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

% *Judgment reserved on : 16.11.2015*
Judgment delivered on : 24.11.2015

+ CRL.A. 1321/2013

SONU Appellant

Through Mr.M.L.Yadav, Advocate.

versus

STATE Respondent

Through Mr. Tarang Srivastava, 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 11.07.2012 and 14.08.2012 respectively wherein the appellant namely Sonu stood convicted under Section 376(2)(f) of the IPC. He has been sentenced to undergo RI for a period of 10 years and to pay fine of Rs. 5,000/- and in default of payment of fine to undergo RI for a period of 2 months. Benefit of Section 428 of the Cr.P.C has been granted to the appellant.

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2 Nominal roll of the appellant has been requisitioned. This reflects that as on date the appellant has undergone incarceration of almost about 8 years which includes remissions earned by him. The version of the prosecution was unfolded in the statement of the mother of the victim Seema. She was examined in Court as PW-5. Her version which was the basis of the FIR was to the effect that on 22.03.2008 while she was cooking food and her daughter (the prosecutrix-PW-3) aged about 8 years was playing in the gali and when she went looking out for her daughter she heard her crying. PW-3 narrated the incident to her which was to the effect that the appellant Sonu, who was the neighbor, had called PW-3 to his room on the pretext of giving Holi colours being a Holi day. He bolted the door from inside; after removing his underwear he committed, unholy act of rape upon her daughter. PW-3 was bleeding from her private parts. She was medically examined by Dr. Rakhi (PW-8). Her medical report was proved through Dr. Sandhya (PW-11). The appellant after his arrest was also medically examined. His MLC Ex. PW12/A suggested that there was nothing to show that he could not perform the sexual act. The Investigating Officer SI Dharampal was

examined as PW-14.

3 In the statement of the accused recorded under section 313 of Cr.P.C. he stated that this was a case of false implication. There was a money dispute between himself and Seema (PW-5) who had taken a loan of Rs. 20,000/- from his cousin and since she was not repaying the amount this false case has been planted upon him. DW-1 Kiran Singh, his cousin has come into the witness box to support his defence.

4 The Trial Court has rejected the defence of the appellant. On the basis of the evidence collected by the prosecution both oral and documentary the appellant was nailed and sentenced as aforementioned.

5 On behalf of the appellant the foremost argument propounded by the learned Amicus Curiae is that the prosecutrix herself has not been able to narrate the incident; she has been silent. Her statement recorded under section 164 of the Cr.P.C. is contrary to the version recorded even on oath. Her version is not clear. PW-5 her mother was only a hearsay witness. There is also no medical evidence to connect the appellant with the crime. The doctor who had medically examined the victim PW-8 Dr. Rakhi was not cross examined on all counts; the appellant is entitled to

benefit of doubt and a consequent acquittal.

6 Needless to state that these arguments have been refuted by learned Public Prosecutor.

7 The FIR was registered on the complaint of the mother of the victim. She was examined as PW-5. She has deposed that on the date of occurrence i.e. 22.03.2008 while her daughter (PW-3) was playing outside in the gali, she was cooking food ; she went out looking for her daughter but she did not find her; she informed her husband; she and her husband went for search of her daughter; when PW-3 returned she was weeping; she narrated the incident to her mother which was to the effect that appellant Sonu who was their neighbor committed “galat kaam” on her; blood was oozing out. Police was called and the present FIR was lodged.

8 PW-5 Seema was cross examined. She reiterated the version in her chief. Relevant would it be to note that no suggestion had been given to the victim that this is a case of false implication for the reason that Rs. 20,000/- which was a money dispute, had arisen between PW-5 and the cousin of the appellant. This defence which has now been projected at

the time when the statement of the accused was recorded under section 313 of the Cr.P.C was thus clearly an afterthought. This was not taken at the initial stage. Had it been a honest defence, it would have found mention in the suggestions given to PW-5 but was not so.

9 Prosecutrix aged 8 years could not be examined under section 164 of the Cr.P.C. Before her examination on oath in Court a preliminary round of questions were put to her. She was then examined without oath. She has deposed that on the day of Holi the appellant who was the neighbor called her in his room on the pretext of giving her Holi colours. He removed her underwear. He also removed his underwear and did wrong act with her. She felt pain at the place from where she was passing urine. She started bleeding. She managed to escape from the door and narrated the incident to her mother. This witness was cross examined. She admitted that the appellant was under the influence of liquor at the time of incident. She managed to flee by opening the kundi of the door. She denied the suggestion that she is a tutored witness. Relevant would it be to note that this witness was also not suggested on the line of defence now propounded before this Court; it was not

suggested to her that it was due to a money dispute between PW-5 and the cousin of the appellant that PW-3 has falsely implicated the appellant.

10 The victim was medically examined on the same day by Dr. Rakhi, who was a senior resident at Lal Bahadur Shastri Hospital. Her detailed examination vide MLC Ex. PW 8/A showed dried blood stains on medial side of thigh and legs; hymen not intact, a midline tear extending from psoterio fourchette to anus. Bleeding was also found. Cross examination of this witness was deferred for the next date on which date Dr. Usha Upreti (PW-9) had come to depose on behalf of Dr. Rakhi as Dr. Rakhi had left the Hospital. PW-9 had categorically stated that she can recognize the handwriting of PW-8 who prepared the MLC and accordingly proved as Ex. PW-8/A. This document was exhibited as per the rules of Evidence. Submission of learned defence counsel on this score that this document cannot be read in evidence is thus futile.

11 The medical record of the victim clearly shows that not only injuries were found on various parts of her body but there was also

blood clot found on the thigh and legs. There was a tear extending from psoterio fourchette to anus. This documentary evidence thus fully corroborated the oral testimony of PW-3 and PW-5.

12 The defence projected by the appellant that this was a case of false implication was rightly rejected by the Trial Judge. The Trial Judge has correctly noted that this defence was not projected in the first place; had it been a true defence it would have been taken at the very first instance i.e. at the stage of cross examination of the witnesses of the prosecution. This was not the defence at that time. This defence was taken at a later stage i.e. when the statement of the appellant was recorded under section 313 of the Cr.P.C. i.e. more than 3 years after the date of offence clearly shows that this was on legal advice.

13 The exhibits which included the vaginal swap and undergarments had been seized; so also blood samples of the accused. The forensic evidence i.e. report of CFSL evidenced blood on the vagina, underwear bloody clothes of the victim but since the blood sample of the appellant was purified the connectivity on this count could not be established.

14 The oral and ocular version of PW-3 and PW-5 was consistent

and cogent. There was no reason for the Court to disbelieve it. The case of false implication is clearly ruled out. The medical evidence also supported this oral evidence. On no count does the impugned judgment calls for any interference. Since the victim was a minor aged about 8 years and being less than 12 years the appellant has already been given minimum punishment which is imprisonment for a period of 10 years. Neither the conviction nor does the sentence call for any interference.

15 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

NOVEMBER 24, 2015

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