

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

RESERVED ON : 2nd MARCH, 2015

DECIDED ON : 24th MARCH, 2015

+ CRL.A. 909/2013

GHANSHYAM

..... Appellant

Through : Mr.Neeraj Bhardwaj, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI & ANR. Respondents

Through : Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 13.12.2012 of learned Addl. Sessions Judge in Sessions Case No. 104/2010 arising out of FIR No.168/2010 PS Begumpur, by which the appellant - Ghanshyam was held guilty for committing offence punishable under Section 376 IPC, the instant appeal has been filed by him. By an order dated 13.12.2012, he was awarded RI for seven years with fine ₹ 5,000/-.

2. Allegations against the appellant as set up in the charge-sheet were that in the year 2009 at Ms.Naaz Khan's house at Budh Vihar and at

house No.125, Pocket-12, Savera Apartment, Sector-21, Rohini, he sexually assaulted 'H' (assumed name) aged 14 years several times. A written complaint (Ex.PW-2/DA) was lodged on 29.06.2010 by victim's mother regarding the occurrence to the police. The FIR was lodged after recording victim's statement (Ex.PW-3/A) on 30.06.2010. 'H' was medically examined. The accused was arrested on 01.07.2014 and taken for medical examination. Statements of the witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was submitted against the appellant in the Court. To establish the appellant's guilt, the prosecution examined fifteen witnesses. In 313 Cr.P.C. statement, the appellant denied his complicity in the crime and pleaded false implication. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has preferred.

3. I have heard the learned counsel for the parties and have examined the file minutely. Admitted position is that 'H' used to work at the residence of CW-1 (Naaj Khan @ Najma Begum) as domestic help. She (Naaj Khan) had promised her parents that she would be kept like her daughter and would be provided good education. The appellant was a

servant in the said house. Earlier, he was fired from the job after he committed theft. However, he again joined her in 2009. CW-1 (Naaj Khan @ Najma Begum) earlier lived at Krishan Vihar and subsequently, shifted to Budh Vihar. Finally, she started residing at Savera Apartment, Sector-21, Rohini. Both 'H' and the appellant continued to work with her in the said house. It is also not disputed that 'H' became pregnant during her stay in the said house. She was medically examined by PW-5 (Dr.Mili Verma) vide MLC Ex.PW-5/A on 30.06.2010. She had pregnancy of seven month duration approximately. She delivered a male child thereafter. The prosecutrix was unaware of her pregnancy. When she felt pain in her abdomen and was taken by her mother to the hospital, her pregnancy surfaced there.

4. In her statement (Ex.PW-3/A) given to the police, at the first instance, 'H' narrated a detailed account as to how and under what circumstances, she was sexually assaulted by the appellant regularly on various dates after putting her in fear. The appellant has not denied the factum of her pregnancy. His defence throughout was that his employer's son Shehzad @ Babar used to establish physical relations with the prosecutrix and it resulted in her pregnancy. He was falsely implicated by his employer to save her son Shehzad @ Babar and was not responsible

for the crime. In her Court statement, 'H' categorically implicated the appellant for committing rape upon her on various dates. Specific Court question was put to her if anyone else was involved or responsible for the incident. She responded that 'only the accused was responsible'. She did not assign or attribute any role whatsoever to her employer's son. In the cross-examination, she emphatically denied that Shehzad @ Babar was the author of the crime and she exonerated him due to a settlement arrived at with Naaj Khan @ Najma Begum. No valid reasons have been offered by the accused forcing 'H' to spare the real offender and to falsely implicate an innocent one. She did not nurture any ill-will against him. No infirmities could be elicited in her cross-examination to discredit her version. Evidence of the victim of sexual assault has great probative force. Appellant's involvement surfaced soon after H's parents came to know about her pregnancy. No cogent evidence has emerged on record to infer if employer's son used to have physical relations with the prosecutrix. No such complaint was ever lodged by the appellant to his employer or H's parents. He did not divulge as to when on any specific date, such physical relations were established by his employer's son and what was his reaction. He has attempted to shift the blame upon the employer's son after the prosecutrix named him for the nefarious act. PW-8 (Ruksana),

H's mother, corroborated her version and she deposed that 'H' had informed her that she was raped by the appellant who worked as a servant in the said house. PW-8 (Ruksana), H's mother, is not expected to exonerate the real culprit.

5. During investigation, DNA test was conducted. PW-15 (Ms.Shashi Bala), Sr.Scientific Officer (Biology) DNA Unit, FSL, Rohini, proved the DNA Finger Printing Test report (Ex.PW-14/G). Her testimony remained unchallenged. As per report, the DNA profiling (STR analysis) performed on the exhibits '1', '2' & '3' provided was sufficient to conclude that source of Ex.'1' (blood sample of the accused Ghanshyam) and source of Ex.'3' (blood sample of 'H') were the biological father and mother of the source of Ex.'2' (blood sample of male baby of 'H'). Apparently, the ocular testimony is in conformity with the DNA profiling and corroborates H's version to establish the appellant to be the author of the crime without doubt.

6. The prosecutrix was below 16 year of age on the day of occurrence. PW-11 (Smt.Bhagwati Devi), Principal MCD Primary School, proved the school record, where her date of birth was recorded as 11.06.1995. She was admitted in the said school in 1st standard on 03.08.2002 vide admission No.7613 and studied upto 5th standard till

26.03.2007. The relevant documents are Ex.PW-11/A and Ex.PW-11/B. The appellant did not deny her date of birth as reflected in school registers. Since 'H' was below 16 years of age even her consent to the act with the appellant was inconsequential. So innocent she was that she did not come to know about the symptoms of pregnancy till she felt pain in her abdomen and was taken for medical examination. She was having seven month pregnancy that time. It is relevant to note that the appellant was aged about 60 years and exploited the innocence of the child during absence of his employer and other family members and ravished 'H' repeatedly on various dates after putting her in fear.

7. Minor contradictions, inconsistencies, deficiencies and improvements highlighted by the appellant's counsel are not material to affect the core of the prosecution case. The prosecution has produced reliable and clinching evidence of the minor child who had no ulterior motive to falsely implicate the accused. It is in consonance with medical evidence and DNA profiling. The appellant did not produce any evidence to show the involvement of anyone else in the incident.

8. The conviction and sentence recorded by the Trial Court are based upon fair appraisal of the evidence and warrant no intervention. The appeal lacks merits and is dismissed. 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 24, 2015 / *tr*