

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

% *Judgment Reserved on: September 23, 2016*  
*Judgment Delivered on: October 21, 2016*

+ **CRL.A. 1585/2011**

MANOJ BHAGAT ..... Appellant

Represented by: Mr. Jivesh Tiwari, Adv.

Versus

STATE ..... Respondent

Represented by: Mr. Hirein Sharma, APP with  
SI Mithlesh Yadav, PS  
Mukherjee Nagar.

**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**  
**MUKTA GUPTA, J.**

1. Manoj Bhagat challenges the impugned judgment dated 10<sup>th</sup> May, 2011 convicting him for offence punishable under Section 376(2)(f) IPC and the order on sentence dated 20<sup>th</sup> May, 2011 directing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹10,000/-.
2. Assailing the conviction learned Counsel for Manoj contends that the testimony of the prosecutrix does not inspire confidence as she has not stated in her statement that she was forced or threatened. The conduct of the appellant shows that he has been falsely implicated in the case as he was arrested from his house only and he did not run away.
3. Learned APP for the State on the other hand contends that the factum

of sexual intercourse has been proved by the evidence of PW-10, Dr. Payal Bajaj who stated that the hymen of the prosecutrix PW-1 was found torn.

4. FIR No. 314/2008 was registered under Section 376 IPC at PS Mukherjee Nagar on the complaint of the PW-2, mother of the prosecutrix, who stated that she worked as a maid servant in the kothies and her husband did a private job. She had four children and the prosecutrix PW-1 was her youngest daughter. On 7<sup>th</sup> September 2008 around 8:00 P.M., their neighbor Manoj the appellant herein came to their place to take some water. She asked Manoj to give her some cement which was lying at the place where he worked as a guard (chowkidar). Manoj told her to send some child so she sent the prosecutrix PW-1 along with him. After sometime, PW-1 prosecutrix came with the cement and while weeping told her that Manoj removed her underwear and also his pants and did 'ganda kaam', and when somebody called out Manoj, it was then he left the prosecutrix. She further stated that she did not come at night to make the complaint because her husband was at home. After consulting her husband, she brought the prosecutrix aged 10 years to the police station. She stated that Manoj had committed rape upon the prosecutrix, thus action be taken against him. PW-9, W/SI Mukesh Devi recorded this statement vide Ex. PW-2/A. PW-9 W/SI Mukesh Devi where after along with PW-2, PW-1 the prosecutrix and PW-4 Ct. Parshu Ram went to 34/2, Indira Vikas Colony from where Manoj was apprehended. Thereafter, the prosecutrix and Manoj were taken for medical examination to Hindu Rao Hospital. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. by PW-12 Shri Sanjay Jindal, ACMM, Dwarka vide Ex. PW-1/A.

5. After being satisfied that the prosecutrix was giving the statement

voluntarily and without any pressure or coercion, the prosecutrix was examined as PW-1. She deposed that on the 7<sup>th</sup> day of 2008, month she did not remember around 8:00 P.M., her mother had sent her with Manoj to take cement for filling up a pit in their house. Manoj took her to the upper floor of the house and did 'ganda kaam' with her. He removed his clothes and also removed her clothes and put his urinating portion in her urinating portion. Thereafter, somebody called him, so he brought her down and gave her cement. She came back to her house and narrated the incident to her mother. Her father was not at home. When her father came home, her mother told her father about the incident. She further stated that Manoj was known to her before the date of incident as he had been visiting their house. During her cross-examination, she stated that she had sustained injuries on her knee.

6. PW-2, mother of the prosecutrix, deposed in sync with her statement on the basis of which FIR was registered. She further stated that the underwear of the prosecutrix had blood stains. During her cross examination, she denied the suggestion that Manoj had caught them while they were stealing cement from the site and he warned them that he will lodge a complaint against them. She also denied the suggestion that in order to save themselves, she concocted the story and in connivance with her husband and the police, she has falsely implicated Manoj in the case.

7. PW-7, Inderjeet, father of the prosecutrix, corroborated the testimony of the prosecutrix 1 and PW-2.

8. PW-10, Dr. Payal Bajaj, Senior Resident, Obs and Gynae Department, Hindu Rao Hospital was deputed on behalf of Dr. Chavi Shukla who did the gynae examination of the prosecutrix. As per the MLC of the prosecutrix

Ex.PW-8/A, the hymen was torn. There was no discharge/hair/bleeding or injury. P/V just admits tip of index finger. No sign of any external injury was found.

9. PW-13 Dr. P. K. Jain, Specialist Radiologist, Hindu Rao Hospital, who examined the X-ray plates of the prosecutrix opined that the age of the prosecutrix was between 7-9 years as per the X-ray report Ex. PW-13/A.

10. Despite lengthy cross-examination of the prosecutrix nothing material could be elicited in favour of the appellant. Merely because as per FSL report Ex.PW-9/C no semen could be detected in the slides prepared from the vaginal smear of the prosecutrix, the same would not lead to an inference that no rape was committed on the prosecutrix who was a girl of tender age of 7-9 years. To constitute the offence of rape even partial penetration is sufficient. The fact that the appellant was arrested from his house on the next day of the incident and he did not abscond, would not lead to the inference that the appellant was innocent and he committed no offence. Further merely because of the fact that no injury was sustained by the prosecutrix, it cannot be said that rape was not committed upon the prosecutrix. By the cogent and convincing testimony of the prosecutrix, duly corroborated by the testimony of PW-2, and the MLC which shows that the hymen was torn, the prosecution has proved its case beyond reasonable doubt.

11. Thus, I find no infirmity in the conviction of the appellant for offence punishable under Section 376(2)(f) IPC and the order on sentence. Appeal is accordingly dismissed.

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

13. TCR be returned.

**(MUKTA GUPTA)**  
**JUDGE**

**OCTOBER 21, 2016**  
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