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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : SEPTEMBER 22, 2015

DECIDED ON : SEPTEMBER 29, 2015

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CRL.A. 1205/2013

PYARE LAL

..... Appellant

Through : Mr.Habibur Rahman, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 13.05.2013 of learned Additional Sessions Judge in Sessions Case No.63/13 emanating from FIR 203/2010 registered at Police Station Begum Pur by which the appellant Pyare Lal was convicted under Section 376 (2) (f) IPC, the instant appeal has been filed by him. By an order dated 20.05.2013, the appellant was sentenced to undergo RI for ten years with fine ₹10,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 19.08.2010 at about 1.00 p.m. at Jhuggi Plot No.163,

Pocket-21, Sector-24, Rohini, the appellant committed rape upon the

prosecutrix 'X' (assumed name), aged around two years. Information about the incident was conveyed to the police at 2.15 p.m. and Daily Diary (DD) 21/A (Ex.PW-7/A) came into existence. The investigation was assigned to SI Somveer Singh who along with Ct.Chand Ram went to the spot. PCR officials had already taken the victim to Baba Saheb Ambedkar Hospital, Rohini where she was medically examined by MLC (Ex.PW-11/A). After recording statement of victim's father Satish Bansal (Ex.PW3/A), the investigating officer lodged First Information Report. Statements of witnesses conversant with the facts were recorded; the accused was arrested; and exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the accused in the court. The prosecution examined eleven witnesses to substantiate its case. In 313 statement, the appellant pleaded false implication without examining any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the present appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix along with her parents and uncle Ashok Kumar Bansal used to live at House No. No.163, Pocket-21, Sector-24, Rohini. They had come about 17/18 days before

the incident from Madhya Pradesh to Delhi. It is also not in dispute that the complainant and his brother Ashok Bansal used to ply rickshaw. Victim's mother used to go for her job as 'baildar' at a nearby place. It is also not in dispute that on the day of incident, the appellant distant relative of the victim's parents was present in the house in question at the relevant time.

4. The occurrence took place at around 1.00 p.m. PW-3 (Satish Bansal), 'X's father, after coming to know the horrible and unfortunate incident on return to home, immediately set the police machinery into motion and DD No.21A (Ex.PW-7/A) about the incident was recorded. The victim was taken to Baba Saheb Ambedkar Hospital at 2.15 p.m. and was medically examined there. PW-11 (Dr.Pratima) has proved the MLC (Ex.PW-11/A) prepared by Dr.Neeraj Kumari and Dr.Rashmi being conversant with their hand-writing and signatures. As per MLC, hymen was was torn; posterior vaginal wall tear measuring 1cm was present, which was repaired under anesthesia. Apparently, it was a case of brutal sexual assault upon the tiny girl aged around two years. Victim's parents had no ulterior reasons to fake the incident of rape.

5. In his statement (Ex.PW-3/A), PW-3 Satish Bansal gave detailed account of the occurrence to the police and revealed as to how

and under what circumstances the prosecutrix was ravished by the appellant. Since the FIR was lodged promptly without any delay and the petitioner was implicated by name, there was least possibility of the complainant to concoct a false story in such a short period.

While appearing as PW-3, Satish Bansal proved the version given to the police without any variation. He deposed that when on 19.03.2010, he had gone to ply rickshaw at around 11.00 a.m. At that time, his younger brother Ashok and his maternal uncle Pyare Lal were present in the house and his wife along with 'X' had left for baidari. At about 1.00 p.m. when he returned home after plying rickshaw, he saw 'X' crying badly in appellant's lap; blood was also lying here and there. The appellant was seen wiping out (cleaning) the blood. On enquiry as to why 'X' was crying, the appellant told that nothing had happened. He further deposed that blood was coming from 'X's legs. He immediately asked the appellant if he had done galat kam (rape) with 'X' to which he replied in negative. The appellant was seen by him only in his underwear and baniyan and his pant was lying nearby in the room. The accused picked up the pant and fled the spot. He awoke his younger brother Ashok, sleeping in the room in a badly drunk condition. When informed about the occurrence, Ashok started crying. On inquiry from 'X; 'kya hua', 'X'

indicated towards the accused. He took her daughter to his wife's work place. Someone from the neighbourhood informed the police. In the cross-examination, he informed that he had returned to the home at around 12.45 p.m. He denied the suggestion that real culprit was his brother Ashok and the appellant was falsely implicated to save him. The witness fairly admitted that his brother Ashok was also taken to the police station.

6. On scanning the entire testimony of the witness, it reveals that no material infirmities could be elicited in the cross-examination to suspect his version. The appellant did not deny his presence at the spot soon before the incident. He also did not deny that when the witness entered the room, 'X' was in his lap. Material facts deposed by the witness remain unchallenged and uncontroverted in the cross-examination. The incident of rape is not under challenge. Appellant's only plea is that real author of crime was Ashok Bansal who was not implicated because of his close relation with the complainant. The appellant did not furnish any explanation as to why he did not raise any alarm when the innocent child was being allegedly ravished by Ashok Bansal. There is no denial that Ashok Bansal was under the influence of liquor that time. Factum of the appellant fleeing the spot also shows his unnatural and unreasonable conduct. Instead of reporting the incident to

the police or 'X's family members, the appellant on his own attempted to wipe out the blood fallen on the ground to destroy the evidence. 'X' was in the immediate company of the appellant before the incident. Under Section 106 Evidence Act, the appellant was expected to inform as to how and under what circumstances, the child sustained injuries on her private parts.

7. PW-2(Rekha), 'X's mother had taken the child with her at her work place at a nearby spot. However, when the child started feeling hungry at around 12.30 p.m., she brought her at her residence to serve food. After serving the food to the child, she returned to her work place leaving the child in the company of her brother-in-law Ashok and the appellant Pyare Lal, her husband's maternal uncle. After some time, the child was brought at her work place by her husband and she was informed that Pyare Lal, her husband's maternal uncle, had done 'Galat Kaam' (balatkar) with 'X'. In the cross-examination, she informed that her husband had come at her work place at around 1.15 p.m. The appellant who was not her real 'mama' but use to visit them often as he lived in the said colony. She admitted that Ashok used to take liquor. Nothing was suggested to her that it was the handiwork of her brother-in-law Ashok. Again nothing material could be extracted from her testimony in the cross

examination to disbelieve her. She had no ulterior motive to falsely implicate the accused with whom there was no previous history of hostile relations. She had left the child in the company of her brother-in-law and the appellant without suspecting foul play. 'X's parents must be interested to bring the real offender to book. They were not expected to let the real culprit go scot free and to falsely implicate an innocent one. In the absence of prior animosity or ill-will 'X' parents were not expected to level serious allegations of sexual assault to have reflection on the chastity of their own infant girl to implicate the accused.

8. PW-4 (Ashok Bansal) in his Court statement deposed about the presence of the accused along with him at the crime spot soon before the incident. He also deposed that at about 12.00 noon, Rekha returned to her work place after leaving 'X' in the house in his and that of Pyare Lal's presence. He deposed that the accused brought liquor and both of them consumed it. He added that the accused made him to drink more liquor as a result of which he lost his senses and slept. At about 1.00 p.m. when his brother returned home after plying rickshaw and awoke him, he saw the child in the lap of his brother and she was bleeding. The accused fled the spot. The witness denied the suggestion that the child was raped by him and the appellant was falsely implicated in this case.

9. No sound reasons exist to disbelieve the testimonies of PWs 2, 3 and 4 who were close relative of the victim. Appellant's involvement to be the perpetrator of the crime emerged soon after the incident when the child 'X' was seen in his lap. Had it been the handiwork of PW-4 (Ashok Bansal), the appellant must have raised alarm then and there. He failed to explain as to why he did not prevent PW-4 Ashok Bansal to defile the child. Neither did he inform 'X's parents nor did he take the child to hospital. Contrary to that his post event conduct is highly unnatural as after picking pant, he fled the spot and could be arrested from a park where he was hiding.

10. Ocular testimony of the prosecution witnesses is in consonance with medical evidence. FSL Reports (Ex.PX and Ex.PY) further connect the appellant with the crime. In FSL Reports (Ex.PX and Ex.PY) 'blood' was detected on Ex.1b(cotton wool swab); Ex.1(d) (Baby T-shirt); Ex.2 (Cotton wools swab); Ex.3(underwear); Ex.4 (Blood stained gauze cloth), Ex.5a (Underwear) and Ex.5b(Shirt). Blood of human origin of 'B' Group was detected on Ex.1(d) (Baby T-shirt) and Ex.5b (Shirt of the accused). Human 'semen' was detected on Ex.5a (underwear of the accused). The accused failed to submit plausible explanation as to how and under what circumstances human semen emerged on his underwear.

He also did not furnish any explanation as to how his blood Group 'B' happened to be there on baby's T-shirt. This is an additional incriminating circumstance to point an accusing finger against the appellant.

11. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances appearing and proved against him. He merely alleged false implication without any reliable foundation. He made feeble unsuccessful bid to put blame on PW-4 (Ashok Bansal) for the crime. For the first time he took the defence that his false implication was due to financial dispute. However, he did not elaborate as to what it was. This vague afterthought defence deserves outright rejection. For a petty financial dispute (if any) 'X's parents were not imagined to use their small kid.

12. The Trial Court has discussed all the relevant facts minutely and the impugned judgment deserves no intervention. Sentence order needs no modification as minimum sentence of ten years prescribed under Section 376 (2) (f) has been awarded to the appellant. Sentence order needs modification to the extent that default sentence for non-payment of fine (if any) would be SI for three months only. Other terms and condition of the sentence order are left undisturbed. 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.

13. The appeal lacks merit and is dismissed. Trial Court record along with the 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

SEPTEMBER 29, 2015

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