

\$~R-101

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

% *Judgment reserved on : 16.11.2015*
Judgment delivered on : 19.11.2015

+ CRL.A. 1094/2013

BADARI MEHTO

..... Appellant

Through Mr.Anwesh Madhukar, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr.Tarang Srivastava, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 05.7.2013 and 06.7.2013 respectively wherein the appellant stood convicted under Section 376 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.20,000/-,in default of payment of fine to undergo SI for 15 days. Benefit of Section 428 of the Cr.P.C. has been granted to the appellant.

2 Nominal roll of the appellant has been requisitioned. As on date the appellant has undergone 5 years of incarceration which includes the
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remissions earned by him. His jail conduct has been satisfactory.

3 The version of the prosecution was disclosed in the statement of the prosecutrix recorded under Section 161 Cr.P.C. which had formed the basis of the FIR and which was to the effect that at about 4.00 p.m. in the afternoon on 26.4.2011 while she was playing outside her house the accused who was known to her had taken her to a poultry farm where, in a room he had committed rape upon her. She informed her father pursuant to which the present FIR had been registered. The victim was medically examined and her MLC was proved as Ex.PW-1/A. Statement of the victim was recorded under Section 164 Cr.P.C. by the learned M.M. and was proved as Ex.PW-7/A. Her father Dinesh was examined as PW-4. The appellant was also medically examined and his MLC Ex.PW-11/A suggested that there was nothing which indicated that he could not have performed the sexual act. Exhibits which were seized included the clothes of the victim as also her blood sample and vaginal swab were sent to the FSL for examination and the FSL has submitted its report (Ex.10/G).

4 At the outset learned Amicus Curiae on behalf of the appellant submits that this case rests upon the sole testimony of the victim; there

are three versions recorded of the victim i.e. her statement under Section 161 Cr.P.C. which had formed the basis of the FIR; her statement under Section 164 Cr.P.C. as also her statement on oath in Court. There are inherent contradictions in these versions. Such material contradictions cannot be ignored; they go to the root of the matter; the witness is not credible. It is pointed out that whereas in one version the victim had stated that she was enticed by the appellant to go to the poultry farm where the act had been committed whereas in her version under Section 164 Cr.P.C. she had stated that she had been dragged, forced and coerced to go there. In her statement under Section 164 Cr.P.C. for the first time she had introduced in her version that Rs.50/- had been given to her by the appellant. This did not find any mention in the FIR. Her statement that blood was oozing out from her private parts was not supported by the medical evidence and not only her hymen was found intact but there was also no blood detected on her private parts or upon her clothes. The defence sought to be set up by the appellant was not examined in the correct perspective; this was a case of false implication as there was a money dispute between the father of the victim and the appellant. A sum of Rs.4000/- had been owed by PW-4 (father of the

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victim) to the appellant and when the appellant asked for the money this false case has been planted upon him. There is also no explanation for the inordinate delay in the registration of the FIR. Learned counsel for the appellant has placed reliance upon the judgment of the Supreme Court reported as (2011) 7 SCC 130 Krishan Kumar Malik Vs. State of Haryana to support his submission that inconsistencies and contradictions in the version of the prosecutrix cannot form the basis of a conviction and such a dicey witness cannot be relied upon.

5 Needless to state that these arguments have been refuted.

6 Record shows that the witness was examined in Court as PW-3. Her statement under Section 161 Cr.P.C. which had formed the basis of the FIR has been perused. It was stated that at 4.00 p.m. on 26.4.2011 while she was playing outside her house, the accused who was known to her and was their neighbour had enticed her to go to the poultry farm where he had bolted the door from inside and committed rape upon her. He had threatened her not to disclose the incident to any person. Record shows that this incident was finally disclosed at 10.54 p.m. The first DD to this effect was recorded at this time and this is clear from the version of SI Dinesh Chandra (PW-9). He had recorded DD No.66A at

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10.54 p.m. on the night of 26.4.2011 wherein the police were informed that rape had been committed upon a girl aged 12 years by one Badari Mehto and this information had been transmitted to them by her father. The statement of the victim under Section 164 Cr.P.C. which was recorded by the M.M. has also been perused. In this statement the victim had detailed the incident in the manner in which it had occurred describing the fact that the appellant who was known to her and their neighbor had taken her in a room at a poultry farm where he had after gagging her mouth committed rape upon her. He had given her Rs.50/- and threatened her not to disclose this incident to anyone.

7 This Court notes that there is no inconsistency in the version recorded under Section 164 Cr.P.C. qua the statement of the victim recorded under Section 161 Cr.P.C. Although in her statement recorded under Section 164 Cr.P.C. she has stated that the appellant had gagged her mouth and taken her to the poultry farm and in the FIR she had stated that she had been enticed by the accused to go to the room but this is no material contradiction/improvement as it is a playing of words which have been used by the prosecutrix; the meaning and intent however being the same. The meaning and intent being that the

appellant had forcefully enticed her and taken her to a room at a poultry farm where he had committed rape upon her. The manner in which the rape had been committed has been described in detail both in her version under Section 161 Cr.P.C. as also in her version under Section 164 Cr.P.C. and again reiterated on oath. The victim has stuck to her stand. She had been subjected to a lengthy cross-examination. She had been given a suggestion that she had falsely implicated the accused as a sum of Rs.4000/- was owed by her father to the appellant which was the bone of contention for this false implication. She had denied this suggestion. She had admitted that the accused had come to their house once in a drunken condition and he was their neighbor but had categorically stated that this was not a case of false implication.

8 The father of the victim was examined as PW-4. He had also disclosed the incident in the manner in which it was described to him by his daughter. He had reported the matter to the police. He had on oath stated that after he had come back from his work (being a rickshaw puller) the incident had been told to him by his daughter. The accused was co-labourer working with him. They were not on friendly terms.

Learned defence counsel suggested that it was due to the dispute of

Rs.4000/- that PW-3 has falsely implicated the appellant but this suggestion had been categorically denied.

9 This Court notes the factum that the incident had occurred at 4.00 p.m. The first DD entry was recorded in the police station at 10.54 p.m. This Court also notes that the victim was a 12 year old girl. She had disclosed this incident to her father when he had returned home. Being a rickshaw puller he might have returned at late hours; he reported the matter to the police by calling 100 number; this was at 10.54 p.m. In this background there appears to be no delay in lodging the FIR. Testimony of PW-3 is also clear, cogent and consistent. On oath in Court she stated that after the forceful incident of rape had been committed upon her blood oozed out from her private parts; her clothes were also seized by the doctor. These clothes had been sent for an FSL examination and no blood has been detected on these clothes. Medical record also suggests that the hymen of the victim was also intact and when the forceful act was committed upon the victim blood might have oozed out from her private parts but may not have been sufficient to dirty her underclothes. This factum has been well noted by the trial judge. This by itself is not sufficient to discard the testimony of the

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victim.

10 PW-9 was the first person who had reached the spot. He has on oath stated that he had gone to the poultry farm i.e. the spot of the incident and had noted soil marks of struggle.

11 Rape, prior to the Criminal Law (Amendment) Act 2013, had been defined as:

“375. Rape- A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following stood as under:

.....

.....

.....

Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

12 The manner in which the incident has been described by the victim clearly falls within this unamended definition of rape. The Apex Court has time and again reiterated that the conviction under Section 376 of the IPC can be founded on the sole testimony of a prosecutrix; the rider being that the testimony has to be clear, cogent and unblemished; it should be trustworthy and should wholly inspire

confidence. This Court is of the view that the testimony of PW-3 does fall within these parameters. There was nothing which could dent her version.

13 The Supreme Court in (2003) 8 SCC 551 Bhupinder Sharma Vs. State of Himachal Pradesh in this context had noted as under:

“In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident, which is likely to reflect on her chastity, had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors, the crime is brought to the light, there is inbuilt assurance that the charger is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case.”

14 Although a defence has been projected by the accused that this was a case of false implication because of a dispute of Rs.4000/-

between the father of the victim and the appellant but this Court finds it difficult to believe that a sum of Rs.4000/- would be the cost of young girl putting her honour at stake and this being corroborated by her father and especially when both the daughter (PW-3) and the father (PW-4) were consistent on all other scores. Moreover, the parties i.e. the appellant and the victim who were admittedly neighbors and living in the same neighbourhood and if this was a truly projected defence nothing could have prevented the appellant to produce a neighbor in defence to highlight this issue but no evidence has been led in defence.

15 Even on the point of sentence, the appellant has been given the minimum sentence which calls for no interference. The appeal is without any merit. It is accordingly dismissed.

INDERMEET KAUR, J

NOVEMBER 19, 2015

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