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

% *Judgment reserved on : 10.12.2015*
Judgment delivered on : 14.12.2015

+ CRL.A. 1207/2013
RANJEET

..... Appellant
Through Mr. Neeraj Bhardwaj, Advocate

versus

STATE OF THE NCT OF DELHI

..... Respondent
Through Ms. Kusum Dhalla, APP for the
State

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 10.04.2013 and 27.04.2013 respectively wherein the appellant Ranjeet stands convicted for having committed the act of rape upon his minor daughter 'P' examined as PW-1.

2 The version of the prosecution was unfolded in the statement of the mother of the victim Shashi Prabah who was examined as PW-2. Her version was to the effect that on the narration given by her daughter

(PW-1) who had informed her the appellant (husband of PW-2 and father of PW-1) had committed rape upon. Complaint was lodged in the police station. Apart from the statement of PW-2, the statement of the victim (PW-1) was recorded. She was a minor being 14 years of age on the date of the incident. She was the second eldest child in the family. Version of PW-1 being that her father used to sit at home most of the time and he did not do any work. Her mother used to work at Gurgoan where she was working as a beldar. About 10-15 days prior to the filing of the complainant, her father had committed rape upon her. He had raped her on an earlier occasion also. He used to call two persons who would also commit the unholy act of rape upon her and he told the prosecutrix that those persons would give money to him for the said purpose. She informed the police.

3 In her cross-examination, PW-1 denied the suggestion that she wanted to get away from family and she used to go to an army camp where she liked one police man. She denied the suggestion that her father had not committed the aforesaid heinous act upon her.

4 Apart from PW-1 and PW-2, the prosecution had also examined the medical evidence which was through Dr. Shilpi Rathore (PW-7). She

had medically examined the victim and her MLC (Ex.PW-7/A) was prepared. Her hymen was found ruptured. It was found to be an old tear. No external injury had noted upon her person. It is this medical evidence which has been highlighted by the learned counsel for the appellant to substantiate that there was no external injury and her hymen was an old tear. This is answered by the version of the prosecutrix who had stated that the incident of rape had been committed 10-15 days prior to the date of filing the complaint. This was probably the reason why the doctor had noted the hymen to be an old tear. In the course of investigation, Dr. Vaishali Sharma (PW-10) had also examined the victim. The victim was found to be three months pregnant. She had deposed that abortion was advised; i.e. a medical termination of the pregnancy. As per PW-13, after the termination of the pregnancy, the foetus of the victim had been taken in a sealed cover and sent to the CFSL for an examination. The report of the CFSL pertaining to the DNA of this foetus had reported that the biological father of this foetus was the appellant; thus confirming that it was pursuant to the unholy act of rape committed by the father upon his daughter that the daughter/victim had become pregnant and she was aborted with a three months pregnancy and her

aborted foetus had determined that the appellant was the father of this foetus. It was this clinching evidence which had heavily relied upon by the Trial Judge to nail the appellant.

5 Learned counsel for the appellant before the Trial Court as also before this Court submitted that the appellant was a blind man and he could not have committed the act of rape. This defence emanated for the first time in the statement of the accused recorded under Section 313 of the Cr.PC. It did not emanate earlier. This defence appears to be palpably false for the reason that the appellant was medically examined by Dr. Kartik Krishan (PW-9) on 26.10.2010. The doctor had made a complete physical examination and although a redish brown coloured contusion over the left side of the cheek and another redish brown coloured contusion over the left side of forehead of the appellant were noted but there was nothing to suggest that he was not capable of performing the sexual act. It was not opined that the appellant was a blind man as has now been propounded. Neither was thus told to the doctor and neither did the doctor notice it. It was obviously a false plea.

6 The statement of the victim recorded under Section 164 of the Cr.PC (Ex.PW-2/A) fully corroborates her version on oath in Court. She

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was a credible and cogent witness. There was absolutely no reason on her part to have falsely implicated the accused. The suggestion given by the appellant that the victim used to go to an army base camp and used to love a police person is contrary to the stand propounded now which is to the effect that the mother and the daughter (PW-2 & PW-1) had a loose character and were most likely in the business of prostitution and when the appellant learnt about this, this led a false implication. That apart the defence that the appellant was a blind man was never raised before the Trial Court and did not emanate in the cross-examination of any of the witnesses of the prosecution. This argument is also now propounded before this Court and is wholly contrary to the suggestion given to PW-2 which as noted supra and at the cost of repetition was that the victim had a relationship with a police man at an army base camp.

7 This Court in the discussion supra has already held that the plea of the appellant that he was a blind man was unfounded. The appellant was clearly taking chances with conflicting stands. The testimony of PW-1 as noted supra was credible and cogent. That apart the clinching evidence against the appellant was the DNA of the unaborted foetus of

the victim which match the paternity of the appellant. There appears to be little left in the matter.

8 The prosecution has been able to prove its case to the hilt. The conviction of the appellant calls for no interference. The appellant has already been granted the minimum sentence of 7 years RI.

9 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 14, 2015

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