

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

% *Judgment reserved on :04.08.2015*
Judgment delivered on :06.08.2015

+ CRL.A. 1304/2013
RAJESH

..... Appellant
Through Mr.Neeraj Bhardwaj and Ms.
Pooja Bhardwaj, Advs.

Versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent
Through Mr.Pramod Saxena and
Mr.Varun Goswami, APPs 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 13.10.2011 & 17.10.2011 respectively wherein the appellant stood convicted for an offence under Section 376 (2)(f) of the IPC. He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo SI for 6 months.

2 Nominal roll of the appellant reflects that as on date, he has undergone incarceration of about 5 years.

3 The version of the prosecution was unfolded in the statement made by the complainant Mazda Khatoon (PW-2), the mother of the victim. Her daughter aged 7 years (PW-1) while playing outside the house was found crying; on her asking, her daughter told her that the boy who had been caught hold by the crowd and was being beaten had given her something to eat and thereafter he had committed the act of rape upon her; her daughter told her that she has expressed pain. PW-2 has detailed the incident in the manner in which it was disclosed to her. On inquiry, the name of the appellant was revealed as Rajesh.

4 It was this version of PW-2 which had led to the prosecution of the appellant. As noted supra, it has come in the version of PW-2 herself that the public persons had already caught hold of the accused and had beaten him; the mother had found her daughter crying; on inquiry, it was revealed that this boy had committed the act of rape upon her daughter.

5 Before advertng to the testimony of the prosecutrix, the testimony of constable Dharmender Kaushik (PW-10) is also relevant. He was on patrolling duty in the area at the relevant time. He has deposed that when he reached near the nala, he saw the other persons had gathered there; the appellant was being beaten by the public; a 7

year old child was standing near her mother and was crying. She rescued the appellant from the public and thereafter he was informed by PW-2 that the appellant had committed rape upon her daughter. Her daughter has narrated the incident to her. Police was informed. Nothing has been discredited in this version of PW-10. He had stuck to his stand.

6 The star witness of the prosecution is the prosecutrix. She was examined as PW-1. She was a 7 year old child. A preliminary round of questions had been put to her before she was examined in Court. She had detailed the incident in the manner in which it had occurred. Her testimony was recorded in camera. She has described that in the evening of 03.05.2010 when she was playing near the drain, the accused had come there and taken her away on the pretext of giving her 'chizzi'. The accused had taken out her underwear; he had committed rape upon her; the witness in the local dialect had described the incident in her own words and this has been noted by the trial Judge. Thereafter some persons came there and they caught hold of the accused as the victim had raised alarm. The public started beating the accused. PW-1 disclosed this incident to her mother.

7 Relevant would it be to note that this testimony of PW-1 as given

in Court was also her version in her statement recorded under Section 164 of the Cr.PC before the learned Magistrate. This witness had in fact been re-examined by the Court as initially the charge had been framed against the appellant under Section 376 read with Section 511 of the IPC but on her re-examination she had detailed the incident which had matched the version under Section 164 of the Cr.PC which had led the Court to return a correct finding that the offence of rape had been committed upon the prosecutrix. The medical evidence which was the MLC of the victim (Ex.PW-8/A) through Dr. Reena (PW-8) also corroborates this version of the prosecutrix.

8 The CFSL in its report dated 24.01.2011 had found blood on the underwear of the victim; human semen was detected on the underwear of the accused.

9 The accused had no defence. In fact, even the learned counsel for the appellant has fairly conceded that there is hardly any infirmity in the judgment of the trial Judge as evidence has been appreciated in the correct perspective. This Court notes that the entire evidence which had been lead before the trial Judge which includes not only the testimony of PW-1 which is fully cogent and coherent and matching her version

under Section 164 of the Cr.PC, it is also supported by the version of her mother (PW-2); testimony of PW-10 is also relevant. He had reached the spot immediately thereafter. The accused had already been apprehended. The medical evidence and the scientific evidence also support the version of the prosecution. On no count, does the impugned judgment call for any interference.

10 Learned counsel for the appellant in the alternate has submitted that since the appellant has been convicted for the offence under Section 376 (2)(f) of the IPC i.e. for the offence of a child rape, leniency may be awarded to him for grant of sentence. This Court notes that the offence had been committed in the year 2010 which was prior to the amendment (The Criminal Law (Amendment) Act, 2013). The offence of rape of a child below the age of 12 years calls for a minimum sentence of 10 years which is extendable up to life. The victim has already got the minimum punishment. The trial Judge had rightly noted that these kinds of crimes are on the increase; even assuming that the appellant is a young boy and a first offender but this Court notes with pain that such persons, in fact, need a greater deterrent to deter them from committing any such crime in the future. Learned public prosecutor has rightly

pointed out that if such a convict is awarded a punishment lesser than the minimum prescribed by the Legislature it would send a bad message to the society as such kind of crimes are an abhorrent to our society.

11 This Court is thus not inclined to interfere in the sentence awarded to the appellant.

12 The impugned judgment calls for no interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 6, 2015

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