

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

RESERVED ON : FEBRUARY 04, 2015

DECIDED ON : MARCH 16, 2015

+ CRL.A.1204/2013

CHANDER DEV @ KARU @ DADA

..... Appellant

**Through : Mr.Jatin Rajput with Mr.Anupam
Dubey, Advocates (DHCLSC)**

versus

THE STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 12.01.2011 in Sessions Case No.168/09 arising out of FIR No.184/07 registered at Police Station Mayapuri by which the appellant Chanderdev @ Karu @ Dada was held guilty for committing offence under Sections 376 (2) (f) IPC, the instant appeal has been preferred by him. By an order dated 14.01.2011, the appellant was awarded RI for ten years with fine ₹ 2,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 16.05.2007 in between 9:30 a.m. to 10:41 a.m. at

H.No.WZ-553, E/2, Nangalraja, Ambedkar Basti, New Delhi, the appellant committed rape upon prosecutrix 'X' (assumed name) aged around four years. Police machinery swung into action when DD No.12A (Ex.PW-2/A) was recorded at Police Station Mayapuri on getting PCR call regarding the incident at about 10.41 a.m. on 16.05.2007. The investigation was assigned to SI Sukhbir Malik who with Ct.Satyawan went to the spot. 'X' was medically examined. FIR (Ex.PW3/B) was lodged on the statement of victim's mother Smt.Manju (PW-3). The accused was arrested and medically examined. During investigation, statements of witnesses conversant with the facts were recorded. 'X' recorded her statement under Section 164 Cr.P.C. After completion of investigation, a charge-sheet was laid against the appellant before the court. The prosecution examined 24 witnesses to substantiate its case. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication due to strained relations between the complainant and his nephew. He did not examine any witness in defence. The trial resulted in his conviction as aforesaid. Feeling aggrieved and dissatisfied, he has filed the instant appeal.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell

into grave error in relying upon the testimonies of the interested witnesses without independent corroboration. The Trial Court overlooked the fact that initially the child witness had not implicated the appellant for committing rape upon her. When she was re-examined, she improved her version to fill up the lacuna as tutored by her relatives. The identity of the perpetrator of the crime has not been established. No independent public witness was associated at any stage of investigation. The appellant was not arrested at the spot and his arrest at the railway station is highly suspect. Learned APP urged that there are no valid reasons to suspect the testimony of a child witness.

4. The appellant was named in the FIR lodged promptly soon after the incident. He was known to PW-3 (Manju) and PW-4 (Rajender) before the occurrence. In fact, he belonged to the PW-4's native place and he knew him since his childhood. 'X' had taken PW-3 and PW-4 at the residence of the accused where the occurrence had taken place. He was apprehended on the pointing of PW-4 (Rajender). In her Court statement, 'X' identified him to be the perpetrator of the crime without any hesitation though she was unaware of his exact/full name. She described him by the name he was known i.e. Karu @ Dada by the children of the locality. Dock identification of the appellant by the

prosecutrix 'X', PW-3 and PW-4 leave no doubt about his identity. Admitted position is that the appellant's nephew lived on the third floor of the premises in question. The appellant used to visit him frequently there. So there was no question of mistaken identity.

5. The appellant has put-up the defence that 'X' had sustained injuries due to fall on the road and she was saved by him from the speeding motorcycle at Nangal Road near mother dairy booth. The prosecution has produced clinching evidence to establish that 'X' was sexually assaulted on the day of incident and injuries suffered by her was the outcome of the nefarious act. She was taken for medical examination soon after the occurrence. MLC (Ex.PW-5/A) reveals that her hymen was found torn; she was bleeding from her vagina. The blood stained cloths which 'X' was wearing at the time of her medical examination were seized in the hospital and were handed over to Ct. Satyawan. Apparently, it was a case of sexual assault. Merely because in 164 Cr.P.C. statement 'X' did not describe in clear words, it cannot be inferred that no such assault had taken place. It is to be remembered that the victim in the instant case was about four or five years of age and was not aware as to what kind of act was done with her. It is not expected from the child of this age to understand the consequences of the sexual assault and describe

it minutely. The doctor who proved the MLC was not questioned if the injuries sustained by the victim were possible due to fall as alleged. Why would the girl or her relatives implicate the accused charging him with rape, if the injury was caused by a fall?

6. Testimony of 'X' (PW-6) is crucial to establish the appellant's guilt. She categorically deposed that when she had gone to a nearby shop to purchase some sweets, the accused took her in his lap to his house and put finger inside her rectum as a result of which she felt pain and started crying. She was caught hold of by her hairs and hit against the wall. When she returned to her house, she was not able to stand due to pain. In the cross-examination, she further disclosed that the accused had taken her in his house in his lap (mujhe godi mein utha kar ley gaye). None else was present in the house that time. The toffees which she purchased were in her hands. Since 'X' did not reveal sexual assault/rape during her examination on 25.03.2010, she was recalled for further examination on 07.10.2010. In her testimony, she disclosed that after she was taken by the accused inside the house, he first put finger in her rectum, thereafter he took out his male organ and put it inside her female organ as a result of which she suffered lot of pain. In the cross-examination, she denied that the injuries in her private part were because

of motor accident near mother dairy. No material discrepancies, whatsoever, could be elicited in the cross-examination. No suggestion was put by the appellant to the child witness that she was not present in the house at the relevant time. He also did not put any suggestion as to where else he was at the time of occurrence. 'X's version inspires confidence. Unless an offence has really been committed, a little girl and her relatives would be extremely reluctant to make such allegations which are likely to reflect on her chastity.

7. PW-3 (Manju), is other material witness. 'X' was kept under her supervision when her parents had gone to work. 'X' had gone to a nearby shop to purchase something for eating and when she did not return after about fifteen minutes as usual, PW-3 went to search her. She met 'X' on the way and she was weeping. On enquiry, 'X' told that 'dada ne khoon kar diya'. When she along with 'X' was going to her house, PW-4 (Rajender) met them on the way and she narrated the incident to him. They went to appellant's house and noticed fresh blood lying on the floor of the room and at a place near the drain. Without wasting time, PW-4 made a telephone call at 100; PCR officials reached. Local police took 'X' to DDU hospital where she was medically examined. In the cross-examination, PW-3 denied if she had any enmity with the appellant due to

some altercation with his nephew. PW-4 (Rajender) deposed on similar lines and corroborated her version. In response to Court question, PW-3 informed that 'X' was bleeding from her vagina when she first met her. PW-4 (Rajender) has also deposed that he had noticed blood on the pant which 'X' was wearing on the front covering her private part. There are not valid/sound reasons to disbelieve their testimonies. For a petty altercation with the appellant's nephew on some occasion, the complainant cannot possibly concoct a false story of heinous offence to implicate the appellant. The child of four or five years cannot be used by her relatives for this purpose.

8. The exhibits collected during investigation were sent for Forensic Science Laboratory for examination. FSL reports (Ex.PX1 & PX2) are in conformity with ocular evidence. Human semen was deducted on Ex.1 (underwear) and 3a (baby's knickers). Blood was also deducted on Ex.1 (underwear), Ex.2 (blood stained clothes), Ex.3a (baby's knickers), Ex.3b (baby's top) and Ex.5 (blood stained cemented material). It was of AB group. The appellant failed to explain as to how and under what circumstances, the victim's blood appeared on the floor of his house. He also did not offer any explanation as to how the semen stained the underwear and baby's knickers.

9. Information recorded at the first instance in the PCR form (Ex.PW-13/A) at 10:30/31 a.m. on getting telephonic message from PW-4 (Rajender) on phone 28522284 about the commission of rape is very crucial and relevant. It records that the age of the victim was four years and the perpetrator of the crime was one Karu aged about 60/65 years R/o Vill, Madanpour, the Hilsa, Distt.Nalanda, Bihar who had come about two or three days before from Nalanda (Bihar). It further records that Karu had absconded and uncle and aunt of the victim were at the spot. This information which unfolded the appellant's involvement is not expected to be manipulated at that point of time.

10. Minor inconsistencies, improvements and omissions highlighted by the appellant's counsel are inconsequential as they do not affect the core of the prosecution's case and can be safely ignored in view of the overwhelming evidence of the prosecutrix and her uncle/aunt coupled with medical evidence and Forensic Science Laboratory reports. The prosecution witnesses had no ulterior motive to falsely implicate the appellant with whom they had no prior animosity. He did not examine even his nephew to prove enmity with PW-3 and PW-4 on account of any altercation with him any time. The impugned judgment is based upon fair appraisal of evidence and the findings on conviction warrant no

interference. Since the appellant had ravished an innocent minor child, aged about five years, he deserves no leniency. Nominal roll reveals that he has almost served out the sentence awarded to him by the Trial Court.

11. In the light of the above discussion, the appeal lacks merits and is dismissed. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

MARCH 16, 2015

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