.Chand.

10. Again, testimony of the prosecutrix could not be shattered in the cross-examination. There was no occasion for the prosecutrix to make serious allegations against her father to bring herself in disrepute. She has corroborated 'X's version on material facts. No material discrepancy could be elicited in the cross-examination to discard her statement.

11. PW-6 (Manju Chhabra), appellant's wife, has corroborated the statements of 'X' and 'Y'. She talked about physical and mental harassment to her at the appellant's hand. She further revealed that in

January, 2001, she came to know that her husband had sexually assaulted her elder daughter 'X' since the age of five. She came to know about it when the appellant started outraging the modesty of her younger daughter 'Y'. After coming to know about the appellant's behaviour with her daughters, she informed her brother-in-law Suresh Chhabra who did not pay much attention and told that he would talk to the accused and she should not talk to anyone as the matter related to her daughters and no one would marry them. Thereafter, the appellant's behaviour completely changed and he started threatening and giving beatings to them. On 17.03.2002, the appellant attempted to make forcible entry in the house by breaking open the gate. Her daughter had made telephone call at 100. The said complaint was withdrawn by her under the pressure and assurance of the family members that the appellant would not misbehave in future and would maintain the family and pay maintenance regularly. The settlement was made in the 'Biradari' and the appellant gave an undertaking in writing (Ex.PW-1/DX) along with affidavit (Ex.PW-6/1). The accused, however, continued to misbehave. On 24.04.2002, the accused again picked up a quarrel with her daughter 'Y' and threatened to kill her. She went to her in-laws to lodge complaint. The accused was

also there. She had handed over the compromise documents to the police which were seized vide seizure memo Ex.PW-6/3.

12. In the searching cross-examination, she reiterated that compromise was executed on 26.01.2002. She volunteered to add that she was a participant in that compromise. The accused had called one of his friends and had executed the document (Ex.PW1/DY). This document was signed by her and other family members besides the accused and his friend S.S.Chand, representing him. She denied that S.S.Chand had represented her. She further disclosed that compromise deed dated 01.04.2002 was written by Pawan Arora's security guard. She admitted that she was living separate since January, 2002 along with her daughters. Her sons were not living with her as the accused had got their custody. She denied that the appellant was intentionally implicated in the case to keep him in custody to enjoy S.S.Chand's company without hindrance.

13. PW-6 (Manju Chhabra) has corroborated the statements given by her daughters without major variations. PW-7 (Arjun Arora) deposed that on 01.04.2002, he had gone to the house of Tulsi Ram, appellant's father-in-law. Tulsi Ram, Suresh, Jawahar, Madanlal and Pawan were present there. Appellant's wife Manju was also present there.

There he came to know that Subhash (the appellant) had committed rape on his daughter. The appellant confessed his guilt before the 'Panchayat' and assured that he would remain absent from the house for about one year and this was written on a stamp paper (Ex.PW-6/1) which bears his signatures at point -A. It was also signed by the accused at point-B. Similar is the testimony of PW-8 (Tulsi Ram) in this regard.

14. Execution of documents (Ex.PW6/1, Ex.PW1/DX and Ex.PW1/DY) has been admitted by the accused. These documents were executed in the presence of many family members of the appellant including his brothers. In these documents, there is a categorical confession/admission by the appellant whereby he sexually abused his daughter 'X' since the age of five. He further admitted to have outraged the modesty of her other daughter 'Y'. The admission/confession recorded in the presence of 'Panchayat' lends credence to the version given by the prosecutrix, her sister and their mother. The appellant never challenged validity and genuineness of those documents or putting signature thereon without going through their contents. In 313 statement also there is no categorical denial about the execution of these documents. He admitted that the documents were signed by him at the instance of his wife who had

threatened him that in case of refusal to sign the documents, she would implicate him in a false case. He admitted that at the time when he signed the documents, some members of his family were also present. DW-2 (Suresh Kumar Chhabra), appellant's brother also admitted his signatures over Ex.PW-1/DX and Ex.PW6/1. Contents of these documents speak volume about the crime committed by the appellant.

15. The appellant did not bring on record any plausible evidence of his false implication. He rather attempted to level allegations against her daughter to have objectionable relations with one Prakash and his wife Manju to have relations with one S.S.Chand. These allegations are without any foundation and seem to have been levelled to wriggle out the confession made by him in the documents executed in the presence of his family members.

16. The Prosecutrix's statement is in consonance with the medical evidence. She was medically examined by PW-2 (Dr.P.V.Suneetha) vide MLC Ex.PW-2/A; her hymen was found ruptured. In the alleged history, there is mention that she was raped by her father repeatedly since the age of seven upto the age of fifteen.

17. Minor contradictions, improvements and inconsistencies highlighted by the appellant's counsel are not fatal to the prosecution case

as these do not go to the root of the case. There are no valid reasons to disbelieve the affirmative deposition of the prosecutrix 'X' and her sister 'Y' coupled with medical evidence.

18. In *State of Himachal Pradesh vs. Asha Ram* 2005(9) SCALE 371, the Supreme Court held that it is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting 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. It is also well-settled principle of law that 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. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

From the evidence, it is clearly established that P.Ws. 1 and 2, despite strained relationship between their mother and father, were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to.

19. The impugned judgment based upon fair appraisal of evidence needs no intervention. The conviction is upheld.

20. The perpetrator of the crime is none else but the father of the prosecutrix. 'X' was sexually abused since the age of five when she was a little kid, unaware of the consequences of the act. Instead of providing safe environment, the appellant betrayed the trust of the family and indulged in physical relationship with his own daughter. The father is the fortress and refuge of his daughter in whom the daughter trusts. In the instant case, the accused's lustful acts have indelible scar not only physically but also emotionally on the victims. He deserves no leniency or sympathy.

21. In the light of the above discussion, I find no merit in the appeal and it is dismissed. The appellant shall surrender before the Trial Court on 11.01.2016 to serve out the remaining period of sentence. Trial Court record be sent back forthwith along with the copy of the order. Superintendent Jail be also informed.

S.P.GARG)
JUDGE

DECEMBER 23, 2015

sa