

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

**DECIDED ON : FEBRUARY 06, 2015**

**+ CRL.A. 390/2012**

**BABLOO**

**..... Appellant**

**Through : Ms.Saahila Lamba, Advocate**

**(DHCLSC)**

**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. The instant appeal is directed against the judgment dated 04.05.2011 of learned Additional Sessions Judge-01 (North), Tis Hazari Courts in Sessions Case No.56/2010 arising out of FIR No.325/2009 registered at Police Station Kotwali by which the appellant-Babloo was held guilty for committing offence under Section 376 (2) (g) IPC. By an

order dated 11.05.2011, he was sentenced to undergo RI for ten years with fine ₹10,000/-.

2. Facts and circumstances giving rise to the case, as stated in the charge-sheet were that on 24.11.2009, the appellant and his associate Chhotu administered poisonous substance to 'X' (assumed name), aged 14 years and thereafter sexually assaulted her for two days. Police machinery swung into action when 'X' lodged complaint at 11:45 a.m. on 26.11.2009 against the appellant and his associate for committing rape on her person. Both the accused persons were arrested and at their instance, clothes of the prosecutrix which she was wearing at the time of incident were recovered. 'X' was medically examined. Statements of witnesses conversant with the facts were recorded and after completion of investigation, a charge-sheet was filed against both of them for committing offence under Sections 328/376 (2) (g) IPC. The prosecution examined 13 witnesses to bring home the appellant's guilt. In the statement recorded under Section 313 Cr.P.C. to afford him opportunity to explain the incriminating circumstances, the appellant denied his complicity in the crime and pleaded false implication. After considering the evidence and rival contentions of the parties, the trial resulted in the conviction of both Babloo and Chhotu. It is relevant to note that both of

them were acquitted of the offence under Section 328/34 IPC and the State did not challenge their acquittal. It is unclear if co-convict Chhotu has preferred any appeal to impugn the judgment.

3. Learned counsel for the appellant urged that the version given by the prosecutrix is improbable and it is unbelievable that she was continuously ravished for two days by the appellant and his associate. At no stage, the prosecutrix raised alarm. The delay in lodging the FIR has not been explained. No injuries were noticed on her body at the time of her medical examination. Learned APP while supporting the judgment of the trial court urged that there are no valid reasons to disbelieve the prosecutrix who had no ulterior motive to falsely implicate the accused.

4. Appellant's conviction is primarily based on the sole testimony of the prosecutrix 'X', aged 14 years; resident of Kanpur. Her mother had expired when she was aged about five years and her father had performed second marriage. Her step-mother had two kids and did not provide love and affection to her. Finally, she was adopted by one Sabir Hussain whose attitude towards her was also not good. That compelled the minor and innocent child to travel alone in a train to stay with Sabir Hussain's daughter living at Bhajanpura, Delhi. She had no money with her when she alighted at Railway Station, Delhi and met the appellant

Babloo, a rickshaw puller, who allured her to take her to Bhajanpura. She fell in his trap and sat on the rickshaw. On the pretext of taking her to Bhajanpura, the appellant took her here and there and finally when it was dark, he promised to take her to Bhajanpura the next day. During night, she was administered some poisonous substance by him and his associate Chhotu and she became unconscious. PW-3 ('X') elaborated in her testimony that when she regained senses, she felt pain in stomach and vagina; her salwar was smeared with blood. She was given new clothes and was taken to a place near a water pool under the tree where she took bath and changed her clothes. Next day, again, she was sexually assaulted at night on the grass near the Patri by both Babloo and Chhotu. On the third day, when the accused persons were taking her in the rickshaw, she saw police officials and reported the incident. On her statement (Ex.PW-3/A), FIR was lodged. She identified her wearing clothes (Ex.P-1). Ex.P-2 (pant/jeans) was supplied by the accused persons after committing rape for the first time. In the cross-examination, she disclosed that the train in which she had travelled arrived at Delhi Railway Station in the evening. She was unaware as to where at what particular place, her sister lived at Bhajanpura. She fairly admitted that on the first day she did not complain to anyone when she was taken from one place to another. She, however,

explained that when wrong act was done by the accused with her first time, she had raised alarm. There was no shop or house where she was kept.

5. The appellant did not opt to cross-examine the prosecutrix and adopted the cross-examination conducted on behalf of co-convict Chhotu. No material discrepancy or infirmity could be elicited in the cross-examination to disbelieve the version narrated by the prosecutrix. Her statement on material facts remained unchallenged and unrebutted. She implicated both the appellant and Chhotu by name and identified them in the court. She had no extraneous consideration to falsely rope in the appellant with whom she was not acquainted before the incident and had travelled from Kanpur in search of her sister. Finding the minor aged about 14 years alone, the appellant and his associate took advantage and on the pretext of taking her to Bhajanpura, sexually assaulted her. The prosecutrix was found in the company of the appellant at the time of his arrest. The appellant did not explain as to how and under what circumstances, the prosecutrix who was a stranger remained in his company.

6. 'X' statement has been corroborated by medical evidence. PW-6 (Dr.Ravi Kanta) medically examined her on 26.11.2009 at 3.20

p.m. vide MLC (Ex.PW-6/A). The alleged history records that 'X' was sexually assaulted by rickshaw pullers on 24<sup>th</sup> and 25<sup>th</sup> November, 2009. PW-9 (Dr.Sonia Agarwal) revealed that on examination her hymen was found torn and she had fresh bleeding. Apparently, there is no conflict between the ocular and medical evidence. As per FSL report (Ex.PW-10/A) proved by PW-10 Dr. Manisha Upadhyay, blood was deducted on exhibit 1 (i.e. jeans/pant), Ex.2p (blood collection of victim), Ex.5 (blood sample); Ex.11b (one pyjama/(lower)) and 11d (one handkerchief). Human semen was deducted on Exhibits 1 (jeans), 3a (Pyjama/(lower)), 6a (semen sample), 7 (one dirty pant) and 11b (one pyjama/(lower)). Blood deducted on various exhibits was of human origin. Blood group on exhibits 1 and 11b was of 'AB' group. Semen stains were of 'AB' group on exhibits 1 and 11b. It was of 'A' group on Ex.7 (pant). The clothes which the prosecutrix was wearing at the time of commission of crime at first instance were recovered at the instance of the accused pursuant to his disclosure statement. Jeans pant (Ex.1) is same which was given to the prosecutrix to wear after rape on the first night. The accused has failed to explain as to how and under what circumstances, blood and human semen happened to be on these clothes. In 313 Cr.P.C. statement, the appellant did not offer plausible explanation to the incriminating circumstances

proved against him except making the bald denial of the allegations. No motive was assigned to the prosecutrix to make false statement against them for the heinous crime. The trial court has considered all the relevant materials and appreciated the rival contentions of the parties. The impugned judgment is based upon fair appraisal of the evidence and needs no interference.

7. In the light of above discussion, while maintaining the conviction and sentence, the sentence order is modified to the extent that the default sentence for non-payment of total fine of ₹10,000/- would be SI for one month. Other terms and conditions of the sentence order are left undisturbed.

8. The appeal stands disposed of in the above terms. Copy of this order be sent to the concerned Jail Superintendent for information. Trial court record be sent back along with a copy of this order.

**(S.P.GARG)**  
**JUDGE**

**FEBRUARY 06, 2015**  
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