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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : SEPTEMBER 16, 2015

DECIDED ON : SEPTEMBER 22, 2015

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CRL.A. 1081/2013

SUNIL @ MONU

..... Appellant

Through : Mr.Imran Khan, Advocate with
Mr.Kunwar C.M. Khan, Advocate.

versus

STATE

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal is directed against the judgment dated 07.03.2013 of learned Additional sessions Judge in Sessions Case No.02/11 emanating from FIR No.185/10 registered at Police Station Nand Nagari by which the appellant-Sunil @ Monu was held guilty for committing offences punishable under Sections 324/363/366/376(2)(f) IPC. By an order dated 12.03.2013, he was awarded various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 04.09.2010 at around 7:15 p.m. after kidnapping the

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prosecutrix 'X' (assumed name), aged around 7 years from the lawful guardianship of her parents, the appellant committed rape upon her at his house. The incident was reported and Daily Diary (DD) No.29A came into existence at 12.00 a.m. at Police Station Nand Nagari. The Investigation was assigned to SI Manmeet, who was on patrolling duty in the area. On reaching the spot, he came to know that the victim had already been taken to GTB hospital for medical examination by PCR officials. After recording statement of Rekha, victim's mother (PW-4/A), he lodged First Information Report. The accused was arrested and taken for medical examination. Statements of witnesses conversant with the facts were recorded. 'X' recorded her statement under Section 164 Cr.P.C. Exhibits were sent for examination to Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of various offences including Section 377 read with Section 511 IPC. In order to bring home the appellant's guilt, the prosecution examined 16 witnesses in all. In 313 statement, the appellant pleaded false implication and denied his involvement in the crime without producing any witness in defence. After considering the rival contentions of the parties and on appreciating the evidence on record, the Trial Court by the impugned judgment held the

appellant guilty for the offences mentioned above. It is apt to note that the appellant was acquitted of the charge under Section 377 IPC read with Section 511 IPC and the State did not challenge it. Being aggrieved and dissatisfied, the instant appeal has been preferred by the appellant.

3. I have heard the learned counsel for the parties and have examined the file. Victim is a minor girl of tender age of seven years. PW-12 (Smt.Santosh Kumar), Principal, MCD Primary School, Nand Nagari proved the admission form (Ex.PW-12/B) where her date of birth was registered as 07.05.2003. As per admission register (Ex.PW12/A), she got admission in the aforesaid school in 1st standard on 14.07.2008. No sound reasons prevail to disbelieve the date of birth recorded in Ex.PW-12/A. Her parents never anticipated such an unfortunate incident to happen in future to manipulate her age that time. The accused had nowhere denied that the prosecutrix was above seven years of age on the day of occurrence.

4. The occurrence took place on 04.09.2010 at around 7:15 p.m. The victim was taken immediately to GTB hospital where she was medically examined by MLC Ex.PW-14/A which records her arrival time at 9:30 p.m. The FIR was lodged without any delay. After recording statement of the victim's mother PW-4 (Smt.Rekha), rukka (Ex.PW-2/A)

was sent at 11:45 p.m. In her statement (Ex.PW-4/A), the complainant gave detailed account as to how and under what circumstances 'X' was ravished by the appellant in his house. The appellant was specifically named in the FIR and definite role was assigned to him. Since the FIR was lodged promptly, there was least possibility of the complainant to concoct a false story in such a short period.

5. 'X' recorded her statement under Section 164 Cr.P.C. (Ex.PW-5/A) on 07.09.2010. She implicated the appellant and gave vivid description of the sequence of events whereby she was taken from the park by the appellant to his house and was sexually assaulted after extending threats to her. She even disclosed that after the occurrence, the accused was locked in the room and was subsequently arrested by the police. Before recording her statement as PW-5 in the Court, the learned Presiding Officer conducted preliminary inquiry to ascertain if she was a competent witness and was able to give rational answers to the questions put to her. It was also ensured that 'X' was making her statement voluntarily without any fear or pressure. After recording his satisfaction, the learned Presiding Officer recorded her statement without oath. She deposed that when she was playing outside her house with her friends, the accused came there and picked her purse, chocolate coloured having four

clips. He took her in his house at some distance away from the park. He gave teeth bite on her private parts and cheeks. Firstly, he opened her hair and removed her clothes and then removed his clothes and gave teeth bites on her cheeks. She further elaborated that the accused oiled her private part, spread power two times and slapped her. Thereafter, he put her private part into her private part. When she cried, some uncles and one aunt came there. The accused was apprehended. Ex.P-3 (purse) was recovered at the spot. In the lengthy and searching cross-examination, no material infirmities could be extracted. Mere suggestions denying the appellant's involvement in the crime were put to the witness. No ulterior motive was assigned to the child witness for making false allegations of rape against the appellant with whom she has no prior animosity or hostility. Admitted position is that the appellant lived in the neighbourhood of the victim and there was no previous ill-will or animosity forcing the victim or her parents to falsely implicate him in this case. The victim and her parents had no sound reasons to fake the incident of rape which had reflection on the chastity of 'X', an unmarried little girl.

6. PW-4 (Rekha) has corroborated 'X' version in its entirety without any variation. She informed the Court that the victim had gone at

about 5.00 p.m. to a park near temple to play. When she did not return till late evening, she and her sister-in-law Poonam went to search her. When they reached near House No.C-2/18, Nand Nagari, they found 'X' weeping. On enquiry, she informed that one uncle had taken her inside the house and had caused teeth bite on her cheeks. She took them inside the house No.C-2/18. When they were entering inside the house, the accused came out of it and attempted to flee. On the pointing of the prosecutrix, the accused was caught hold by her brother-in-law Naresh who had arrived on hearing the noise. She further informed that the accused was earlier known to her by face being a resident of C-Block. Many persons from the Mohalla gathered and gave beatings to him. Again, in the cross-examination, certain suggestions were put but nothing material was elicited to suspect the version given by the witness. No extraneous consideration was assigned to the witness to falsely depose against the accused. PW-6 (Naresh Kumar) and PW-7 (Smt.Poonam) have further corroborated her version.

The ocular testimony given by material prosecution witnesses is corroborated by medical evidence and there is no conflict between the two. PW-14 (Dr.Vandana) proved MLC (Ex.PW-14/A) prepared by Dr. Ria to whom she had seen writing and signing while on duty with her.

Some injuries were found on the body of the victim. External genitalia was found bruised and labia majora and minora were swollen and hymen was torn. In FSL report (Ex.PW16/D), human semen of 'A' Group was detected on Ex.1 i.e.underwear.

7. Certain insignificant discrepancies, improvements and contradictions highlighted by the appellant's counsel are inconsequential as they do not affect the core of the prosecution case. Settled law is that the testimony of a child witness cannot be rejected out-rightly. The evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and a child witness is an easy prey to tutoring. The Court has to assess as to whether the statement of the victim before the court is voluntarily expression of the victim and that she was not under the influence of others. As observed above, there is no indication if the prosecutrix was tutored; her statement is consistent throughout.

8. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. He did not produce any evidence to prove if there was any animosity with the victim's parents to falsely implicate him. No foundation for such a defence was laid. Moreover, for a petty dispute (if any) it is not believable

that the parents of a minor child would use their own daughter to settle score with him. The defence deserves out right rejection.

9. Conviction is based upon fair appraisal of evidence and reasoned judgment given by the Trial Court warrants no intervention. The conviction is sustained.

10. The offence committed by the appellant is grave and serious. A minor innocent school going-child was ravished by the appellant to satisfy his sexual lust. Rape on a tender aged girl is bound to create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely. Sentence order needs no modification except that the default sentence for non-payment of fine of ₹6,000/- in all shall be Simple Imprisonment for one month.

11. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of the order. Copy of the order be sent to Superintendent Jail for information.

(S.P.GARG)
JUDGE

SEPTEMBER 22, 2015

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