

\$~R-20

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

% *Date of Decision: November 13, 2017*

+ **CRL.A. 130/2011**

GUGAN

..... Appellant

Through: Mr.Siddharth Aggarwal &
Mr.Gautam Gandhi, Advocates

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State

PRATIBHA RANI, J. (Oral)

1. This appeal has been preferred by the appellant challenging the judgment dated 19th November, 2009 and order on sentence dated 21st November, 2009 whereby he has been convicted for committing the offence punishable under Section 376 IPC and sentenced to undergo RI for a period of 7 years and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo SI for 6 months.

2. Briefly stating, case FIR No.601/07 was registered on the basis of statement made by Kumari 'A' (name withheld to conceal her identity) aged about 17 years to the effect that her mother had expired a year ago and after the completion of her last rites (Tehravi) her father used to sexually abuse her and on resistance from her, he used to beat her and do 'galat kaam' with her. Her father had committed 'galat kaam' with her the day before she reported the incident. When she informed the residents of the locality, somebody informed the

PCR. The police came and took her and her father to the hospital where their medical examinations were conducted. Her statement under Section 164 CrPC was also got recorded and after completion of investigation, charge-sheet was filed.

3. The appellant pleaded not guilty to the charge framed. The prosecution examined 12 witnesses in all to prove its case. The appellant has also been examined under Section 313 CrPC to explain the incriminating evidence appearing against him wherein he has denied the case of prosecution and stated that he has been falsely implicated in this case.

4. It is now settled principles of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

5. In the instant case, PW-5 'A', the prosecutrix had stated that after the death of her mother, her father raped her thrice in the year 2007. She informed this incident to her neighbour (PW-1, Poonam), who was residing just opposite to her house. She addressed her as Aunty. The police came to the spot and took her to the hospital along with PW-1, Poonam. Thereafter, she was produced before the Court where her statement Ex.PW-5/A was recorded before the learned Magistrate. FIR was registered on her complaint Ex.PW-5/B on which she had put her thumb impression.

6. In the complaint Ex.PW-5/B, which formed basis of the registration of FIR No.610/2007, she had stated that after the death and last rites (Tehravi) of her mother, her father used to wake her up during night and after removing her clothes used to commit *galat kaam* with her. Whenever she resisted saying that no father would do such type of act with her daughter, her father used to beat her. Two days prior to the registration of the FIR when her father again did *galat kaam* with her, she informed the residents of the Gali. Somebody informed the PCR and thereafter, she was sent for medical examination. She made statement Ex.PW5/B to the police. The endorsement on the rukka sent by SI Kadar Nath Pandey is to the effect that on receiving DD No.19A he along with Constable Goverdhan reached on the spot where he met with the prosecutrix and her neighbour PW-1, Poonam. The prosecutrix, PW-5 was taken to AIIMS for her medical examination where her MLC was prepared.

7. PW-1, Poonam, the neighbour of the prosecutrix has stated that on 21st June, 2007 in the evening, PW-5 'A' came out running from

her house and she was crying. She informed that her father was doing wrong act with her and she explained the wrong act to her that her father had been committing rape with her. Several persons gathered there and somebody from the neighbour informed the Police Control Room. Police reached the spot and prosecutrix 'A' as well as appellant were taken to AIIMS. She accompanied the prosecutrix to AIIMS where her consent was obtained by the doctor for medical examination of 'A'.

8. On the MLC Ex.PW-5/C of the prosecutrix, the alleged history given by her was that she being sexually assaulted by her father.

9. PW-9 Dr.Basil, who examined the prosecutrix 'A' and prepared her MLC Ex.PW5/C, when appeared before the Court has stated that he has examined the prosecutrix 'A'. On examination, the hymen was found to be ruptured. Some fluid stains were seen in genital area. He has also stated that he opined on the MLC Ex.PW5/C at point 'S' that there was a possibility of sexual assault.

10. The appellant/accused in his statement under Section 313 Cr.P.C. has denied the prosecution evidence in simplicitor and has not led any evidence in his defence. The only suggestion given to PW-1 and PW-5 for his false implication is that the prosecutrix used to spend more time with PW-1, her neighbour and this was to the annoyance of the appellant.

11. The appellant does not dispute that his wife had expired and the prosecutrix was 16-17 years old at that time.

12. Proximity with a neighbour and that too a female could not be a reason for him to feel annoyed. The prosecutrix, PW-5 has admitted

that after having dinner, she used to have a stroll in the *gali* with Poonam Aunty (PW-1) and she used to come late by 11.00 or 11.30 pm for which her parents used to scold her but that itself could not be a motive for her to implicate her own father in a serious offence of rape. This is a case where the appellant/father has been named to be a person who has committed rape on his own daughter, who was staying with him. After the death of the mother, the prosecutrix had no support system except her father and she would not blame her own father for committing rape on her.

13. While dealing with the case of the rape wherein the offender is none else but the father, the version of the prosecutrix can be accepted without any corroboration. In the statement of the prosecutrix there are no material contradictions except about the date or the month. This Court cannot ignore that she is illiterate and put her thumb impression on the complaint as well as on FIR. She being an illiterate person may not be able to give specific date and time or the month or the year.

14. From the evidence coming on record, it is established that PW-5, 'A' was subjected to rape by the appellant. The medical evidence corroborated the testimony of the prosecutrix to the extent that her hymen was found ruptured. Minor contradictions or discrepancy appearing in her statement as pointed out by learned counsel for the appellant cannot be treated a ground for disregarding otherwise reliable testimony which proved the prosecution case beyond reasonable doubt.

15. In the case reported as Madan Gopal Kakkad vs. Naval Dubey, (1992) 3 SCC 204, it was observed that even in cases wherein there is

lack of oral corroboration to that of a prosecutrix, a conviction can be safely recorded, provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

16. In view of the above discussion, the impugned judgment does not suffer from any illegality. The appeal has no merit and the same is hereby dismissed.

17. LCR be sent back alongwith copy of this order.

18. A copy of this order be sent to the concerned Jail Superintendent for information.

NOVEMBER 13, 2017
'pg'

PRATIBHA RANI
(JUDGE)

न्यायमेव जयते