

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

**RESERVED ON : 22nd JULY, 2016
DECIDED ON : 04th AUGUST, 2016**

+ CRL.A.1331/2015 & CRL.M.B. 8338/2015

YOGESH

..... Appellant

Through : Mr.Sumeet Verma, Advocate with
Mr.Abhijeet Sharma, Advocate.

versus

THE STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The instant appeal has been preferred by the appellant – Yogesh to challenge the legality and correctness of a judgment dated 27.08.2013 of learned Addl. Sessions Judge in Sessions Case No.43/2010 arising out of FIR No.68/2012 PS New Ashok Nagar by which he was held guilty for committing offences punishable under Sections 376/377 IPC. By an order dated 03.09.2013, he was sentenced to undergo RI for ten years with fine ₹2,000/- under Section 376 IPC and RI for five years with fine ₹1,000/- under Section 377 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that for about two years prior to 27.02.2012 at House No.B-698, New Ashok Nagar, the appellant, Victim X's step father (assumed name)

committed rape and carnal intercourse upon her. Police machinery came into motion on getting information vide DD No.36A (Ex.PW-11/A) on 27.02.2012 at 2113 hours to the effect that an 'individual' was being beaten by public and he had committed rape upon a girl aged around 12 years. The investigation was handed over to SI Nitin Kumar who along with Const. Jagdish went to the spot. After recording statement of the victim's mother (Ex.PW-1/A), the Investigating Officer lodged First Information Report. 'X' was medically examined; she recorded 164 Cr.P.C. statement. The accused was arrested. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the accused for commission of the aforesaid offences. In order to establish its case, the prosecution examined eleven witnesses and relied on various documents. In 313 Cr.P.C. statement, incriminating material appearing against the accused was put; he denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. Appellant's counsel urged that material discrepancies in the case of the prosecution emerging on record were ignored without cogent reasons. The prosecution was unable to establish if any 'legal' marriage had taken place between the victim's mother Rakesh and the appellant; the appellant was not victim's step-father. Since the appellant used to object victim's objectionable relations with the boy living in the neighbourhood, he was falsely implicated in the instant case. No injuries were found on the victim's body during her medical examination. Learned Addl. Public Prosecutor urged that the findings of the Trial Court based upon fair

appreciation of the evidence warrant no interference. The prosecutrix and her mother have categorically implicated the appellant for the crime and there are no sound reasons to discard their cogent and reliable testimonies.

4. Admitted position is that PW-1 (Rakesh), victim's mother was earlier married to one Subhash in 1985; Subhash expired in 2000. Thereafter both the appellant and PW-1 (Rakesh) started living together in the village. About ten years before, they shifted to Delhi and continued to live together. True, the prosecution did not collect any document to show formal marriage between the two, the fact remains that both the petitioner and PW-1 (Rakesh) were living as 'husband' and 'wife'. The prosecutrix always treated the appellant as her 'step-father'. On the day of occurrence also all of them were living together. It is also admitted that PW-1 (Rakesh) was employed in a private company at Sector-7, Noida. She used to remain present at her place of work from morning to late evening. On the day of occurrence i.e. 27.02.2012 as usual PW-1 (Rakesh) returned to her house at about 07.30 p.m. The accused was not available in the house. Her efforts to contact him on mobile proved unsuccessful as he had switched it off. Subsequently, he was brought at the spot by the public who had thrashed him. PW-3 'X' had gone to PW-2 (Renu)'s house after the incident.

5. In the initial information conveyed to the police vide DD No.36A (Ex.PW-11/A), there was specific mention that an 'individual' identified as the appellant was being given beatings by public and he had committed rape upon a girl aged around 12 years. In her complaint (Ex.PW-1/A), victim's mother gave detailed account and disclosed as to how and under what circumstances, the appellant used to sexually abuse her daughter 'X' aged around 12 years for the last two years. In her 164 Cr.P.C.

statement (Ex.PW-3/A) recorded on 28.02.2012, 'X' categorically implicated the appellant to be the author of crime. She informed the learned Presiding Officer that in the absence of her mother, the accused used to sexually abuse her for the last about two years and had committed rape upon her several times. She further informed that on the day of occurrence i.e. 27.02.2012, the accused had consumed liquor. He had attempted to commit rape upon her after putting her in fear. She ran out crying and bolted the room from outside. Thereafter, she narrated the incident to her neighbour PW-2 (Renu). When her mother returned home in the evening, she apprised her about the incident.

6. In her Court statement, 'X' in her examination-in-chief recorded on 31.10.2012 deposed that on 27.02.2012 at around 02.30 - 03.00 p.m., she and the accused were present in the house while her two sisters were away to tuition; her mother had gone on her duty. After consuming liquor, the accused had done "Jabardasti" with her and tried to remove her clothes. On her excuse to go to bathroom, the accused released her. She ran out of the house after bolting the door from outside and went to Renu's residence residing nearby. When her mother returned at 07.30 p.m. she came out of the house of her aunt and told her mother about the incident who lodged the complaint.

7. The prosecutrix was declared hostile and was cross-examined by the learned Addl. Public Prosecutor after Court's permission. In the cross-examination, she admitted that the accused had committed rape upon her for the last about two years after putting her in fear. The accused used to come to the house after consuming liquor and commit rape upon her. Due to fear, she did not tell anything to anybody. She further elaborated that on

some occasions the accused had inserted penis inside her mouth; he had inserted it inside her rectum on two or three times. In the cross-examination, she denied to have any objectionable relationship with a boy who lived in House No.700 along with his brother. She denied if the accused used to restrain her from having relations with the said boy. She further denied if the accused was falsely implicated as she and her mother wanted to get rid of him. She denied that false statement was given by her at PW-2 (Renu)'s behest.

8. On scrutinizing the entire statement of the victim, it can be inferred with certitude that no worthwhile discrepancies or infirmities could be extracted in her cross-examination. No ulterior motive was assigned to the child witness aged around 13 years to falsely implicate her own step-father upon whom they all were dependent for their livelihood. No serious quarrel had taken place prior to the incident forcing the victim to suddenly level serious allegations of sexual assault upon her on 27.02.2012. On that day, her mother, as usual, had gone to her place of work. At about 02.30 – 03.00 p.m. the accused after consuming liquor attempted to commit rape upon the prosecutrix. She saved herself pretending to go to washroom. She was intelligent enough to bolt the room from outside to prevent the appellant to chase her. She went to PW-2 (Renu)'s house and apprised her about the entire incident. She in turn informed PW-1 (Rakesh) on her return in the evening. The accused did not deny his presence inside the house at the relevant time. He was thrashed by the individuals and this fact has not been challenged in the cross-examination. The accused did not furnish any reason as to why the public had given beatings to him. The version given by the prosecutrix is consistent throughout. At no stage, she alleged commission of

rape on 27.02.2012. Her plea was that on that day an attempt was made by the accused to commit rape upon her but the attempt was failed by her by pretending to go to washroom. The statement given by PW-1 (Rakesh), her mother, in the Court about her rape upon 27.02.2012 is inconsequential as she was not a witness to the incident. After the prosecutrix was able to save herself from an attempt to rape on 27.02.2012, she spilled the beans and informed that the accused used to sexually abuse her for the last about two years taking advantage of her loneliness in the house.

9. The defence taken by the appellant does not inspire implicit confidence as at no stage he lodged any complaint against any 'boy' to have physical objectionable relations with her daughter. The accused did not give any definite and specific date when he had allegedly found both of them in objectionable relationship/ position. The allegations that the prosecutrix had established physical relations with the said boy are without any foundation and cannot be taken as correct.

10. The statement of the prosecutrix has been corroborated in material particulars by PW-2 (Renu) and PW-1 (X's mother). Medical evidence is consistent with ocular testimony. Soon after the occurrence on 27.02.2012 the prosecutrix was medically examined vide MLC (Ex.PW-8/A). It records the alleged history wherein the victim herself had informed that her step-father used to abuse her for the last about two years in the absence of her mother. In the MLC (Ex.PW-8/A), X's hymen was found torn. Since victim was not ravished on 27.02.2012, there was least possibility of her sustaining injuries on her body including private parts.

11. X's age is not under challenge. Besides this, PW-4 (Mukta Kumar), Vice Principal, Rajkiya Sarvodya Kanya Vidhyalya, B Block, New

Ashok Nagar, Delhi, has proved the Transfer Certificate as well as relevant entry in the admission and withdrawal register (Ex.PW-4/A and Ex.PW-4/B respectively). X's date of birth recorded therein was 15.10.1988. Apparently, the victim was below 16 years of age and her consent (if any) to have physical relations with the appellant was immaterial.

12. In the absence of any prior animosity or ill-will, the prosecutrix, appellant's step-daughter living with him for the last about ten years is not expected to level serious allegations of rape against her own father. She was not going to be benefitted by making so serious imputations. No sound reasons exist to disbelieve or suspect her version. Strained relations between the appellant and victim's mother over petty issues were not enough to prompt or force the tiny girl to implicate her father. It is unbelievable that PW-1 (Rakesh) would use her own daughter to settle minor issues (if any) with the appellant and put her honour at stake.

13. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. He did not name the 'boy' with whom the prosecutrix had any unwanted relationship. He did not elaborate as to why the prosecutrix or her mother wanted to get rid of him. The impugned judgment based upon fair appreciation of the evidence deserves no intervention. Minor discrepancies and contradictions that do not go to the root of the case can be ignored. The conviction is affirmed.

14. The Sentence Order is based upon fair reasoning. The victim was a child aged around 13 years and the perpetrator of crime was her own step-father who exploited her innocence and committed rape upon her several times taking advantage of her innocence and loneliness. 'X' was not

aware about the consequence of the act and even her consent under fear was of no relevance.

15. In the light of above discussion, I find no merit in the appeal and it is dismissed. Pending application also stands disposed of. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

AUGUST 04, 2016 / tr

