

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

+ CRL.A.399/2000

% Decided on: 3rd August, 2016

RAJESH KUMAR Appellant
Through: Ms. Saahila Lamba, Advocate.

Versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Rajesh Kumar has been convicted for offences punishable under Sections 366/376/506 Part II IPC vide order dated 13th May, 2000, and vide order on sentence dated 15th May, 2000, awarded rigorous imprisonment for a period of ten years and fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for two months for the offence under Section 376 (f) IPC and for offences punishable under Section 366/506 part-II rigorous imprisonment for three years and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo rigorous imprisonment for one month on each count.

2. Learned counsel for the appellant contends that though the incident took place on the intervening night of 2nd June, 1998 and 3rd June, 1998, and

the FIR was registered on 3rd June, 1998 at 3.40 PM, i.e. after lapse of sufficient time, even then the name of the appellant was not mentioned in the FIR by the mother of the prosecutrix. Even the prosecutrix named the appellant for the first time in her statement recorded under Section 164 Cr.P.C. after a period of three months on 3rd September, 1998. Admittedly, the appellant was known to the prosecutrix, despite which he was not named in the FIR. The prosecutrix has not supported the prosecution case in cross-examination. The appellant has been falsely implicated, thus he be acquitted of the charges framed.

3. Learned Additional Public Prosecutor for the State submits that the appellant is not named in the FIR recorded on 3rd June, 1998 as prosecutrix was threatened by the appellant not to take his name, however, the identity was revealed in the supplementary statement of the mother, which was recorded on 4th June, 1998 itself. Further the prosecutrix named the appellant in her statement under Section 164 Cr.P.C. Both the prosecutrix and her mother have supported the prosecution case which is corroborated by the MLC of the prosecutrix and the CFSL report.

4. The case of the prosecution is that on the intervening night of 2nd June, 1998 and 3rd June, 1998, the prosecutrix PW.2, was sleeping on the roof

along with her mother, grandmother and brother. Accused lifted her and took her to a newly constructed house where he laid her on ground and removed her underwear and committed rape on her. The accused had threatened her to kill if she disclosed it to anyone and ran away from there. She came back to the house and narrated the incident to her mother. She was medically examined and her statement (Ex.PW. 2/A) was recorded under Section 164 Cr.P.C. During cross examination she deposed that she did not remember the date, month or year of the incident. She further deposed that the accused was known to her prior to the incident but she had not told the name of the accused to her mother. She identified the accused at police station but had not come to court to identify the accused as she already knew him. She also deposed that her father was sleeping outside the house near the door, which is the only entrance to the house and was not locked from inside on the day of incident. She deposed that she had not identified the accused when he lifted her from the cot in the night. She also did not identify the Accused when he committed rape on her. She further deposed that she had not told the name of the accused to the police.

5. The version of the prosecutrix in her examination-in-chief is corroborated by her MLC Ex.PW.2/A and the CFSL report Ex. PW.7/A. The

prosecutrix is a child of tender age and was examined without oath. Having deposed in examination-in-chief and withstanding the cross-examination initially, her testimony cannot be discredited merely because she could not withstand the grilling cross-examination till the end blurred why answering two questions put to her in the end.

6. Version of the prosecutrix is also corroborated by her mother, who was informed immediately by her and who found her bleeding from private parts, whereafter the mother of the prosecutrix informed her husband, who called the police. PW.3 also clarified that her daughter did not disclose the name of the appellant initially, as she stated that she had been threatened by him not to disclose his name. The MLC Ex.PW.7/A of the prosecutrix, who was aged eight years at the time of the incident, notes that there were marks of scratches on the back of the prosecutrix, which supports her version that she was taken by the accused to a newly constructed house opposite her house, where she was laid on the ground and raped. Further as per the CFSL report Ex. PW.12/C semen was detected in the vaginal swab of the prosecutrix.

7. Considering the cogent and convincing testimony of the prosecutrix, duly corroborated by her mother, the MLC Ex. PW.7/A and CFSL report Ex.

PW.12/C merely because, she did not disclose the name of the appellant immediately after the incident, the prosecution case would not fail.

8. Consequently, the present appeal is dismissed. During the pendency of the appeal, the sentence of the appellant was suspended by this Court vide order dated 30th August, 2000. The appellant will surrender to custody for undergoing the remaining sentence. The bail bond and surety bond of the appellant are cancelled.

9. Trial court record be sent back.

(MUKTA GUPTA)
JUDGE

AUGUST 3, 2016
‘n’