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

% *Judgment reserved on : 03.12.2015*
Judgment delivered on : 09.12.2015

+ CRL.A. 793/2013
ASHOK

..... Appellant
Through Mr. Azhar Qayum Butt, Adv.

versus

STATE (GOVT. OF NCT.) OF DELHI

..... Respondent
Through Ms. Kusum Dhalla, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 07.12.2010 and 10.12.2010 respectively wherein the appellant stands convicted under Sections 363/376 of the IPC. For his conviction under Section 376 of the IPC, he has been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.5,000/- in default of payment of fine to undergo RI for 6 months. For his conviction under Section 363 of the IPC, he has been sentenced to

undergo RI for a period of 3 years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo RI for 2 months.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date he has undergone incarceration of 7 years & almost 5 months. His jail conduct has been satisfactory.

3 The version of the prosecution was unfolded in the statement of Rehnuma Khatoon (PW-6) the mother of the victim 'N' (PW-3) (8 years of age) that on 17.12.09 at about 1.00 pm her daughter PW-3 was playing outside. PW-3 all of a sudden went missing. After 4-5 hours, PW-3 returned home. She appeared not well due to fear and shock. On query by PW-6, PW-3 did not reply. On 26.12.2009, her health deteriorated. When queried again, PW-3 disclosed to her mother that one rickshaw puller took her on the pretext of giving her sweets and committed the unholy act of rape upon her. The mother and daughter accompanied by the uncle of PW-3 (PW-8) went to the police station. On the way, PW-3 saw the appellant Ashok who was a rickshaw puller and she identified him as the person who had committed the aforesaid act upon her. The appellant was apprehended and arrested. Investigation was set into motion. The victim was medically examined. Her medical

evidence was proved through her MLC (Ex.PW-9/A). Her hymen was found to be ruptured.

4 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence stating that it is a case of mistaken identity. No evidence was led in defence.

5 In view of the aforementioned evidence as led by the prosecution, the appellant was sentenced and convicted as aforementioned.

6 On behalf of the appellant, learned amicus-curiae submits that there is no explanation for the inordinate delay in lodging the FIR. The incident had occurred on 17.12.2009; FIR had been registered on 26.12.2009. The version of PW-3 is full of contradictions. Identity of the appellant has not been fully established. The FSL has also not supported the version of the prosecution. Benefit of doubt must accrue in favour of the appellant.

7 Needless to state that these arguments have been refuted.

8 The Court shall first deal with the aspect of delay in lodging the FIR. This delay has been explained in the version of PW-3 and PW-6. PW-6 has stated that on the fateful day i.e. on 17.12.2009 when her daughter returned home, she appeared to be under fear and shock.

Inspite of repeated queries, she did not tell her anything. She had blood stains on her salwar. On 19.12.2009, PW-6 had taken her daughter to Jagparvesh Hospital. Her condition however continued to deteriorate. On repeated queries, her daughter disclosed about the incident pursuant to which the complaint was lodged. Further version of PW-6 is that her brother-in-law Mohd. Sajid (PW-8) had also accompanied her to the police station. On their way to the Hospital, near Shastri Park, PW-3 identified the appellant (who was driving a rickshaw) as the person who had committed the rape upon her. The accused was apprehended. Public persons also overpowered him. He was taken to the police station.

9 PW-3 is the star witness of the prosecution and the victim herself. She has explained that after the alleged act of rape had been committed upon her by the rickshaw puller i.e. the appellant, blood was oozing from her vagina. She was feeling pain. She returned home but did not tell anything to her mother. On 19.12.2009, when her condition continued to deteriorate, her mother had taken her to a private doctor. On repeated queries, she had disclosed the incident to her mother at that point of time.

10 In her lengthy cross-examination, she had stuck to her stand. She

had stated that the act of rape was committed in the bushes where the appellant had taken her. She was not even able to walk properly but out of fear and shock she did not disclosed the incident to her mother. This version of PW-3 is fully corroborated by the version of PW-6. It is obvious that PW-3 did not disclose the incident to her mother as she was in an apprehensive state of mind; her apprehension was a mixed emotion of both fear and shame. The delay in lodging of the FIR thus stands justified.

11 The appellant was admittedly a rickshaw puller in the Shastri Park area where PW-3 and PW-6 were living. The incident had occurred in the same area. While they were travelling to Jagparvesh Hospital at Shastri Park on 26.12.2009, the victim had identified the appellant who was pulling the rickshaw at that time. Since the incident of rape had lasted for few minutes, she had ample opportunity to view his face and she had accordingly identified him. The Trial Judge had correctly noted that there were several rickshaw pullers in line in the area but the victim had identified this particular man. There was no reason for her to have falsely implicated the appellant. It is also not the case of the appellant that there was any previous enmity between the parties for his false

implication. His case was of a mistaken identity but this Court is of the view that the testimony of the prosecutrix (who was an 8 years old child) was both cogent and coherent evidence which is evident not only from her version recorded on oath in Court but also her version recorded under Section 164 of the Cr.PC. She had categorically stated that she was not deposing on the tutoring of anyone. The crime was also perpetuated in broad day time. The time was mid-morning. There was sufficient opportunity for PW-3 to have seen the appellant. Moreover, her version was that the appellant had initially taken her on the promise of giving her sweets and then taken her to the bushes where he committed the aforementioned act of rape upon her.

12 The medical evidence is also fully corroborative of the coherent and cogent testimony of PW-3 and PW-6. Her MLC (Ex.PW-9/A) narrates the history given by the victim herself; her hymen was also found ruptured.

13 In this background, this Court finds it difficult to accept the argument of the learned counsel for the appellant that this is a case of mistaken identity. The proposition of law is well settled. The uncorroborated evidence of the prosecutrix is worthy of credit and even

without corroboration can be sufficient to nail the accused.

14 In the instant case not only is the statement of the victim corroborated by the version of her mother but also by her medical evidence. The impugned judgment does not call for any interference. The victim in this case was an 8 years old child. The Trial Judge has awarded incarceration of 10 years RI which in view of this Court also calls for no interference.

15 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 09, 2015

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