

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

**RESERVED ON : 3rd JULY, 2015
DECIDED ON : 21st JULY, 2015**

+ CRL.A. 999/2011

RAM NANDAN Appellant

Through : Mr.Sumeet Verma, Advocate.

VERSUS

THE STATE (GOVT NCT OF DELHI) Respondent

Through : Ms.Fizani Husain, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 09.03.2011 of learned Addl. Sessions Judge in Sessions Case No. 96/08 arising out of FIR No. 940/07 PS Uttam Nagar by which the appellant – Ram Nandan was convicted for committing offence under Section 376(2)(f) IPC, the instant appeal has been preferred by him. By an order dated 11.03.2011, he was sentenced to undergo RI for ten years with fine ₹ 10,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on the night intervening 21/22.12.2007, the appellant

committed rape upon 'X' (assumed name) aged about seven years. Daily Diary (DD) No.42A (Ex.PW-4/A) came into existence at 06.40 p.m. at PS Uttam Nagar on 22.12.2007 on receipt of information about a child sitting abandoned at M-48, Mohan Garden, Uttam Nagar. The investigation was assigned to ASI Sanwar Mal who went to the spot. 'X' and her brother PW-2 (Sajjan Kumar) present there apprised the Investigating Officer about the commission of rape. 'X' was taken for medical examination to DDU Hospital. After recording statement (Ex.PW-2/A) of victim's brother – Sajjan Kumar, the Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. 'X' recorded her statement under Section 164 Cr.P.C. Ram Nandan was arrested and medically examined. The exhibits collected during investigation were sent to Forensic Science Laboratory for examination. After completion of the entire investigation, a charge-sheet was laid before the Court. The prosecution examined eighteen witnesses to prove the appellant's guilt. In 313 Cr.P.C. statement, the accused denied his involvement in the crime and took the defence that he was falsely implicated by the victim's brother when he declined to lend ₹15,000/- to him. He did not produce any evidence in defence. The trial

resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error to rely upon the testimonies of interested witnesses without independent corroboration. Material discrepancies and contradictions in the statements of the prosecution witnesses were ignored and overlooked by the Trial Court. The medical evidence did not corroborate 'X's version as she did not sustain any visible injuries on her body. In the FSL report, 'semen' detected on the clothes did not match with that of the appellant. In the initial information conveyed to the police there were no allegations of sexual assault upon the child. The prosecution witnesses have made vital improvements in their deposition. It is unclear as to why PW-2 (Sajjan Kumar), victim's brother preferred to inform the landlady instead of reporting it to the police. Delay in lodging the FIR has remained unexplained. PWs have given conflicting statements as to what was the relationship between 'X' and the appellant. Learned Addl. Public Prosecutor urged that 'X' aged around seven years has fully supported the prosecution case and no reasons exist to disbelieve her.

4. The prosecutrix 'X' had lost her father and she was staying at the residence of her brother Babban at Mohan Garden, Uttam Nagar. It appears that 'X' was maltreated there and during PW-2 (Sajjan Kumar)'s visit there, she insisted to go with him. PW-2 (Sajjan Kumar) brought her at the house of the appellant – Ram Nandan who lived at M-48, Mohan Garden, Uttam Nagar. It is relevant to note that the appellant was known and acquainted with the victim's brother as he lived in his neighbourhood in the village. PW-2 (Sajjan Kumar) in his deposition before the Court categorically stated that he stayed along with 'X' at the appellant's room on the night intervening 20/21.12.2007. On 21.12.2007, he went to Noida leaving 'X' with the appellant at his room to fetch his clothes etc. and returned next day at about 06.00 or 07.00 p.m. 'X' was found weeping and on inquiry about that, she disclosed about sexual assault by the appellant upon her. He immediately informed the landlady who in turn informed the police at 100. In the cross-examination, PW-2 (Sajjan Kumar) elaborated that 'X' was residing with his elder brother for the last about 8 or 9 months. He denied the suggestion that 'X' met him at the Police Station after she was recovered by the police. He denied if he had enmity with the appellant to falsely implicate him.

On perusal of the statement of the victim's brother, it stands established that he had brought 'X' at the appellant's residence on 20.12.2007. She had stayed in the said accommodation when Sajjan Kumar had gone to Noida on 21.12.2007 to bring his clothes. During that night, 'X' was ravished by the appellant. PW-8 (Suhan Lata), landlady, who has corroborated PW-2's version in its entirety has deposed that the room in question was rented out to the appellant about 6 or 7 months before the incident. She further stated that after coming to know about rape upon 'X' from victim's brother – Sajjan Kumar, she gave a call to police at 100; the appellant was arrested by the police. She denied the suggestion that false statement was given by her as she intended to get the tenanted room vacated. PW-8 (Suhan Lata)'s testimony inspires implicit confidence as she had no prior acquaintance with the victim or her brother to give any false statement at their instance. Nothing has emerged to infer if any time, she intended to get the tenanted room vacated from the appellant. Contrary to that, the appellant had denied his residence in the premises at M-48, Mohan Garden, Uttam Nagar and specific suggestion to that effect was given to PW-2 (Sajjan Kumar) in the cross-examination. PW-8 (Suhan Lata) further informed that 'X' aged 7 or 8 years was seen

by her at the house of the accused. It falsifies the appellant's contention that 'X' was not brought at his room by PW-2 (Sajjan Kumar).

5. Crucial testimony is that of PW-1 (X), a child witness. In her 164 Cr.P.C. statement (Ex.PW-15/A) recorded on 02.01.2008, she had implicated the appellant for the crime. She gave detailed account of the incident and informed the learned MM as to how and under what circumstances, she was beaten and sexually assaulted by the appellant to whom she used to address 'Mama'. Her 164 Cr.P.C. statement is most natural being in her own words. When she appeared before the Court as PW-1, learned Presiding Officer put various questions to ascertain if she was a competent witness and was able to give rationale answers to the questions put to her. After recording his satisfaction about the child witness to be intelligent enough to give evidence, her statement was recorded. In her brief statement, she identified the appellant without any hesitation to be the perpetrator of the crime. She disclosed that she had gone to the appellant's house along with her brother. During night, after disrobing her, the accused undressed himself and committed rape upon her; she was also slapped by him. These facts remained unchallenged and uncontroverted in the cross-examination. No ulterior motive was assigned to the child to level serious allegation of rape against him. Except putting

bald suggestions without any foundation, no queries whatsoever were raised about the version given in her examination-in-chief. No suggestion was put to the witness if her brother had not brought her at his house for short stay.

6. Medical evidence is in consonance with ocular evidence. Soon after the incident, 'X' was taken to DDU Hospital at 09.23 p.m. on 22.12.2007 and was medically examined vide MLC (Ex.PW-10/A); her hymen was found torn. The alleged history recorded therein reveals that it was a case of 'sexual assault'; appellant's name to be the perpetrator of the crime finds mentioned therein. As per FSL reports (Ex.PW-18/A and PW-18/B), human 'semen' was detected on Ex.1 (baby's skirt), Ex.2 (baby's underwear) and Ex.5 (underwear). The appellant did not explain as to how human 'semen' surfaced on the clothes of the child 'X' who was in his company throughout after her brother – PW-2 (Sajjan Kumar) had gone to Noida. Detection of human 'semen' on the baby's clothes lends-credence to her version.

7. The accused did not give plausible explanation to the incriminating circumstances proved against him. He took inconsistent and conflicting defence. For the first time in 313 Cr.P.C. statement, he alleged that victim's brother had suffered loss in business and had demanded ₹

15,000/- from him. When he declined to pay the money, he was falsely implicated in this case. The defence deserves outright rejection. The brother is not imagined to level serious allegations of rape and use a little girl aged about 7 years to falsely implicate a person who allegedly declined to pay ₹ 15,000/- as loan. No such suggestion was given to PW-2 (Sajjan Kumar) in the cross-examination. Nothing has come on record if PW-2 (Sajjan Kumar) has suffered any loss in business or had demanded any loan from the appellant. The appellant did not give detail particulars as to when said demand was raised and declined by him.

8. Certain minor contradictions, improvements or discrepancies highlighted by the appellant's counsel are inconsequential as they do not affect the core of the prosecution case. There is no delay in lodging the FIR. Soon after PW-2 (Sajjan Kumar) returned from Noida at around 06.00 p.m., information to the police was conveyed promptly and DD No.42A (Ex.PW-4/A) was recorded at 06.40 p.m. Some delay in lodging the FIR is not fatal in rape cases.

9. Conduct of the prosecutrix appears to be most natural. No sound reasons exist to disbelieve her. Admittedly, she was aged around 7 or 8 years and was unable to put resistance to the nefarious act of the appellant due to fear. No adverse inference can be drawn merely because

visible injuries were not found on her body at the time of medical examination. In any event, absence of injuries or mark of violence on the person of the prosecutrix may not be decisive, particularly, in a situation where the victim did not offer any resistance on account of fear meted out to her. In '*Madan Gopal Kakkad vs. Naval Dubey & anr.*', 1992 (3) SCC 204, a minor girl aged about 8 years was raped. It was held that even slight penetration of the penis into the vagina without rupturing the hymen would constitute rape. In '*Rajinder @ Raju vs. State of H.P.*', AIR 2009 SC 3022, it was held that absence of injuries on the person of the prosecutrix does not lead to an inference that she consented for sexual intercourse with the accused. In '*Radhakrishna Nagesh vs. State of Andhra Pradesh*', 2012 (12) SCALE 506, Supreme Court held "that being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains."

10. The prosecutrix and her brother had no strong motive to falsely involve the appellant. They had absolutely no reason whatsoever to falsely implicate the accused to whom they have preferred to visit and upon which trust was reposed and X's brother had no hesitation to leave her in the appellant's company in his absence. The appellant taking undue advantage of loneliness of the hapless child exploited her innocence and

established physical relations with her and betrayed the trust reposed in him. Settled legal position is that the sole testimony of the prosecutrix if found to be worthy of credence can be basis of conviction even without corroboration.

11. The judgment based upon proper appreciation of the evidence needs no intervention. The appeal lack 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

JULY 21, 2015 / *tr*