

\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON : SEPTEMBER 18, 2015
DECIDED ON : SEPTEMBER 30, 2015**

+

CRL.A. 1112/2013

TILAK RAJ

..... Appellant

Through : Mr.Neeraj K.Sharma, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant Tilak Raj impugns a judgment dated 21.01.2013 of learned Additional Sessions Judge in Sessions Case No.48/13 arising out of FIR No.400/11 registered at Police Station Khajuri Khas by which he was convicted under Section 376 IPC. By an order dated 24.01.2013 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 18.11.2011, the appellant committed rape upon the prosecutrix 'X' (assumed name), aged around 14 years, her daughter.
Crl.A.1112/2013

Victim's mother Smt.Reena lodged a complaint on 25.11.2011 before the Police Station Khajuri Khas disclosing that her daughter 'X', aged around 14 years was 'missing' from house since 20.11.2011. FIR was lodged under Section 363 IPC. Efforts were made to find whereabouts of the 'missing' girl. On 27.11.2011, Reena produced 'X' at the Police Station where her statement was recorded. 'X' disclosed that when her mother had gone to Kolkata, she was sexually assaulted by her father on the night of 18.11.2011. The Investigating Officer got prosecutrix medically examined; she recorded her statement under Section 164 Cr.P.C. The accused was arrested and taken for medical examination. Statements of witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of offences under Section 363/376 IPC. The prosecution examined 13 witnesses in all to establish its case. In 313 statement, abjuring guilt, appellant alleged that 'X' and her mother were involved in illicit activities. Since he used to object to that, he was falsely implicated by them. He also set up the plea of 'alibi' and examined DW-1(Amit Kumar) in defence. After considering the rival contentions of the parties and on appreciating the evidence on record, the

Trial Court by the impugned judgment convicted the appellant for the commission of offence under Section 376 IPC. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that 'X' aged around 14 years on the day of incident is appellant's real daughter. She along with her mother and brother Yash used to live with the appellant at G-299, Gali No.24, Khajuri Khas, Delhi. It is also not in dispute that 'X's mother Reena had gone to Kolkata to attend last rites of her mother during the relevant period.

4. To infer the appellant's involvement in the crime, testimony of PW-1 'X' is of utmost significance. She in her Court statement deposed that when her mother had gone to Kolkata during the night intervening 19/20.11.2011, she was sexually assaulted by her father. She elaborated that on that night she and her brother were sleeping on the floor and her father was on the cot. Later on, the appellant putting her brother on bed to sleep, came on the floor and slept by her side. He, thereafter, established physical relations with her despite her request not to indulge in foul activity. The appellant did not listen to her request and caught hold of her. Thereafter, the appellant inserted his male organ into her private

part as a result of which she cried due to pain. The accused did not care to relieve her. After the completion of the sexual act, her brother Yash, aged around five years was shifted on the floor and the appellant went on the bed to sleep. The witness further deposed that next day in the morning, she went to her friend Nicky's house and feeling lonely, took shelter there. When her mother returned after 5/6 days, she narrated the incident to her. She was, thereafter, taken to the Police Station where she recorded her statement. In the cross-examination, she disclosed that her mother had gone to Kolkata one day prior to the incident. The incident had taken place about 2.00 a.m. in the night. None came to her rescue despite her raising alarm. She further informed that on the next morning, she left the house at around 10.00 a.m. and stayed with her friend for about a week. Her friend Nicky lived with her husband and a child in a nearby house. She did not inform her about the incident. She denied the suggestion that she, her mother and her friend Nicky were involved in illicit activities which were objected to by the appellant.

5. No sound reasons prevail to disbelieve the prosecutrix specifically when in her statement under Section 164 Cr.P.C. Mark X1 recorded on 28.11.2011, she had implicated the appellant for commission of rape upon her in the absence of her mother during her visit to Kolkata.

The defence taken by the appellant for false implication does not inspire confidence. The prosecutrix and her mother were living with the appellant since long and at no stage before the said incident, he ever had any complaint about the conduct and character of the prosecutrix and her mother. He did not elaborate as to who were the individuals with whom the prosecutrix and her mother used to have illicit relations. He did not furnish any reasons as to why he did not lodge any complaint against the said individuals for the said alleged illicit activities. Admittedly, the prosecutrix had stayed for about a week at the residence of her friend PW-3(Nicky @ Nanhi) after the rape incident. The appellant did not initiate any proceedings to search her or to lodge 'missing person report'. When 'X's mother returned from Kolkata, she immediately lodged the report with the police to locate her. After that, the prosecutrix surfaced and narrated the incident to her mother. The defence taken by the appellant is inconsistent and conflicting. In 313 Cr.P.C. statement, the appellant for the first time alleged that on 20.11.2011, when he returned from his workplace at around 1.30 a.m. in the night, he saw a 'boy' to whom he knew before and gave beatings to him for his presence at odd hours. The said 'boy', thereafter went away. No such defence was put to the prosecutrix or other prosecution witnesses in their cross-examination. Name of the

said 'boy' was not disclosed. No complaint was lodged by the appellant against him. It also falsifies his plea of 'alibi'. He did not produce any reliable evidence to show as to where he was at the time of incident.

6. PW-2 (Reena), 'X's mother has corroborated 'X's version in its entirety. She also deposed that on 17.11.2011, she had gone to Kolkata to attend last rites of her mother who had expired on 15.11.2011. On 23.11.2011 finding 'X' missing from the house, she enquired from the appellant about her. The appellant told her that 'X' had run away on 20.11.2011. Thereafter, she went to the police station on 24.11.2011 but her report was registered on 25.11.2011. On 26.11.2011, 'X' met her and started crying. On asking the reasons for crying, she informed her that the appellant had committed rape upon her. Nothing material could be extracted in the cross-examination to discredit her testimony. She informed that prior to the incident she had never left 'X' alone in the house. She denied that she, her daughter and her friend Nicky were involved in illicit activities. PW-3 (Nicky @ Nanhi) has corroborated 'X's version about her stay at her house for about a week. She was fair enough to state that during her stay 'X' did not reveal about commission of rape by the appellant. No ulterior motive was assigned to this independent public witness to make false statement. Allegations against

her character were also imputed by the appellant without any foundation. 'X' character is of no relevance and does not permit the appellant, her father, to defile her. In the absence of prior animosity, 'X' aged around 14 years, an unmarried girl, was not imagined to level false allegations of rape against her own father to have reflection on her own chastity. During her examination in the Court, she was in tears. Her evidence has great probative force.

7. Certain discrepancies highlighted by the appellant's counsel are inconsequential. It is true that in 164 Cr.P.C. statement (Mark X1), 'X' did not claim her brother's presence at the crime spot. However, in the Court deposition, she claimed that her brother aged five years was present in the room. The prosecution even examined him as PW-11 and he also deposed against the appellant. Even if testimony of PW-11 is excluded from consideration, it would not dilute or impact the otherwise cogent and reliable testimony of the prosecutrix. The appellant's conduct is unnatural and unreasonable as despite 'X's mother away to Kolkata, he did not make sincere efforts to find out her though she remained missing for about a week. It lends credence to the 'X's version that she had taken shelter at her friend's house as she was scared.

8. The Trial Court has discussed all the relevant contentions of the appellant and has dealt with it with reasons. Conviction based upon fair appraisal of evidence warrants no intervention. Sentence order needs modification to the extent that default sentence for non-payment of fine would be SI for two months. Other terms and condition of the sentence order are left undisturbed.

9. The appeal is disposed of in the above terms. Trial Court record be sent back forthwith along with the copy of this order. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

SEPTEMBER 30, 2015

sa