

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

RESERVED ON : 23rd MARCH, 2015

DECIDED ON : 26th MARCH, 2015

+ CRL.A. 116/2005
SIYA RAM Appellant
Through : Mr.Manindra Dubey, Advocate.

versus

STATE Respondent
Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 04.09.2004 of learned Addl. Sessions Judge in Sessions Case No. 56/2001 arising out of FIR No.86/1989 PS S.P.Badli, by which he was held guilty for committing offence punishable under Section 376 IPC. By an order dated 08.09.2004, he was awarded RI for ten years with fine ₹ 5,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 26.11.1989 at about 01.00 P.M., the appellant committed rape upon 'X' (assumed name) aged about nine years in the tenanted premises in his occupation in village Siraspur. The police machinery swung into action when information was conveyed from Hindu

Rao Hospital vide Daily Diary (DD) No.17A on the night intervening 28/29.04.1989 about admission of 'X' by her mother. ASI Jai Singh went there and lodged First Information Report after recording statement of victim's mother (Ex.PW-2/A). Statement of the prosecutrix could not be recorded as she was unfit to give statement. X's underwear was seized vide seizure memo Ex.PW-2/A. During investigation, 'X' recorded her statement under Section 164 Cr.P.C. The exhibits were sent to Forensic Science Laboratory for medical examination. Efforts were made to find out the perpetrator of the crime i.e. the appellant but he could not be traced. Charge-sheet was submitted after recording statements of the witnesses conversant with the facts in the Court against him as Proclaimed Offender. In the proceedings under Section 299 Cr.P.C., the Trial Court recorded statements of eight witnesses and by a judgment dated 19.12.1990 consigned the file to Record Room. Subsequently, on 27.01.2001, the appellant was arrested under Section 41.1 (C) Cr.P.C. The proceedings were reopened. Charge under Section 376 IPC was framed against him to which he pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined / recalled nine witnesses. In 313 Cr.P.C. statement, the appellant denied his complicity in the crime

and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, he has preferred the appeal.

3. During arguments, on instructions, appellant's counsel stated that the appellant has opted not to challenge the findings of the Trial Court on conviction. He, however, prayed to take lenient view and to release the appellant for the period already undergone by him in custody in this case.

4. Since the appellant has given up challenge to the findings recorded under Section 376 IPC, conviction under Section 376 IPC is to be affirmed. I have also gone through the evidence adduced by the prosecution to establish the appellant's guilt. 'X' in her Court statement recorded on 09.05.2002 after a gap of thirteen years when she had already turned twenty-two years and was a married lady, deposed in detail as to how and under what circumstances, the appellant who lived in her neighbourhood committed rape upon her. She elaborated that after the appellant lured her to his room, he closed the door from inside and laid her on a cot. He removed her frock and underwear after removing his underwear and other clothes, and attempted to insert his private part in her place of urinating. When he could not do so, he applied mustard oil on his private part and inserted it as a result of which, she felt a lot of pain and blood started oozing out from her private part. She went to her house and

just laid in the court-yard. When her mother enquired as to what had happened, she divulged the occurrence to her. Her mother went to the house of the accused who succeeded to flee away. Thereafter, she was taken to a private doctor. At Hindu Rao Hospital, she remained admitted for several days. Her statement (Ex.PW-3/A) was recorded before the Metropolitan Magistrate. In the cross-examination, no infirmity could be extracted whatsoever to suspect her reliability. She denied that injuries suffered by her were due to fall. There is no variance between the oral and medical evidence. She remained admitted in Hindu Rao Hospital till 02.05.1989 for treatment. Her medical history reveals that she had a tear of about 1” on fourchette and hymen was torn. Fresh bleeding was present from torn site and stitching / re-stitching was done under general anaesthesia. X’s mother revealed that her underwear was soaked in blood. Soon after the incident, she got treatment in the hospital for several days. Even after marriage, she used to get treatment. Apparently, the child was brutally ravished by the appellant, a grown up man of about thirty-five years.

5. Sexual offences constitute an altogether different kind of crime which is the result of a perverse mind. When a rape has been committed on a tender aged girl of 8 / 9 years, it will create a permanent

impact and impression on the mind of such a girl which may permanently affect her adversely. The prosecutrix in the instant case travelled from her matrimonial home at Siwan (Bihar) to make statement before the Court to seek justice after thirteen years. X's mother informed that her in-laws were not aware about the incident. The victim has given consistent version throughout. She implicated the appellant for the ghastly act in her statement recorded under Section 164 Cr.P.C. She reiterated it when she first appeared on 16.07.1990 under Section 299 Cr.P.C. and second time on 09.05.2002. She could not forget the traumatic experience. In the instant case, the victim was a helpless innocent child. Such cases need to be dealt with sternly and severely. In a case of rape of a minor girl under twelve years, the law prescribes for RI not less than ten years, unless exceptional circumstances exist. The appellant was a married man and had children at the time of incident. He betrayed the trust of X's mother and ravished an innocent unsuspecting girl aged eight years to satisfy his lust. There exists no adequate and special reasons whatsoever to reduce the sentence. Conduct of the appellant is unreasonable. He remained absconded for about thirteen years and could be brought to book only after he was apprehended on 27.01.2001. Act of the accused was both

despicable and reprehensible reflecting a perverted mind. He deserves no leniency.

6. In the light of above discussion, the appeal lacks merits and is dismissed. The appellant shall surrender before the Trial Court on 6th April, 2015 to serve out the remaining period of substantive sentence. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

MARCH 26, 2015 / *tr*