

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

% *Date of Judgment: 17.9.2015*

+ CRL.A. 1272/2012

ADITYA @ VICKY

..... Appellant

Through Mr. B.S.Mathur and Mr.Rajat
Mathur, Advocates.

versus

STATE

..... Respondent

Through Ms.Meenkashi Dahiya, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal is directed against the impugned judgment and order on sentence dated 13.9.2012 and 24.9.2012 respectively wherein the appellant had been convicted under Section 376 of the IPC read with Section 506 of the IPC. For his conviction under Section 376 of the IPC he had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.50,000/- which was to be paid to the victim as compensation in default of payment of fine to undergo SI for 6 months. For his conviction under Section 509 of the IPC he had been sentenced to undergo RI for a period of 2 years and to pay a fine of Rs.2000/- in

default of payment of fine to undergo SI for period of 15 days. Both the sentences were to run concurrently and benefit of Section 428 of the Cr.P.C. had also been granted to the appellant.

2 Nominal roll of the appellant reflects that as on date he has undergone incarceration of 3 years.

3 The version of the prosecution was unfolded in the testimony of prosecutrix who has been examined as PW-8. She was admittedly a minor as on the date of the offence. She was aged 14 years and 9 months. The fact that she was a minor has not been disputed. Her version is that on 20.10.2011 at about 1.30 p.m. when she was returning home from her school the appellant who was known to her had taken her inside a factory where 2-3 other persons were also present. Those boys were sent out of the factory. The appellant locked the door of the factory and committed rape upon her. She was threatened not to disclose the incident to anyone or he would electrocute her. Apart from the statement of PW-1 her paternal aunt (Chachi) was examined. She entered into the witness box as PW-6. The statement of the victim under Section 164 Cr.P.C. was recorded. She was medically examined

vide MLC Ex.PW-7/A. Learned counsel for the appellant submits that no external injury has been noted upon her person. This clearly show that no forceful act of rape was committed upon her as is her submission. The site plan has been proved as Ex. PW-13/B. Attention has been drawn to point A where the alleged offence has been committed. It is pointed out that this is a busy junction and if the offence was committed in the afternoon at 1.30 p.m. it is impossible to believe that when prosecutrix had raised alarm no one came to save her. The version is concocted. Additional argument of the learned counsel for the appellant is that there is no explanation for the inordinate delay in lodging the FIR which was lodged after almost 12 hours of the incident.

4 Needless to state that these arguments have been refuted.

5 The version of the prosecution was hinged on the testimony of 14 witnesses of the prosecution. As already noted supra the star witness of the prosecution is the prosecutrix (PW-8). There is also no gain saying to the settled proposition of law that if the testimony of the prosecutrix is cogent and coherent it can alone be the basis of conviction. Tested on

this anvil the version of PW-8 qualifies the test. She had corroborated her statement made under Section 164 Cr.P.C. qua the statement made by her on oath in Court. She had deposed that on 20.10.2011 the appellant who was known to her had committed rape upon her by pulling her inside the factory and this was at about 1.30 p.m. when she was returning home from her school. She screamed and tried to save herself but nobody was there. This act was committed in a room on ground floor of the factory. At that time 2-3 boys were also there. They were asked to leave the premises. She had described the incident in detail. The police was informed by her cousin i.e. the son of her Tau. In her lengthy cross-examination she admitted that her father was an alcoholic. She admitted that the appellant was known to her. He used to come to their shop to buy cigarettes on credit. She used to speak to the appellant. She denied the suggestion that even on the fateful day she had rang up the appellant asking him to pay his credit balance. She also denied the suggestion that because of a fight between her grandmother and the appellant the appellant had been falsely implicated by her.

6 Version of PW-6 (Chachi of the victim) is also relevant. She had deposed that on the fateful day the victim had told her that she had a quarrel with the appellant. She informed her Jeth only in the evening about the incident. This witness was declared hostile. She admitted that she had no good relationship with the family of the victim. There is a partition wall between her house and the house of the victim.

7 The delay in the lodging of the FIR is explained in the testimony of PW-6 and though the victim had related the incident to her Chachi on the same day (in the afternoon) who had a strained relation with the family of the victim did not take care of the incident. She informed her jeth about the incident in the evening. First PCR call was received by PW-11 in the PCR at 23.16 p.m. which had been recorded in Ex.PW-11/A. This information was conveyed to the local police station pursuant to which the FIR had been registered on 21.10.2011 at about 3.45 -4.00 a.m. The delay in lodging of the FIR is wholly explained in view of these testimonies.

8 The factory owner i.e. the place where the offence was committed was also examined. He was examined as PW-14. He deposed that two

boys namely Ram Sewak and Shiv Shanker used to work in his factory and used to reside in the factory premises. The appellant who was known to them residing in the same neighbourhood had brought one girl in the factory where untoward incident had taken place. The MLC of the victim was conducted by Dr. Ajay Dalal (PW-7). Although admittedly no external injury was seen upon the victim but the gynecological examination of the victim (evident from Ex.PW-9/A) and the version of Dr.Roma Gupta (PW-9) clearly shows that blood stains were found over the labia majora and the hymen was found ruptured. This evidence of blood on the private parts of the victim and her hymen having been found torn is fully corroborative of the version of the prosecutrix who had on oath deposed that when rape had been committed upon her she felt pain in her private parts and there was bleeding. The submission of the learned defense counsel that there were no external injury visible on the victim would be nullified and the same is an argument noted to be rejected. In 2005 (13) SCC 766 State of Himachal Pradesh Vs. Asha Ram the Supreme Court had followed the ratio of the judgment laid down in the case of Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635; which reads as under:

“This Court held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony. This Court further held that the opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. This Court held that the evidence of the prosecutrix was amply corroborated by her mother and father whom she immediately informed about the occurrence.

9 The Investigating Officer had been examined as PW-16. The defense of the appellant was that he has been falsely roped in because of the fights which the appellant used to have with the dadi of the victim. Apart from the fact that is a wholly unjustifiable explanation, even presuming that the appellant used to have fights with the dadi of the victim, it would be no special reason for the victim to disown herself and put her own reputation at stake by leveling false allegations of rape against the appellant. This argument appears to be un-understandable. The version of PW-8 which is cogent and coherent has been fully supported by the medical evidence. The FSL had also noted blood on the salwar and the vaginal swab of the victim. This piece of the scientific evidence also advances the case of the prosecution. The impugned judgment does not call for any interference.

10 However, on the aspect of sentence, this Court notes that the appellant was a first time offender. He was 23 years of age at the time of the incident. The minimum sentence prescribed for rape of a minor under the un-amended law (before the Criminal Law Amendment Act, 2013) is RI for a period of 7 years. Noting this factual matrix, this Court is inclined to modify the sentence from RI for a period of 10 years to RI for a period of 7 years. No modification is made in the sentence of fine. With these directions appeal is disposed of.

CRL.M.(B) 7593/2015

11 Since the appeal has been disposed of, the present application has become infructuous. The same is disposed of accordingly. The next date of hearing i.e. 19.10.2015 stands cancelled.

INDERMEET KAUR, J

SEPTEMBER 17, 2015

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