

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

% *Date of Decision : May 18, 2016*

+ **CRL.A. 1/2014**

SHRI PAPPU Appellant
Represented by: Mr.Manuj Aggarwal, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP
SI Neeraj Kumar, PS S.B.Dairy

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. The appellant Pappu was charged with having forcible sexual intercourse, for over a month, with his minor daughter aged 13 years; and not to disclose her identity I would be referring to the victim by a pseudo name : Ujjala, because her identity has not to be disclosed and I do not intend to reduce the helpless victim to a letter.
2. Notwithstanding the star witnesses, including Ujjala, turning hostile and which in the Indian environment is to be expected because a helpless family would reconcile with the circumstance of dependence and a minor daughter, barely into her teens, would succumb to family pressure; which in turn would be influenced by societal pressures, conviction has been returned on the basis of FSL report Ex.PW-10/A and Ex.PW-10/B.
3. It all started when DD No.27A, Ex.PW-11/A was recorded at

P.S.Shahbad Dairy at 6.40 P.M. to the effect that a 13 years old girl had confided to her maternal grand-mother that her father had raped her, which information was conveyed by the police control room to the duty officer at the police station and investigation was entrusted to SI Satya Narayan PW-11, who took along with him Ct.Leelu Ram PW-8 and proceeded to the spot, but as deposed to by him met Leela Devi along with her grand-daughter Ujjala and therefore he recorded Ujjala's statement Ex.PW-6/A at the gate of the police station itself in which she disclosed that for the first time on September 27, 2011, in the absence of her mother, her father, and we use the expression in vernacular used by the young girl : *ched chad ki*, and stripped her naked and thereafter did '*galat kaam with her*'. Thereafter at regular interval her father repeated the act of '*galat kaam*'. Last time her father committed '*galat kaam*' with her on October 18, 2011. On October 19, 2011 when her maternal grand-mother came to her house she conveyed said fact to her maternal grand-mother who in turn informed the police on October 20, 2011.

4. Making an endorsement Ex.PW-11/B beneath Ujjala's statement, FIR Ex.PW-2/A for an offence punishable under Section 376 IPC was registered.

5. Entrusted to W/Ct.Sudesh PW-5 Ujjala was sent for medical examination to Maharishi Valmiki Hospital in the company of her maternal grand-mother where Dr.N.Masand PW-1, the Medical Officer examined Ujjala and recorded the MLC Ex.PW-1/A and referred Ujjala for gynaecological examination. Dr.Ekta Kale PW-12, another medical officer at the hospital, working as a senior gynaecologist examined Ujjala and she wrote her opinion on the MLC Ex.PW-1/A from point 'X' to 'X' and signed

the same at point mark 'A'. She wrote that abdominal examination showed no soft injury. Local examination showed that the hymen of Ujjala was ruptured and admitted one little finger easily. She took two swabs from the vagina of Ujjala, her urine sample, blood samples, few strands of pubic hair, rectal swab and making slides or putting them in vials, along with the under garment of Ujjala handed over the same to the investigating officer. The same were sealed and deposited in the malkhana.

6. The appellant was apprehended and taken to Maharishi Valmiki Hospital where he was examined by Dr.C.Healer PW-3. As per MLC Ex.PW-3/A he was opined to be capable of sexual intercourse. Samples of his blood (two in number), pubic hair and penile swab was taken by Dr.C.Healer and handed over to the investigating officer.

7. All the exhibits were sent for DNA analysis.

8. Ujjala was produced before Sh.Neeraj Gaur, PW-4, Metropolitan Magistrate, Delhi on October 21, 2011 and her statement under Section 164 Cr.P.C. was recorded. As per which she once again indicted her father. At the trial the learned Magistrate has proved the proceedings held by him, which include Ujjala statement as Ex.PW-4/C.

9. As per DNA report Ex.PW-10/A, the description of the sources, DNA examination, result of examination and conclusion are as under:-

“DESCRIPTION OF THE SOURCE

Forensic Sample received on 04/05/2012

Parcel 1 : One envelope sealed with the seal of 'MS MB HOSPITAL POOTH KHURD' CONTAINING EXHIBIT '1a', '1b', '1c', '1d', '1d', '1e', '1f' & '1g' said to be of victim (name withheld).

Exhibit 1a : One microslide having faint smear wrapped in leucoplast labelled as 'Vaginal slide'.

Exhibit 1b : A piece of wet cotton wool swab on a small wooden stick kept in an injection vial labelled as 'Vaginal swab'.

Exhibit 1c : One test tube labelled as 'Blood sample vial' is returned unexamined.

Exhibit 1d : One test tube labelled as 'Blood sample EDTA vial' is returned unexamined.

Exhibit 1e : One injection vial labelled as 'Urine sample' is returned unexamined.

Exhibit 1f : One injection vial labelled as 'Pubic hair' is returned unexamined.

Exhibit 1g : One injection vial labelled as 'Rectal swab' is returned unexamined.

Parcel 2 : One envelope sealed with the seal of 'MS MB HOSPITAL POOTH KHURD' labelled as 'inner garments underwear', is returned unexamined.

Parcel 3 : One envelope sealed with the seal of 'MS HOSPITAL POOTH KHURD' labelled as 'penile smear', is returned unexamined.

Parcel 4 : One envelope sealed with the seal of 'MS HOSPITAL POOTH KHURD' containing exhibit '4'.

Exhibit 4 : A piece of gauze cloth having greenish brown stains described as 'Blood of accused Pappu'.

Parcel 5 : One envelope sealed with the seal of 'MS MB HOSPITAL POOTH KHURD' labelled as 'pubic hair' is returned unexamined.

Parcel 6 : One envelope sealed with the seal of 'MS MB HOSPITAL POOTH KHURD' labelled as 'blood sample in EDTA vial', is returned unexamined.

DNA EXAMINATION

The exhibits '1a', '1b' & '4' were subjected to DNA isolation. DNA was isolated from the source of exhibits '1a', '1b' & '4'. DNA profile was generated from the source of exhibits '1a', '1b' & '4' by using AmpFL STR MiniFiler PCR amplification Kit. STR analysis was used for each of the sample. Data was analyzed by using GeneMapper ID-X Software.

RESULTS OF EXAMINATION

The alleles from the source of exhibit '4' (Blood gauze of accused Pappu) are accounted in the alleles from the source of exhibit '1a' (Microslide) & '1b' (Cotton wool swab).

CONCLUSION

The DNA profile of exhibit '4' (Blood gauze of accused Pappu) are similar with DNA profile from the source of exhibits '1a' (Microslide) & '1b' (Cotton wool swab)

ENCLOSURE

Annexure- Allele chart of Exhibits '1a', '1b' & '4'.

Note

- 1. Remnants of the exhibits have been sealed with the seal of AKS FSL DELHI.*
- 2. The exhibits '1a', '1b' & '4' were sufficient to conclude the results of the case.*

As per Genotype analysis for establishing identify of accused using MICROSATELLITES reads as under:-

(i) D21S11, (ii) D7S820, (iii) CSF1PO (iv) D13S317 (v) D16S539 (vi) D2S1338 (vii) D18S51 (viii) FGA & AMELOGENIN

<i>Loci</i>	<i>Microslide</i>	<i>Cotton Wool Swab</i>	<i>Blood gauze of accused</i>
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	<i>Exhibit '1a' Allele Data</i>		<i>Exhibit 1b' Allele Data</i>		Pappu <i>Exhibit '4' Allele Data</i>	
D21S11	31.2	31.2	31.2	31.2	31.2	31.2
D7S820	8	8	8	8	8	8
CSF1P0	12	12	12	12	12	12
D13S317	11	11	11	11	11	11
D16S539	11	13	11	13	11	13
D2S1338	20	25	20	25	20	25
D18S51	12	16	12	16	12	16
FGA	23	24	23	24	23	24
AMELOGENIN	X	Y	X	Y	X	Y

*The allelic date of the source of the exhibit 4 are ACCOUNTED
in the allele date of the source of exhibit 1a & 1b”*

10. A perusal of the DNA report Ex.PW-10/A and the allelic data Ex.PW-10/B evinces that the DNA profile of exhibit ‘4’ (blood gauze of accused Pappu) are concluded and held to be similar with DNA profile from the source of exhibits ‘1a’ (Microslide labelled as vaginal slide of prosecutrix) and ‘1b’ (cotton wool swab, labelled as vaginal swab of prosecutrix). As per the allelic date Ex.PW10/B, the allelic date of the source of the exhibit ‘4’(blood gauze of accused Pappu) is held to be accounted in the allelic date of the source of exhibits ‘1a’(Microslide labelled as vaginal slide of prosecutrix) and ‘1b’ (cotton wool swab, labelled as vaginal swab of prosecutrix).

11. At the trial, Ujjala said that she made a false complaint against her father because her father had seen her talking with a boy and he objected to the same and gave her a beating. This made her angry. The false report was her retribution. Her maternal grand-mother Sheela Devi PW-7, backed the statement of her grand-daughter stating that her grand-daughter had complained to her that her father gave her a beating and being illiterate she

could not understand and therefore told her niece Kanchan to ring up the police.

12. Conviction has been returned by the learned Trial Judge vide impugned judgment dated July 11, 2013, which for reasons I cannot fathom spans 65 pages, and with respect to the learned Trial Judge is fairly defused, repeat with case law concerning hostile witnesses etc. etc. The conviction has been returned on the basis of DNA report Ex.PW-10/A and Ex.PW-10/B.

13. Since during arguments no issue was raised concerning custody of the exhibits seized during investigation by the Investigating Officer, I proceed to note and simultaneously deal with the arguments advanced.

14. In the teeth of Ujjala's MLC Ex.PW-1/A and the writing from point 'X' to 'X' duly proved at the trial by Dr.Ekta Kale establish beyond a shadow of doubt that Ujjala had been subjected to repeated sexual intercourse. Her hymen was ruptured and admitted of one little finger easily. Ujjala was aged only 13 years. The DNA Report Ex.PW-10/A and Ex.PW-10/B duly proved by its author Sh.A.K.Shrivastava PW-10, Deputy Director, DNA Unit, Rohini establishes that the alleles from Ex.4, blood gauze of Pappu, were accounted for in the alleles from the source of Ex.1a (micro slide) and Ex.1b (cotton wool swab) prepared from samples taken from the vaginal region of Ujjala.

15. In the decision reported as (2014) 2 SCC 576 Nandlal Wasudeo Badwaik Vs. Lata Nandlilal Badwaik & Anr. the Supreme Court held (refer para 13) it is well-recognized that the result of genuine DNA test is scientifically adequate. In said decision since it was nobody's case that the

result of the DNA test was not genuine, the Court proceeded on an assumption that the result of the DNA test is accurate. The result showed that the appellant therein was not the biological father of the girl child. The decision was followed in the decision reported as (2014) 5 SCC 509 Dharam Deo Yadav Vs. State of Uttar Pradesh.

16. The argument that PW-10 did not subject exhibit Ex.1c to Ex.1g to DNA analysis and thereby depriving Pappu the opportunity of a possible exculpatory evidence surfacing if DNA extracted therefrom did not match that of Pappu, is noted and rejected because there was no need to further subject such exhibits as were lifted from the person of Ujjala or her underwear to DNA analysis, if the micro slide from the vaginal slide and vaginal swab yielded DNA and it matched with that of Pappu, save and except Ex.1g because it was the rectal swab and if human semen matching in DNA profile to that of Pappu was detected, offence of unnatural sex would also have been made out.

17. Argument based on the law declared by a Division Bench of this Court in the decision reported as 2010 (2) JCC 1143 Arun Kumar Rao Vs. State of NCT of Delhi that Ex.PW-10/A and Ex.PW-10/B cannot be used against Pappu because while examining him under Section 313 Cr.P.C. the incriminating circumstance emerging therefrom was not put to him is noted and rejected because question No.18 put to him that the two reports show that DNA profile generated from Pappu's blood was accounted in the alleles from Ex.1a and Ex.1b.

18. The decision reported as 2014 (1) SCR 9 Hem Raj Vs. State of Haryana is also not applicable for the reason in said case though FSL Report

showed semen detected on the salwar of the prosecutrix and the underwear of Hem Raj, acquittal was on account of the vacillating stand of the prosecutrix. It was not a case where DNA matched.

19. Before terminating my discussion I need to comment upon the summersault made by Ujjala and her maternal grandmother Sheela Devi. That both of them were compelled to lie is apparent from the fact that Ujjala threw no light on how come her hymen was ruptured and her vagina admitted with ease a finger. Howsoever innocent Sheela Devi would be, surely she would understand the difference between her granddaughter simply howling and howling with shame, fear and pain disclosing that her father had been raping her. Where explanation given by a victim and a near relative is so patently absurd that no rational person would accept the same, forensic evidence and that too of an unimpeachable character would suffice to sustain a charge.

20. The appeal is accordingly dismissed.

21. TCR be returned.

22. Copy of this decision be sent to the Superintendent Central Jail Tihar for updation of the jail record.

(PRADEEP NANDRAJOG)
JUDGE

MAY 18, 2016
skb/mamta