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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 393/2013**

Date of decision: 26.02.2015

TASLEEM @ HATTU Appellant

Through Mr. M.L. Yadav, Advocate.

versus

THE STATE (G.N.C.T OF DELHI) Respondent

Through Mr. Varun Goswami, APP.
Insp. Anil Kumar, P.S. Bawana.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL)

Appellant Tasleem @ Hattu by the impugned judgment dated 25th May, 2012 has been convicted for murder and rape of his sister aged about 12 years on 23rd August, 2008. The appellant has also been convicted under Section 506 and 201 of the Indian Penal Code, 1860 (IPC, for short). By order on sentence dated 26th May, 2012, the appellant has been sentenced to undergo imprisonment for life and fine of Rs.5,000/- and in default of payment to undergo rigorous imprisonment for one year for the offence under Section 302, IPC; rigorous imprisonment for a period of 10 years and fine of Rs.3,000/-, and in default of payment to undergo rigorous imprisonment for a period of six months under Section 376(2)(f), IPC; rigorous

imprisonment for a period of three years and fine of Rs.1,000/-, and in default of payment to undergo rigorous imprisonment for a period of three months for the offence under Section 506, IPC; rigorous imprisonment for a period of three years and fine of Rs.1,000/- and in default of payment rigorous imprisonment for three months for the offence under Section 201, IPC. The sentences are to run concurrently. The aforesaid conviction arises out of charge sheet filed in FIR No.294/2008, P.S.Bawana.

2. The prime witnesses in the present case are Salman @ Nevla (PW4), brother of the appellant and the victim, Shamsuddin (PW7), father of the appellant and the victim, and Amit (PW2), friend of Salman (PW4).

3. Police registered the FIR (Ex.PW10/A) after Shamsuddin (PW7) made a written complaint (Ex. PW7/A) to the effect that he has six sons, and the victim was her only daughter aged about 11-12 years. Shamsuddin (PW7) in his examination deposed that on 23.8.2008, the victim was not well and was suffering from fever. At about 4.30-5 PM, the appellant Tasleem came to PW7's work place at Begumpur and informed that something had happened to the victim. At that time, PW7 had asked the appellant to take his sister to the hospital. However, when PW7 returned home, he came to know that the victim had expired. The appellant Tasleem had taken the victim to the hospital and then brought her back. The victim was buried in the graveyard at Mangolpuri on 24th August, 2008. On 25th August, 2008, a number of children had come at their house on the occasion of *Teeja*.

On the said date, Salman (PW4) revealed that the appellant Tasleem had killed the victim by gagging her mouth with a pillow and a towel. Salman (PW4) also informed Shamsuddin (PW7) that the victim had been sexually abused by the appellant before she was killed. Thereafter, along with the police and others, he (PW4) had gone to the graveyard and body of the victim was exhumed. The police also took into possession the clothes worn by the victim, i.e. one *kurta*, one *salwar*, one towel (*gamchha*) and one shawl, and the same were sealed vide memo, Ex.PW7/B. On the next day, police had come to their house and had seized one mattress and two pillows vide memo, Ex.PW7/C. The exhumed dead body of the victim was identified to be that of his daughter by Shamsuddin (PW7) and, thereafter, the same was taken under custody by the police vide memo, Ex.PW7/D, for post mortem.

4. Statement of Salman @ Nevla (PW4) aged about 15 years affirmatively supports the prosecution version. He has testified that on 23rd August, 2008, his father had gone to work and he along with his friends including Amit (PW2) was playing outside their house. At about 2 PM, the appellant Tasleem came there and took the victim with him holding her hand. After about 15 minutes, the victim came back and had told them that the appellant Tasleem was pressing/gagging her mouth with a pillow. The victim stayed back. After about 20 minutes, the appellant came back and asked the victim to accompany him. The victim was hesitant and refused, but was forcibly taken away. The victim returned and protested that the

appellant was pressing/gagging her mouth. Salman (PW4), thereupon, left the victim in the house of one Vinod. However, the appellant came there at about 3 PM and took the victim with him. The appellant had asked PW4 to fetch a rickshaw for returning the TV and VCD which he had taken on hire. PW4 requested his friend Amit (PW2) to fetch a rickshaw and PW4 proceeded towards his house. PW4 found that the house was bolted from inside and he could hear sound of TV. On peeping through the window, he saw that an obscene movie was being played on TV and the appellant had sexually assaulted the victim. The victim had protested and warned that she shall inform her father. The appellant, undeterred, had warned her that she would be killed. The appellant caught the victim by her neck. The victim was made to lie down on the mattress and, thereafter, the appellant took off his pants and raped her. The appellant had put a towel/*angocha* inside the mouth of the victim and had pressed/gagged her face (mouth) with the towel. After sometime, the appellant put on his pant and went away through the door. PW4 then went back to Vinod's house. The appellant also came to the house of Vinod and handed over the keys of their house to PW4. PW4 was directed by the appellant to go to their house but remain quiet as the victim was sleeping. PW4 along with Amit (PW2) went to the house and saw that the victim was lying on the mattress with one pillow on her face. They removed the pillow to notice that the victim was not breathing. PW4 started weeping. The appellant thereupon came there and was told that the victim had died. The appellant did not show any remorse nor did he shed any tears. The appellant, thereafter, had called their father. Salman (PW4)

wanted to narrate the incident to his father but kept quiet, afraid that he too would get killed. He (PW4) narrated the incident to his father only on 27th August, 2008. We notice that Salman (PW4) in his statement has also incorrectly asserted that his father had met the police on 27th August, 2008. However, the wrong date given by Salman (PW4) would not, in our opinion, dent the prosecution case. On being questioned by the Additional Public Prosecutor, PW4 deposed that he was illiterate and did not remember the exact dates. This error was corrected by PW4 in his cross-examination. PW4 identified the mattress and pillows which were used by the appellant at the time of commission of offence and were subsequently seized and marked as Ex.P2 and Ex.P3. PW4's statement was also recorded under Section 164 of the Code of Criminal Procedure, 1973 (CrPC, for short) which was marked Ex.PW4/A. The said statement (Ex.PW4/A) is no different.

5. Amit, (PW2) was aged 12 years at the time of his court deposition. Trial Court before recording his statement had put questions to ascertain whether PW2 was capable of understanding the questions put to him and give rational answers. Amit (PW2) has corroborated and testified on similar lines as Salman (PW4). He affirmed that they along with others including the victim were playing outside when the appellant came and had taken away the victim with him forcibly. After about 10-15 minutes, victim returned running and had complained that the appellant was pressing/gagging her mouth with a towel. They thought that the victim was joking. After about 20

minutes, the appellant again came back and took the victim. The victim, thereafter, returned to once again complain that the appellant was trying to kill her by pressing/gagging her mouth and confining her in a room. Thereafter, Amit (PW2) and Salman (PW4) had left the victim at the residence of Vinod. However, at 3 PM, the appellant came to the house of Vinod and had asked Salman (PW4) to fetch a rickshaw for returning TV and VCD. At that time, the appellant again took the victim with him forcibly. At the request of Salman (PW4), he (PW2) had gone to fetch a rickshaw, whereas PW4 went to his house. PW2 spoke to Ramu, a rickshaw puller, residing in his neighbourhood who informed that he would come at about 4 PM. While he was returning, mother of Amit (PW2) called him and he went to his own house. After sometime, Salman (PW4) came and informed Amit (PW2) that his brother, i.e. the appellant, had killed his sister, i.e. the victim. He had then gone with Salman (PW4) to his house and saw the victim lying on the mattress with a red-coloured pillow on her face. The pillow was removed and it was noticed that the victim was not breathing. He further deposed that PW4 wanted to narrate the entire incident to his father but he (PW2) had asked him (PW4) to keep quiet otherwise the appellant would kill them too. PW2 testified that after 2 days, Salman (PW4) had narrated the incidence to his father.

6. We have examined the cross-examination of Amit (PW2), Salman (PW4) and Shamsuddin (PW7), and are inclined to accept their testimonies as credible, trustworthy and believable. The

appellant is the brother of PW4 and son of PW7. It would have taken a lot of courage and resolution for them to state that the appellant was the perpetrator, who had sexually abused and raped his sister and then killed her. Their assertions have and carry a halo of truth around them. Grief and agony of the father and anguish and torment of a minor younger brother is perceptible and discernible from the words and the narration.

7. Amit (PW2) in his cross-examination reiterated that the appellant had come thrice in the afternoon of 23rd August, 2008. The appellant had taken the victim with him on three occasions. Salman (PW4) in his cross-examination remained steadfast and has affirmed what he had stated in his examination-in-chief. He also deposed that the victim had never earlier complained to him about the appellant and she was living happily. He clarified the mistake made by him in his examination-in-chief as to the dates, and had clarified that the police officers had visited their house on 25th August, 2008, after her funeral and burial on 24th August, 2008 at the graveyard at Mangolpuri.

8. Shamsuddin (PW7) in his cross-examination had deposed that he was doing welding work and would take a leave only if someone was seriously sick. He accepted that earlier, the victim had complained that the appellant used to beat her, but the victim had never doubted or complained about the character of the appellant. PW7 categorically denied that the appellant, i.e. his son, was framed in a false case as he did not like him for he was living with his in-laws.

9. The testimonies of Amit (PW2), Salman (PW4) and Shamsuddin (PW7) as to the homicidal death and rape suffered by the victim are duly supported and corroborated by the medical evidence. However, before we refer to the medical evidence, it would be appropriate to take on record the testimonies of Inspector Sanjay Gade (PW8); HC Kirti Ballabh (PW9); Constable Hans Raj (PW11), the photographer; Kunal (PW12), the Sub-Divisional Magistrate, Narela; Head Constable Joginder (PW14); and, H.C. Meena (PW20), the SHO and the Investigating Officer. They have deposed that on 25th August, 2008 they had gone to the graveyard at Mangolpuri and on identification by Shamsuddin (PW7), exhumed the dead body of the victim. Investigating Officer H.S. Meena (PW20) had given directions in this regard. Kunal (PW12) had issued an order regarding disinterring the body (Ex.PW12/A). The body was in a decomposed condition and was seized vide seizure memo, Ex.PW7/D, signed by Shamsuddin (PW7). Photographs (Ex.PW11/11 to Ex.PW11/20) were taken by Constable Hans Raj (PW11). The clothes worn by the deceased were recovered from the graveyard by H.S. Meena (PW20) at the instance of Shamsuddin (PW7).

10. The post mortem of the body was conducted by Dr. K. Goel (PW5). He has deposed that on 26th August, 2008, the SHO, PS Bawana, had moved an application for the said purpose. The body had decomposed having black discolouration and cuticle was peeled off all over body. There was gas stiffening and the hair was peeling off. On external examination following injuries were found:-

“1. There was diffuse pinkish area over front of neck scattered over both sides of mid line and upper middle part in total area 6 inches x 3 inches transversely. The skin colour of surrounding area was dark greenish black.

2. There was bruising seen at external vaginal orifice at 5 to 9 O'clock positions. No tearing or laceration seen internally and externally. Signs of decomposition were seen in internal part.”

11. PW5 testified that because of decomposition other external injuries if so present, were not conspicuous and could not be noticed. On internal examination, as regards the neck, subcutaneous and platysmal muscle showing signs of decomposition were noticed. The deeper neck muscles showed bruising with extravasations of blood in neck layers along with signs of decomposition. There was subluxation of right greater cornu of hyoid bone with inward movement having massive bruising.

12. Having examined the aforesaid injuries, external and internal, PW5 in his post-mortem report (Ex.PW5/A) opined that the cause of death was asphyxia as a result of manual pressure over neck (throttling). Injury Nos.1 and 2 were ante-mortem in nature. Injury No.1 was caused by manual grip over the neck. Injury No.2 was consistent with attempt of sexual intercourse. The manual pressure over neck structure was opined to be sufficient to cause death in ordinary course of nature. It records the time since death as about 5 days. PW5's testimony and the report (Ex.PW5/A) clearly corroborates the oral testimony of Amit (PW2), Salman (PW4) and Shamsuddin (PW7).

13. We have also examined the statement made by the appellant

under Section 313 of the CrPC. The appellant had claimed that he was innocent and was falsely implicated at the instance of his younger brother, Salman (PW4), in collusion with his father (PW7) and the Investigating Officer (PW20) of the case. There is no other explanation or ground.

14. In view of the aforesaid discussion, we confirm and uphold the conviction of the appellant under Sections 302, 376(2)(f) and 506 of the IPC. However, offence under Section 201, IPC is not made out. He is acquitted of the said charge.

15. We do not find any reason to interfere with the sentence awarded by the Trial Court for offences under Section 302, 376(2)(f) and 506 of the IPC. The same are confirmed and upheld.

16. Appeal is accordingly disposed of. Trial Court records will be returned.

(SANJIV KHANNA)
Judge

(ASHUTOSH KUMAR)
Judge

FEBRUARY 26, 2015

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