

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

Judgment Reserved on: 26th July, 2016

% *Judgment Delivered on: 1st August, 2016*

+ **CRL.A. 77/2014**

RAM NIWAS

..... Appellant

Represented by: Mr. Habibur Rahman, Mr.
Dhan Mohan and Ms. Tanu,
Advocate.

Versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
the State with SI Pramod
Kumar, PS Janakpuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal Ram Niwas challenges the impugned judgment dated 25th July, 2013 convicting him for the offences punishable under Sections 323, 363 and 376 IPC in FIR No. 143/2010 registered at PS Janakpuri and the order on sentence dated 26th July, 2013 directing him to undergo rigorous imprisonment for a period of three months for the offence punishable under Sections 323 IPC, rigorous imprisonment for a period of three years for the offence punishable under Sections 363 IPC and rigorous imprisonment for a period of ten years for offence punishable under Section 376 IPC.

2. Briefly the prosecution case is that in the intervening night of 26th and 27th June, 2010 at 1.55 A.M., DD No. 4A was received stating that a four year girl has been kidnapped from WZ-50 Posangipur, near C-2 bus stand by a twelve year old boy. On receipt of the DD entry, SI Prem Singh and W/SI

Renuka PW-22 reached the spot and started making enquiries from the parents of the prosecutrix. In the meantime, Ct. Sudhir PW-11, who was on patrolling duty in that area, telephonically received the information regarding missing of a four year old girl. He went to the police station on his motorcycle to take the torch for the purpose of searching the girl. While on way he reached at A-5A Janta Flat, Double Storey in front of statue of Ambedkar he saw the appellant suspiciously standing. After seeing the police motorcycle, the appellant started walking towards the drain. When Ct. Sudhir went towards him, he saw that the appellant was hiding a child in his lap. On enquiry, the appellant could not give any satisfactory answer. Thus, he brought the child along with the appellant to the police station. The name of the appellant was revealed as Ram Niwas. PW-11 also stated that there was blood on the undergarment of the prosecutrix. PW-1 Smt. Radha @ Dhanno and PW-2 Deshraj @ Devi Gulam also reached the police station on the receipt of information that the prosecutrix has been found. On the basis of the statement of Ct. Sudhir, FIR No. 143/2010 was registered under Sections 363/376 IPC. Statement of the prosecutrix was recorded under Section 164 Cr. P.C. The prosecutrix and the appellant were medically examined at DDU Hospital.

3. Learned Counsel for the appellant contends that the PCR call Ex. PW-17/A was made by a third person who has not been examined by the prosecution. No neighbour was made a witness. PW-11 Ct. Sudhir stated in his testimony that he had seen the appellant with a bag however no such bag was seized in personal search of the appellant. Further, PW-2 stated that the appellant was wearing a check shirt and a black pant, however, neither these clothes were identified by anyone nor were they sent to CFSL. Furthermore,

PW-2, father of the prosecutrix stated that the prosecutrix was bleeding from head and legs but there was no external injury as per the MLC. Further as per the parents of the prosecutrix, they reached the police station at 2.00 AM whereas Ct. Sudhir stated that parents reached the police station at 5.00 AM. Despite being apprehended at 2.18 AM, the appellant was arrested only at 9.00 AM.

4. Learned APP for the State on the other hand contends that PW-9 Dr. Nidhi and PW-18 Dr. Aparana who medically examined the prosecutrix stated that the hymen was torn. Despite the prosecutrix being of a tender age of four years at the time of the incident, she has deposed about the offence committed by the appellant. PW-1 Smt. Radha @ Dhanno and PW-2 Desh Raj @ Devi Gautam deposed on the same lines, there was no contradiction in their testimonies.

5. Smt. Radha @ Dhanno PW-1, mother of the prosecutrix, stated that in the intervening night of 26th and 27th June, 2010, the prosecutrix was sleeping with her husband PW- 2 Desh Raj @ Devi Gautam outside the house and she along with other children was sleeping inside the jhuggi. She further stated that her husband PW-2 saw one person wearing a check shirt who took away the prosecutrix. PW-2 raised noise and came inside the jhuggi and informed PW-1 that the prosecutrix was taken away by one person. She along with her husband searched for the prosecutrix but could not find her. Thereafter, their neighbour made a call to police at 100 number on her request. Police found the prosecutrix in the hands of appellant at 2.00 A.M. and they were called to the police station. When they reached the police station, the condition of the prosecutrix was not good. Thereafter, they along with the prosecutrix were taken to DDU Hospital for medical

examination of the prosecutrix. The prosecutrix had informed the police in her presence that the appellant did '*galat kaam*' with her. She further stated that the prosecutrix pointed out towards her private part and said that it was paining, which was caused by the appellant. She also noticed blood on the underwear of the prosecutrix. During her cross examination, PW-1 stated that the prosecutrix was lifted from the cot around 1.00 A.M. PW-2 noticed that the prosecutrix was lifted when she cried. She stated that PW-2 did not chase the lifter because he had suddenly woken up from his sleep and was afraid. She did not hear the cries of the prosecutrix because she was inside the jhuggi.

6. PW-2 Desh Raj @ Devi Gautam, father of the prosecutrix, corroborated the version of PW-1. He further deposed that the prosecutrix was bleeding from head to legs. PW-2 also stated that when he enquired from the prosecutrix, she pointed out her finger to her SHUSHU and said she was hurt (MAARA). On being asked by whom, she pointed out the finger towards the appellant. During his cross-examination, PW-2 stated that he did not chase the person who had taken the prosecutrix because he was very tired.

7. The prosecutrix was examined as PW-6. To ascertain that the prosecutrix can give rational answers to the questions put to her, some preliminary questions were put. Upon questioning the prosecutrix about what had happened, the prosecutrix responded by pointing towards her face and private part. Upon being asked whether she felt pain, she said yes by moving her head. The prosecutrix also pointed out towards the appellant upon being asked who had done the wrong act with her. The prosecutrix answered in affirmative by moving her head on being asked whether she

was wearing underwear at the time of the incident.

8. PW-11 Ct. Sudhir deposed in sync with his earlier statement made before the police on the basis of which the FIR was registered.

9. PW-9 Dr. Nidhi, Sr. Resident (Gyne), DDU Hospital examined the prosecutrix and prepared a detailed MLC Ex.PW-9/A. On local examination, hymen was found torn and tear on posterior fourchette and para urethral was seen.

10. PW-18 Dr. Aparana, Specialist Gynae MCD Dispensary Kalkaji, New Delhi, prepared the discharge summary Ex. PW-10/A1. She stated that the prosecutrix was examined under anaesthesia by Dr. Arpita and Dr. Preeti and they also found the same injuries as mentioned above and one more perineal tear extending 2 cm into vagina.

11. The contradictions of the witnesses as to the time when they reached the police station are minor in nature. The same do not affect the basic testimony of Ct. Sudhir who found the appellant along with the prosecutrix and took them to the police station whereafter the parents of the prosecutrix were called. The appellant was arrested after registration of FIR and thus the delay in formal arrest is duly explained. A bag on the shoulder does not form part of personal search of the accused and was not required to be reflected in the personal search memo. Non-examination of the person who saw the appellant taking away the prosecutrix does not affect the credible testimony of the prosecutrix, her parents and Ct. Sudhir. Further the version of the prosecutrix, her parents and Ct. Sudhir is corroborated by the MLC of the prosecutrix. Thus, I find no reason to interfere with the impugned judgment of conviction and order on sentence.

12. Appeal is accordingly dismissed.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

AUGUST 01, 2016
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