

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

% *Judgment Reserved on: August 08, 2017*
Judgment Delivered on: August 16, 2017

+ **CRL.A.227/2017**

RAVI @ BIRE Appellant

Through: Mr. S.K. Sethi and Ms. Dolly
Sharma, Advocates.

versus

STATE Respondent

Through: Ms. Kusum Dhalla, APP for the
State.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant Ravi @ Bire has filed this appeal challenging his conviction vide judgment dated 20th January, 2016 for the offence punishable under Section 376(2)(f) and under Section 506 IPC and order on sentence dated 29th January, 2016 whereby he has been ordered to undergo RI for ten years with fine of ₹10000/- and in default of payment of fine to undergo SI for three months.
2. The prosecution case in brief is that on 5th April, 2012, on receipt of DD No.33A, SI Kuldeep Singh reached Dr. Hedgewar Arogya Sansthan Hospital where the child victim was found admitted with the history of sexual assault. Since the child victim was not in a position to give statement, on the basis of statement (Ex.PW3/A)

made by her mother (PW3), a case FIR No.122/2012 was registered. Thereafter, the child victim was produced on 6th April, 2012 before the learned Magistrate for getting her statement under Section 164 Cr.P.C. (Ex.PW2/A) recorded.

3. The version of the child victim before the learned Magistrate was that on the date of occurrence, i.e. on 5th April, 2012, she had gone to a nearby shop to buy something and she was accompanied by her younger sister and brother. While she was returning, the appellant/convict Bire caught her, took her to his room and bolted the room from inside. Thereafter, he removed his underwear and pant as well her underwear. Her mouth was gagged with a cloth. Thereafter, he inserted his organ used for passing urine into her body from where she passes toilet. She had a lot of pain and she started bleeding. After about half an hour, Bire ran away from there but while leaving, he also threatened to kill her if she disclosed the incident to anybody.

4. The statement Ex.PW3/A made by Smt. Meena – mother of the child victim is to the effect that on 5th April, 2012, in the evening when she was at her home, her daughter left home at about 6.30 P.M. for going to the nearby shop. After about half an hour, she heard her cries coming from the room of the appellant/convict Ravi. On reaching there, she found her daughter bleeding from her private part. Immediately, she took her to Hedgewar Hospital where her daughter disclosed that the boy, namely, Ravi residing in the neighbouring room had taken her to his room and did “galat kaam”. PCR was informed and thereafter when the police came, she made the statement

which formed basis of registration of case FIR No.122/2012 (Ex.PW1/A).

5. During the medical examination of the child victim, samples were collected and after arrest of the appellant/convict he was also sent for medical examination. The exhibits were sent to FSL, Rohini and after completion of proceedings, the appellant/convict was sent to face trial for committing the offence under Section 376(2)(f) IPC. Since the appellant/convict pleaded not guilty to the charge, prosecution examined 11 witnesses to bring home guilt to the convict.

6. In his statement under Section 313 Cr.P.C, he took plea of total denial and preferred not to lead any evidence in his defense.

7. Learned trial Court convicted the appellant for committing the offence punishable under Section 376(2)(f) IPC, *inter alia*, for the following reasons:-

(i) During the cross examination of prosecution witnesses, the defence taken was that he was not present at the spot and that the child victim suffered injuries due to fall while running. The motive for false implication suggested to the complainant was that she used to take money on credit from him and they also used to have quarrel over her throwing the garbage in front of the room of the appellant.

(ii) None of the above pleas could be substantiated by him either by cross-examination of the prosecution witnesses or by leading any defence evidence.

8. The appellant/convict was held guilty by placing reliance on the statement made by the child victim and her mother and duly corroborated by the MLC Ex.CW 1/A as well as the FSL report Ex.

PW 10/A. As per the FSL report, vaginal swab matched with the blood samples of the appellant Ravi @ Bire. Learned trial Court also held that the appellant was well known to the child victim and that the testimony of PW-3, the complainant and PW 2 the child victim, is inspiring confidence and duly corroborated by the medical and scientific evidence.

9. Learned counsel for the appellant has challenged the verdict of guilty for the following reasons:-

(i) There is contradiction in the testimony of PW-3 - the mother of the child victim and PW-2 - the child victim, as to how she reached the room of the convict, i.e. whether after hearing the cries of her daughter or on being informed by one Nidhi, who saw the child victim crying.

(ii) The child victim left home along with her brother and sister for going to nearby shop but they have not been examined. In the statement under Section 164 Cr.P.C. of child victim, there is no mention of the knife being shown by the appellant/victim and there is also contradiction as to whether police arrived at the spot before she was taken to the hospital or thereafter.

(iii) Testimony of the complainant/mother of the child victim is unreliable as she could not have waited for 15 minutes on hearing her cries.

(iv) The victim was taken to the hospital by bus which took about one hour, despite the fact that the victim was bleeding profusely from her private parts, and no mother would carry her daughter in a crowded bus in such a condition.

(v) As per the complainant, she made a call from the hospital while PW-4 in his cross-examination stated that caller was a male.

(vi) As per statement of CW1 Dr. Sunita Chaudhary, the child victim had no external injuries. CW1 Dr. Sunita Chaudhary had not followed the procedure for medically examining a minor child by examining her in the absence of a female attendant. She had noticed minimal bleeding from the vaginal tear as opposed to profuse bleeding as stated by her mother.

(vii) Learned trial court has failed to consider the motive for false implication of the appellant, that is, the money dispute as well the quarrel with him over throwing of garbage in front of his room.

(viii) The plea of juvenility of the convict has not been properly considered and his age has not been ascertained.

(ix) That the child victim was about 12 years of age at that time. She was going to the school. Despite that, her age proof was not collected and she has been shown to be under 10 years of age just to make the offence more heinous.

10. On behalf of the State, Ms. Kusum Dhalla, learned Additional Public Prosecutor has submitted that this is a case where the mother of the child victim herself reached the place of occurrence and took her to the hospital. The PCR was informed only from the hospital. It has been further contended that the child victim not only in her statement under Section 164 Cr.P.C. but also in her deposition before the court has narrated the incident in detail and identified the convict to be the same person who committed rape on her. Even the details of the act have been explained so as to leave no confusion about the nature of

the offence being committed on her. Learned APP has also drawn attention of this Court to the MLC (Ex.CW1/A) of the child victim to prove that the internal injuries suffered by her were due to the rape being committed on her by the appellant who being neighbour was well-known to the child victim.

11. First of all, I would like to deal with the plea of juvenility taken by the appellant claiming his year of birth to be 1996. Detailed inquiry was conducted by the learned trial court and it was observed that the year 1990 has been made to appear as 1996 by over writing in Parivaar Register Copy (Ex. EW1/A). The appellant was also sent for medical examination to Lal Bahadur Shastri Hospital to ascertain his bone age. Even as per the ossification test report dated 7th July, 2012, he was about 20 years of age. After conducting the inquiry, the convict was held not be a juvenile and the order declaring him not be a juvenile has attained finality. Hence, it is not open now for the appellant to address argument on this issue.

12. Another contention raised on behalf of the appellant about the age of the child victim also no longer survives. At the time of preparation of her MLC (Ex.CW1/A), her age was recorded as 10 years. When her statement under Section 164 Cr.P.C. was recorded, she was a student of fifth standard. Even during the course of hearing of this appeal, at the request of learned counsel for the appellant, certificate from the school of the child victim has been obtained as per which her date of birth is 15.12.2002. Thus, she was less than 10 years of age on the date of occurrence, i.e. 5th April, 2012.

13. The motives for false implication, as suggested by the appellant, are :

(i) Failure of the complainant to return the money borrowed by her from the appellant;

(ii) She was in the habit of throwing garbage in front of his room which was a cause of quarrel.

14. These two pleas seem to be quite inconsistent in the sense that if the parties are not having cordial relationship, he would not lend money to her. Otherwise also, there is no detail of any money transaction between the two before this occurrence. The parties belong to lower strata of society wherein in a one big building, in different rooms, different tenants are residing. The appellant himself being a labourer, would not have forgotten the details of financial transaction, if any, between the parties. Otherwise also, the child victim, who was 9 years 3 months and 21 days at that time, would not have deposed against the appellant had she not been sexually abused by him. She had hardly any motive to implicate him in such a serious offence wherein she herself had suffered mentally and physically.

There is no medical evidence to even remotely suggest that the nature of injuries suffered by the child victim in her private parts could have been caused due to fall while running. The fact that the mother of the child victim had to take her to Hedgewar Hospital by bus, which was about one hour journey from the place of occurrence rather proves that she was not financially sound enough so as to take her daughter to the hospital even by a TSR. The mere fact that the PCR was informed from the hospital further proves that her priority at that time was to

provide medical aid to her daughter. The fact that PCR was informed from the hospital further proves that somehow or the other, she wanted that her daughter should be treated first and rushed her to the hospital instead of waiting for the police to arrive at the spot and then take her to the hospital. This conduct of the complainant rather proves that instead of wasting her time on either searching the offender or waiting for arrival of police, she wanted her daughter to be attended to at some hospital. The child victim was not only bleeding but also under lot of pain.

15. Another contention of learned counsel for the appellant that the informer was a male voice also needs to be out rightly rejected because vide DD No.34A at 2140 hours, Ex. PW4/A, someone telephonically informed that in the house of Kalu near Naseeb Singh MLA's house, Gazipur Gaon, near Shiv Mandir, a 10 years old girl has been raped by a tenant. After recording information, received from lady Constable Neema No...3680PCR/28940792. The entry was made in the diary and assigned to SI Kuldeep and Constable Prahlad as per the information received from H.C. Ramesh from Hedgewar Hospital about the child victim being admitted in Hedgewar Hospital with the alleged history of rape and this DD was also assigned to S.I. Kuldeep Singh. The informant H.C. Ramesh (PW9) from Hedgewar Hospital being a male, PW4 rightly stated that the informant was a male voice and convict cannot draw any type of benefit by pointing out such types of contradictions.

16. The DD report (Delhi Police Control Room - Form 1) also records the information as under:-

“Incident info: Kalu ka makan near Nasib singh MLA ka makan Gazipur Gaon near Shiv Mandir Delhi 10 Sal ke girl ke sath kirayedar ladke ne rape kar diya hai.

DCR No. Received 122

Report received from VAN

ACD 5 MIN CALL IS TRUE X (NAME WITHHELD) D/O LAXMI KASHYAP AGE 10 YRS R/O XXX (ADDRESS WITHHELD) JO YAHA KIRAYE PAR RAHATE HAI KE SATH RAVI S/O VISHAV NATH AGE 19 YRS R/O C-3 GAJIPUR GOAN JO YE BHI YAHA KIRAYE PAR RAHATE HAI NE RAPE KIYA HAI JISE PAKAD RAKHA HAI LADKI KO USKE GHARWALO NE PAHALE HI HEAD GAWAR HOSP MAI ADMIT KARAY DIYA LADKI KI MAA MEENA MOKA PAR MILI HAI IP MOKA PAR.”(EX.PW-4/A)

17. The MLC Ex.PA-1 of the appellant records the opinion of the doctor about potency of the appellant as under:-

‘It cannot be suggested that the said person cannot perform the intercourse.’

18. The MLC of the child victim Ex.CW1/A records that the child victim was brought to Dr.Hedgewar Arogya Sansthan on 5th April, 2012 at 7.30 PM by her mother (Meena) and Raju with history of sexual assault. The patient also gave the history of sexual assault in the evening. Although the victim was not having any scratch mark on the body, on local examination following injuries were noticed:-

*“Midline vertical tear in fourchette area (superficial)
Minimal bleeding seen from tear.
Bleeding controlled by pressure
Bruise found beneath external urinary meatus.
Hymen partially torn.”*

19. In the case Uma Shankar versus State 2007 CrI.L.J. 500 the accused, the neighbour of the victim, allegedly committed rape on a

minor girl aged about 5 years. The evidence in that case was the statement of the child victim and her father who saw the victim girl coming out from the *jhuggi* of the accused at the relevant time. In that case also plea was taken by the accused of false implication due to business rivalry as well as discrepancies in the statement of prosecution witnesses and uncorroborated testimony of the child victim. While rejecting the contentions of the appellant/convict, it was held as under :-

“...6. The arguments advanced by the learned counsel for the appellant lack conviction. These are minor, small and insignificant contradictions. It must be borne in mind that human memory is vicissitudinarian. Small contradictions are likely to happen after lapse of this much time. It must be borne in mind that in this country many people are fond of drawing a long bow as Shatrughan Sharma deposed that his daughter remained unconscious for two days. No significance is to be attached with such like exaggerations. It must be recalled that his daughter was raped and therefore his endeavour would not be leave any stone unturned to see that the culprit stands adequately punished. In State of Maharashtra v. Jag Mohan Singh Kuldeep Singh Anand and Co. 2004 (VIII) A.D. 381 : (2004 Cri LJ 4254) (SC) it was held that there may be some exaggeration of the version of the incident by the complainant as she said that she was given hundred blows. Such exaggeration does not falsify the happening of the alleged incident. In the case of State of Himachal Pradesh v. Asha Ram 2005 (X) AD SC 255 : (2006 Cri.LJ 139) the accused was sentenced to life imprisonment for raping his own five years daughter. It was held that minor or insignificant discrepancies should be ignored. In Surendera Singh v. State of Haryana 2006 (1) JT (SC) 645, it was held that it is well settled principle of Law that every discrepancy in the witness could not be treated as fatal to the prosecution case. The discrepancy which

does not affect the prosecution case materially, does not create infirmity.

20. In a case of rape or sexual assault on child of tender age, her testimony does not require any corroboration if otherwise it is inspiring confidence. In the instant case, the testimony of the child victim is natural and trustworthy. Though, she could not remember the date or the month of the incident, but she could recollect for what purpose she had gone to nearby shop and while she was returning, how she was dragged to the room of the convict and raped. She had also categorically deposed about the threat being extended to her by the convict of being killed if she disclose the incident to anybody else. Her mother had deposed only in respect of what she has seen when she reached the room of the convict on hearing the cries of her daughter. PW-3 Smt. Meena has named a girl from whom she came to know that her daughter was in the room of convict Bire and was weeping, she went to his room where she found her daughter bleeding from her private parts. She immediately took her to a local doctor and as advised, took her to Hedgewar Hospital where she was immediately taken to emergency and then admitted in the hospital. The child victim was traumatised and only after some counselling, she could disclose about she being raped by the convict Ravi @ Bire. Thereafter PCR was informed.

21. All the pleas taken by him in defence remained unsubstantiated and he even could not explain his plea of *alibi* by stating as to where and with whom he was at that time or to establish any motive for his false implication.

22. The contention of the appellant being falsely implicated in this case is liable to be rejected in view of the testimony of the child victim (PW-2) which has been corroborated by medical evidence i.e. her MLC Ex.CW1/A. The testimony of PW-3 – mother of the child victim who reached the room of the appellant on hearing the cries of her daughter and found her bleeding from her private part further corroborates the version of the child victim that after committing rape on her, the appellant left the room leaving her in that condition.

23. Since it is a case of rape on the child below 10 years of age, the learned trial Court has rightly convicted the appellant for committing the offence under Section 376(2)(f) IPC.

24. In view of the above discussion, I see no infirmity in the finding arrived at by the learned Trial Court based upon just appreciation of the testimony of the child victim.

25. The conviction of the appellant under 376(2)(f) IPC and sentence awarded thereunder is upheld.

26. The appeal is dismissed.

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

28. Appellant be also informed through the concerned Jail Superintendent.

**PRATIBHA RANI
(JUDGE)**

AUGUST 16, 2017/‘srb/st’