

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

% *Judgment Reserved on: September 27, 2016*
Judgment Delivered on: October 20, 2016

+ **CRL.A. 1260/2015**

TEJ NARAIN @ NARAIN Appellant
Represented by: Mr. K. Singhal, Adv.

versus

STATE Respondent
Represented by: Mr. Hirein Sharma, APP for
the State.

+ **CRL.A. 10/2016**

SUKHIYA Appellant
Represented by: Ms. Rakhi Dubey, Advocate.

versus

STATE Respondent
Represented by: Mr. Hirein Sharma, APP for
the State.

+ **CRL.A. 1381/2015**

RAM UDAGAR Appellant
Represented by: Mr. Jivesh Tiwari, Adv..

versus

STATE Respondent
Represented by: Mr. Hirein Sharma, APP for
the State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vide impugned judgment dated August 1, 2015, Tej Narain alias Narain, the appellant in Crl. A. 1260/2015, Sukhiya, the appellant in Crl. A.

10/2016 and Ram Udagar, the appellant in CrI. A. 1381/2015 were convicted for offence punishable under Section 366 read with Section 109 IPC. Tej Narain and Ram Udagar were also convicted for offence punishable under Section 376(2)(f) IPC. Sukhiya and Ram Udagar were also convicted for offence punishable under Sections 363/365 read with Section 34 IPC and Section 506 IPC. Vide order on sentence dated August 5, 2015, Tej Narain and Ram Udagar were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹15,000/- each for offence punishable under Section 376(2)(f) IPC. Tej Narain, Sukhiya and Ram Udagar were sentenced to undergo rigorous imprisonment for period of seven years and to pay a fine of ₹10,000/- each for offence punishable under Section 366 read with Section 109 IPC. Sukhiya and Ram Udagar were also sentenced to undergo rigorous imprisonment for period of seven years and to pay a fine of ₹10,000/- each for offence punishable under Section 363/34 IPC and rigorous imprisonment for period of seven years and to pay a fine of ₹10,000/- each for offence punishable under Section 365/34 IPC.

2. Learned counsel for Tej Narain contends that the learned Trial Court failed to consider the fact that the prosecutrix neither named Tej Narain nor alleged any incident of rape by him in her statement recorded under Section 164 Cr.P.C. Thus, there was material improvement in her deposition before the Court. Further the investigation was faulty and the investigating officer did not collect any evidence from the village which would have proved the innocence of Tej Narain.

3. Learned counsel for Sukhiya contends that it is implausible that Sukhiya will facilitate her husband Tej Narain to commit rape upon the prosecutrix. Sukhiya had taken the prosecutrix to the police station as stated

by the prosecutrix herself in her statement recorded under Section 164 Cr. P.C. There is no whisper in the complaint that the prosecutrix sought action against Sukhiya. It is thus prayed that Sukhiya be acquitted or in the alternative she be released on the period already undergone.

4. Learned counsel for Ram Udagar contends that the testimony of the prosecutrix cannot be relied upon because she is not a reliable witness. The prosecutrix has falsely implicated the appellants at the behest of her parents and the motive is evident from the testimony of prosecutrix and her father. On the medical examination, no injury was found on the body of the prosecutrix. Learned Trial Court failed to consider that the prosecutrix did not raise any alarm when she allegedly accompanied the appellants to Bihar. Lastly, it is contended that the prosecution failed to produce the birth certificate of the prosecutrix to prove her age.

5. Per contra learned APP for the State submits that there are no grounds to believe that the prosecutrix has falsely implicated Ram Udagar and Sukhiya at the instance of her parents when she was on good terms with the above two appellants than her parents. Version of the prosecutrix that she was raped is supported by the evidence of PW-2 the doctor concerned, who stated that the hymen was ruptured. Furthermore, the FSL report fortifies the above stated facts as semen was detected on the clothes of the prosecutrix and nikker of the appellant.

6. FIR No. 164/2011 was registered under Section 363 IPC at PS Alipur on the complaint of PW-9, father of the prosecutrix vide Ex.PW-3/A on May 13, 2011, who stated that on May 9, 2011, at about 8:00 A.M., the prosecutrix, PW-4 had gone outside the house to play but did not return. He searched her but could not found her. On May 25, 2011, during the course of

investigation, the prosecutrix was found at the house of Ram Udagar and Sukhiya, who were also present in the house. They were apprehended and taken to the police station. The prosecutrix was taken to SRHC Hospital where she was medically examined. Thereafter, the statement of the prosecutrix was recorded by learned Metropolitan Magistrate under Section 164 Cr.P.C exhibited as Ex. PW- 4/A. On August 29, 2011, Tej Narain, who was absconding, was apprehended on the basis of information received from a secret informer.

7. During the course of trial, PW-13, Sh. Jogi Lakra, Principal, MCD Primary School, Jind Pur, furnished the copy of admission register Ex. PW-13/A, copy of 'Shapath Patra' Ex. PW-13/B and copy of application form Ex. PW-13/C and stated that the date of birth of the prosecutrix, as per the school records, was 1st April, 2002.

8. After satisfying that the PW-4 who was aged about 9 years at the time of incident, was capable and competent to depose correctly about the incident, the learned Additional Special Judge recorded her statement. PW-4 stated that she knew Ram Udagar and Sukhiya as they were residing near her house. She used to go to their house for playing. She also knew Tej Narain as he used to come to the house of Sukhiya. Sometimes, at night she used to sleep in the house of Ram Udagar and Sukhiya. She deposed that Ram Udagar had committed rape upon her many times in his house at night. When Sukhiya had sent her to Bihar with Tej Narain, Tej Narain also committed rape upon her in the village in Bihar during day time as well as at night. Tej Narain committed rape upon her for three days. When Sukhiya and Ram Udagar came to the village, Ram Udagar took her to the fields and committed rape upon her. Ram Udagar had threatened her not to disclose

about it to anyone. When the prosecutrix narrated the entire incident to Sukhiya, she also threatened her not to disclose about it to anybody. During her cross-examination, she denied the suggestion that she had gone voluntarily with Tej Narain.

9. PW-9, father of the prosecutrix, corroborated the testimony of the prosecutrix. During his cross-examination, he stated that he had gone to the house of Ram Udagar and Sukhiya to find the prosecutrix when she had gone missing but the prosecutrix was not there.

10. PW-2, Dr. Hema, Incharge Obs. & Gynae, Satyawadi Raja Harish Chander Hospital, deposed on behalf of Dr. Arti Garg who had examined the prosecutrix and prepared the medical examination report for sexual exploitation Ex. PW-2/A. As per this report, the physical indicator of sexual assault was ruptured hymen and the injury on hymen was stated as recent.

11. PW-5, Manisha Upadhyaya, Senior Scientific Officer (Biology), FSL, prepared the report of Biology Division Ex. PW-5/A and serological report Ex. PW-5/B. Semen was detected on the shirt and salwar of the prosecutrix and on one dirty nikker described as 'undergarment'.

12. Present is a case where a young girl aged 9 years unwanted in her family due to step mother went for solace and comfort to the house of Ram Udagar and Sukhiya who though saved her from the beatings of her parents and gave her food to eat but betrayed the trust as Ram Udagar found her an easy prey to satisfy his lust. Not only she was ravished by Ram Udagar but Sukhiya sent her with Tej Narain to a village in Bihar so that he could satisfy his lust, which he did and brought her back only when the father of the prosecutrix lodged a report.

13. Contention of learned counsel for the appellants that they have been

falsely implicated due to inimical relationship with the parents of the prosecutrix is belied by the version of the prosecutrix who spoke every fact fairly and truly as a innocent child. The prosecutrix fairly admitted that she was having a step mother who used to beat her and Sukhiya used to save her from beatings. She also admitted that in order to avoid beatings, she used to stay even for three-four days continuously at the house of Sukhiya. She also admitted that Ram Udagar used to get things to eat for her also when he brought it for his children. Even though she admitted that her parents threatened to teach lesson to Ram Udagar and Sukhiya, however that does not mean that she was inimical to Ram Udagar and Sukhiya.

14. The case of the appellants is that the prosecutrix voluntarily went to Bihar with Tej Narain which ignores the fact that the prosecutrix was a minor girl aged 9 years whose consent was not material, the age of the prosecutrix having been proved by PW-13. Version of the prosecutrix qua the offence of kidnapping is corroborated as she had to be brought back from Bihar and qua the offence of rape by her MLC and the FSL report.

15. Considering the evidence on record, I find no infirmity in the impugned judgment of conviction and order on sentence. The appeals are accordingly dismissed.

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

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 20, 2016
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