

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

DECIDED ON : FEBRUARY 03, 2015

+ CRL.A.180/2010

UMA SHANKAR

..... Appellant

Through : Mr.S.B.Dandapani, Advocate.

versus

STATE (NCT) OF DELHI

..... Respondent

Through : Mr.Navin K.Jha, APP.

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

S.P.GARG, J. (ORAL)

1. Challenge in this appeal is to a judgment dated 16.07.2009 in Sessions Case No.09/08 arising out of FIR No.118/08 registered at Police Station Vivek Vihar by which the appellant Uma Shankar was convicted under Section 376/506 IPC. By an order dated 16.07.2009, he was awarded RI for ten years with fine ₹5,000/- under Section 376 IPC and RI for one year under Section 506 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant as reflected in the charge-sheet were that before 03.06.2008 for about two months he sexually assaulted prosecutrix 'X' her own daughter aged 12 years at House No.28/54, Kasturba Nagar, Shahdara. The prosecutrix and her mother approached PW-4 (Asha) and PW-6 (Preeti) running an organization under the name of 'Aaj and Lady Help Mahila Panchayat' recognized by Delhi Mahila Ayog and they assisted them to lodge First Information Report. After recording victim's statement (Ex.PW-1/1), the Investigating Officer recorded FIR under Section 376/506 IPC. 'X' was medically examined and her statement under Section 164 Cr.P.C. was recorded. The appellant was arrested. After completion of investigation, a charge-sheet was laid before the court. The prosecution examined 12 witnesses to establish the appellant's guilt. In 313 statement, denying his involvement in the crime, he alleged that due to a quarrel between him and his wife over coming her late, he was falsely implicated. He did not prefer to examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been preferred.

3. Learned counsel for the appellant fairly admitted that there was nothing much to argue as the prosecutrix had not deviated from her

previous statements recorded under Sections 161 and 164 Cr.P.C. No ulterior motive was assigned to the prosecutrix 'X' who gathered courage to report the matter to the police and deposed against her own father. In her statement (Ex.PW-1/1) given to the police at first instance, the appellant was specifically named for the crime. She gave detailed account as to how and under what circumstances she was ravished by her father on various dates after putting her in fear and under threat. When her mother inquired from her as to why she used to remain in fear, she divulged the whole incident to her. In 164 Cr.P.C. statement, she reiterated her version and implicated the appellant for sexual assault. In her statement before court as PW-1, she proved the version given to the police without any variation. Her statement remained unchallenged and uncontroverted in the cross-examination. No suggestion was put to her if the appellant had not indulged in any such sexual activity. No suggestion was put to her if he was falsely implicated due to a quarrel with his wife over coming late in the house. The child witness had no extraneous consideration to rope in her own father. Her testimony inspires implicit confidence and there are no sound reasons to disbelieve her in the absence of any material discrepancies. PW-2 (Smt.Durga Wati), her mother, has also corroborated her version on material aspects. When she inquired from 'X' as to why

she used to remain depressed, she took her to PWs- 4 and 6 after 'X' disclosed her about the obnoxious act of her father. Testimony of PWs-4 and 6 is also on similar lines.

4. Ocular testimony of the prosecutrix is in consonance with medical evidence. In MLC (Ex.PW-3/A) her hymen was found torn indicating that she was subjected to rape. In the alleged history recorded therein, it was specifically informed by 'X' that her father used to commit rape upon her person. She narrated that her father committed rape seven times on her person in the last two months and the last incidence of rape occurred on 28.05.2008.

5. In 313 statement the appellant did not give plausible explanation to the incriminating circumstances proved against him. He did not give any instance when a quarrel had taken place with his wife over late coming. Moreover for that trivial issue, a mother is not expected to put the honour of her own young daughter at stake to implicate her own husband. The findings of the trial court based upon fair appraisal of the evidence require no intervention.

6. Regarding sentence order, the appellant was sentenced to undergo RI for ten years with fine ₹5,000. Instead of protecting her daughter from the evil eyes of others, the appellant betrayed her trust and

ravished her repeatedly inside the house to gratify his passions. She was not safe even in her house. He deserves no leniency. Default sentence for non-payment of ₹5,000/- awarded to the appellant i.e.SI for one year, however, requires modification and it is reduced to SI for 15 days.

7. 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 copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 03, 2015

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