

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

RESERVED ON : 22nd January, 2015

DECIDED ON : 30th January, 2015

+ CRL.A.515/2013 & CRL.M.B.No.11264/2014

DINESH SINGH

..... Appellant

Through : Mr. Chetan Lokur, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through : Ms. Kusum Dhalla, APP for State.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Dinesh Singh challenges the legality and correctness of a judgment dated 24.01.2013 of learned Additional Sessions Judge in Sessions Case No.60/11 arising out of FIR No.75/2011 under Section 376/506 IPC registered at Police Station Ranhola, by which he was held guilty under Section 376/506 IPC. By an order dated 28.01.2013, the appellant was sentenced to undergo RI for 10 years with fine ₹2,000/- under Section 376 IPC and RI for two years under Section 506 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant in the charge-sheet were that on 10.04.2011 in the afternoon at H.No.B-43, Gali Matki Wali, Near Durga Chowk, Vikas Nagar, Delhi, he committed rape upon 'X' (assumed name) aged 8 years and criminally intimidated her. Daily Diary No.28-A (Ex.PW-5/A) came into existence at 03:15 p.m. on 24.04.2011 at Police Station Ranhola, on receipt of information of commission of rape. The investigation was assigned to SI Ved Prakash who with Ct.Sanjeev Kumar went to the spot. After recording statement of the victim 'X' (Ex.PW-1/A) FIR was lodged by sending rukka (Ex.PW-16/A). The prosecutrix was medically examined. She recorded her statement under Section 164 Cr.P.C. The accused was arrested. Statement of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted in the court against the appellant. The prosecution examined 16 witnesses to establish the appellant's involvement in the crime. In 313 statement, the accused pleaded false implication. The trial resulted in his conviction. Being aggrieved and dissatisfied, the appeal has been preferred.

3. Learned counsel for the appellant urged that the prosecution has failed to establish its case beyond reasonable doubt. He referred to the testimony of PW-4(Lakshmeshwar Singh), victim's father, who had

categorically exonerated the accused. He further urged that there was unexplained delay of ten days in lodging the FIR. No physical injuries were found on the body of the prosecutrix at the time of her medical examination. Learned Additional Public Prosecutor urged that there are no reasons to disbelieve the prosecutrix who in clear terms attributed specific role to the appellant and identified him to be the perpetrator of the crime.

4. There is no denial that the prosecutrix 'X', aged about ten years, was sexually assaulted. Appellant's contention is that he was not the author of the crime and it was the handiwork of an 'individual' to whom the prosecutrix called 'Fufa' and he lived with him. PW-4 (Lakshmeshwar Singh) in his deposition also indicated the involvement of the 'individual' who lived with accused Dinesh Singh. The theory propounded by the accused during trial blaming 'someone else' to be the perpetrator of the crime inspires no confidence. It was not at all divulged as to who was the said 'individual' and since when he was residing with him and in what capacity. Throughout the trial, the accused was unable to disclose the detailed particulars of the alleged offender. Even PW-4 (Lakshmeshwar Singh), victim's father, did not reveal his name. It is doubtful if there lived any other 'individual' with the appellant at the

relevant time. The story has been propounded to shift the blame upon some non-existent individual. In 313 statement also the accused did not name the said 'individual' and made only a bald statement that he was falsely implicated. No explanation was offered by the accused as to why the prosecutrix had deposed against her and involved him in such a heinous crime. The prosecutrix 'X' in her statement (Ex.PW-1/A) categorically named 'the accused' to whom she used to call 'fufa' for the crime. She gave a vivid account of the incident as to how on 10.04.2011 at noon time when she had gone to the room of the accused to serve tea, was sexually assaulted and criminally intimidated by him. At the time of medical examination vide MLC (Ex.PW-9/A) on 24.04.2011, it was specifically recorded in the alleged history that the sexual assault on 10.04.2011 was committed by 'Dinesh Singh' when the prosecutrix had gone to his room to serve tea. The appellant was arrested the same day. No complaint was lodged by him or his family members any time for false implication. He did not disclose to the concerned Magistrate before whom he was produced for remand to implicate the 'individual' who allegedly lived with him, in the crime. The prosecutrix in her 164 Cr.P.C. statement (Ex.PW-1/B) named the appellant as the culprit. In her deposition before the Court as PW-1, she identified Dinesh Singh to be

the person who had ravished her not only on 10.04.2011 but also on the previous day. The accused was unable to elicit any material contradictions in her cross-examination to falsify her version. She denied that the 'wrongful act' was done by another boy who lived with the accused in his room. No ulterior motive was assigned to the child witness to falsely rope in the accused, a distant relative of her father and to whom she had gone to serve tea without having any inkling of the impending risk. No sound reasons exist to disbelieve the child witness. Her testimony without any deviation inspires implicit confidence. Number of questions were put by the learned Presiding Officer before recording her 164 Cr.P.C. statement to ascertain if she was a competent witness and understood the questions and could give rational answers. After the court was convinced of the fact that the witness had sufficient maturity and understanding, her statement was recorded.

5. It is true that the victim's father PW-4 (Lakshmeshwar Singh) has opted to resile from his previous statement and did not implicate the accused for the crime. However, his testimony does not appeal to mind. It is not expected that he being the father would spare the real offender and would implicate the accused during investigation. It seems that due to some pressure, the victim's father has opted to

exonerate the accused, his distance relative. Even if PW-4's testimony is excluded, it would not dent the prosecutrix's version. PW-4 cannot be permitted to sabotage the prosecution case. Moreover, PW-4 (Lakshmieshwar Singh) was not a witness to the occurrence. It was PW-1, the prosecutrix, who was aware as to who was the real offender. There is no reason for the court to disbelieve her statement implicating the appellant.

6. It is true that there is delay of ten days in lodging the report with the police. But delay in reporting the matter to police cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. In her statement (Ex.PW-1/A), the prosecutrix explained that due to fear and criminal intimidation, she did not disclose the incident to anyone including her close family member. The victim in the instant case was aged about ten years. She was apparently afraid of appellant's intimidation. It had encouraged the appellant to repeat the crime next day. She had no extraneous motive also to falsely rope in the accused after ten days of the occurrence. It appears that she was initially reluctant to inform her parents. It would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

7. The prosecutrix has not deviated from her earlier version given to the doctor and the police. Her testimony in the court is in consonance with medical evidence when on medical examination her hymen was found torn. The mere fact that there was no wound on her person/body is not conclusive of the fact that she was not subjected to rape. Since she was medically examined after ten days of the occurrence, there was least possibility to notice any mark of physical injury. Moreover, the child was unable to raise protest due to appellant's threat/intimidation. Further absence of violence or stiff resistance by the minor may suggest helpless surrender to the inevitable due to sheer timidity or innocence. Conviction can be based on the sole testimony of the prosecutrix if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. The only test is that such uncorroborated testimony of the prosecutrix should be of sterling quality appearing to be natural, truthful and reliable. In this case in the absence of any material discrepancy and contradiction, the version narrated by the witness minutely cannot be discredited.

8. The trial court has dealt with all the relevant contentions raised by the appellant. The impugned judgment is based upon fair

appraisal of the evidence and needs no interference. The findings of the trial court for conviction under Section 376/506 IPC are confirmed.

9. Regarding sentence, the appellant was awarded RI for ten years with fine ₹2,000/- under Section 376 IPC and RI for two years under Section 506 IPC. Nominal roll dated 11.12.2014 reveals that he has already undergone three years, seven months and seven days incarceration besides earning remission for five months and sixteen days as on 3.12.2014. He is not involved in any other criminal case. His overall conduct in jail is satisfactory. He did not avail any parole/furlough/interim bail during custody. Sentence order records that he has a wife, two minor children and an aged mother. He is the only earning member in the family. Needless to say, the offence committed by the accused is very serious when a child aged 9/10 years was sexually assaulted by him. The appellant betrayed the trust of the family. The prosecutrix used to call him 'fufa'. Taking into consideration the aggravating and mitigating circumstances, the sentence order is modified to the extent that RI for ten years would be RI for 8 years. Other terms and conditions of the sentence order are left undisturbed.

10. The appeal stands disposed of in the above terms. CRL.M.B.No.11264/2014 also stands disposed of. Trial court record

along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

JANUARY 30, 2015

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