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

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Date of Decision : May 16, 2016

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CRL.A. 1208/2013

SAJJAN SINGH

..... Appellant

Represented by: Mr.Ankur Sood, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP
S.D.Sandeep Sharma, PS Vasant Kunj
(North)

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. I shall refer to the victim as : Hope.
2. Statement Ex.PW-1/A made by Chander Mohan to SI Nar Singh PW-7 on June 23, 2004 resulted in FIR Ex.PW-2/A being registered by HC Hawa Singh PW-2 for an offence punishable under Section 354 IPC. The reason being that in the statement Ex.PW-1/A, Chander Mohan disclosed that he was residing as a tenant with his family in a house at Gali No.13, Mahipal Pur Extension belonging to Sh.Manu Singh and was earning his livelihood by plying a TSR. Accused Sajjan Singh was also a tenant in the building. His children used to frequent Sajjan Singh's room to play. Hope, his daughter aged 6 years, told him that yesterday Sajjan uncle removed her underwear. He ignored the statement. But today morning his neighbour

Anita told him that when she went to the terrace to hang clothes for drying, she saw his daughter without an underwear.

3. Hope was taken to Safdarjung Hospital, where a Dr.Sonia Gumman examined her and wrote the MLC Ex.PW-7/A, proved at the trial by Sh.Abhay Ram, Record Clerk, because Dr.Sonia Gumman has left service, that on examination hymen was found to be intact. There was no injury on either the vulva, labia majora and minora. No other injury mark on the body was there. She recorded that vaginal swab from aria around vagina farosa and lower vagina was handed over to Ct.Deepa : Belt No.2290-SW.

4. Named as an accused, appellant Sajjan Singh was sent for trial for having committed an offence punishable under Section 354 IPC.

5. Evidence was recorded by the learned Metropolitan Magistrate and Chander Mohan appeared as PW-1. He deposed in sync with his statement Ex.PW-1/A. Anita, the neighbour referred to by Chander Mohan in his statement, appeared as PW-4 but did not support the case of the prosecution. So did one Bhushan who appeared as PW-5. But when Hope appeared as PW-9, then aged 14 years, she stated that after removing her underwear, the accused misbehaved with her. Because the learned Metropolitan Magistrate noted that Hope was hesitant to describe what has happened, she gave a pen and a piece of paper to Hope, who wrote Ex.PW-9/A, to the effect that after removing her undergarment the accused raped her.

6. I find that the word used by Hope in her writing Ex.PW-9/A is '*rape*'.

7. The case was therefore committed to Sessions. The charge of having committed an offence punishable under Section 376 IPC was framed against the appellant. Witnesses were re-examined.

8. Chander Mohan appeared as PW-1 and stood by his statement

Ex.PW-1/A. Having perused the cross-examination I find that the witness stands.

9. Anita appeared as PW-4 and did not support the case of the prosecution once again. But Bhushan, appearing as PW-5, somewhat supported the case of the prosecution by stating that many years ago when he was on the roof of the building he saw the accused kissing a girl aged about 6 years and he informed the family members.

10. Hope deposed before the Court of Sessions as PW-3 and stood by what she had deposed before the learned Metropolitan Magistrate.

11. In view of the aforementioned ocular evidence vide decision dated February 27, 2013 appellant Sajjan Singh has been convicted for having committed the offence of rape.

12. The only issue argued is whether it is proved that appellant raped Hope.

13. Regretfully, the learned Trial Judge has ignored the MLC Ex.PW-7/A. What happened to the vaginal swabs prepared as recorded in the MLC Ex.PW-7/A is unknown. FSL Report concerning the same, if at all the same were sent for forensic examination is not on record. No police officer has deposed of the vaginal swabs being deposited in the malkhana and therefrom taken to the Forensic Laboratory and brought back therefrom.

14. Hope was aged 6 years at the time of the incident and her deposition when she was 14 years that she was raped and the clarificatory question whether she understood what rape meant and her answer that she did, is contradicted by the MLC for the reason if a man attempts to insert his penis in the vagina of a 6 years old girl and assuming fails in the attempt there would be tenderness around the vulva. Besides, in the statement Ex.PW-1/A

the father of Hope has said that his daughter told him that the appellant had just removed her underwear. He has not even said that his daughter told him that she was either fondled or attempted to be raped or raped. Deposing in Court, Hope has said that after removing his clothes appellant laid her on the bed and raped her.

15. Aforesaid features of the evidence have been overlooked by the learned Trial Judge and thus I dispose of the appeal acquitting appellant of the charge punishable under Section 376 IPC. The appellant is convicted for having committed the offence punishable under Section 354 IPC, which clearly emerges from the testimony of the prosecutrix and what was disclosed by her father at the first instance to the Investigating Officer.

16. For the offence committed by him the appellant is sentenced to undergo imprisonment for the period already undergone which I find as per the nominal roll up to December 12, 2015 is 4 years, 3 months and 12 days and as of today would be 4 years, 8 months and 16 days. Remission earned is 5 months.

17. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

MAY 16, 2016
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