

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

Date of Decision: June 16, 2017

+ **CRL.A. 533/2016**

PRAVEEN @ BABLU

..... Appellant

Through: Mr. Biswajit Kumar Patra, Delhi
High Court Legal Services
Committee's Panel Advocate

versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, Additional
Public Prosecutor with SI
Rameshwar Prasad

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The legality of appellant's conviction under Section 376 of IPC is the subject matter of this appeal. Impugned judgment of 14th March, 2016 holds appellant guilty of having raped prosecutrix, aged 5 years, on 18th August, 2012 at 3:30 P.M. at F-281, Phase-6, Aya Nagar, New Delhi.

Impugned order of 22nd March, 2016, sentences appellant to rigorous imprisonment for 10 years with fine of ₹50,000/- for committing offence punishable under Section 376 (2) of IPC. Trial court has directed that in default of payment of fine, appellant shall undergo rigorous imprisonment for one year. The facts as noticed in impugned judgment are as under: -

On 18th August 2012, SI Jaivir Singh recorded statement of Smt. Jameela (PW1), the mother of the victim, who told him that she alongwith her family was residing in a rented accommodation; that her one son, aged about 11 years was residing with his grand parents in their village, whereas her other four children were living with her; that on 18th August, 2012 at about 3.30 pm, her youngest daughter S, aged 5 years, alongwith other children was playing in the courtyard and she was chatting with Ms. Anjum, the aunt of her husband, and then Sameer, aged 6 years, the son of Anjum came to her and told her that Parveen @ Bablu uncle, having given her toffee had sent him outside to play and thereafter, he bolted her daughter S alongwith him in his room; that the mother of the victim rushed towards the room of Parveen and found that the door was closed; that she heard cries of her daughter through the window in the room; that she removed the curtain from the window and peeped inside and saw that Parveen @ Bablu had laid her daughter straight on the floor of the room and after laying himself on her was committing rape upon her; that she raised alarm in high voice and after hearing her voice the accused released her daughter and after putting her underwear on, opened the door of the room; that she caught hold of her daughter and after hearing her voice neighbours had gathered on the spot, and landlord Mobin Khan made a telephonic call to her husband, who after reaching the house called his employer S.K.Sharma, who after reaching called the police on number 100.

Trial court has relied upon the testimony of prosecutrix (PW-2) and that of her parents (PW-1 & PW-3), medical evidence and other evidence on record including evidence of SI Jaivir Singh (PW-12) and has

discarded appellant's version in his statement under Section 313 of Cr.P.C., which is as under: -

“Question: Do you want to say anything else?”

Answer: I am innocent. I have been falsely implicated in this case. I further submits that on the day of incident, one of the children of Jameela had passed latrine in front of my house and when I objected to this, the mother of the victim started abusing me. I had met with an accident before the incident and at the time of the incident I was under treatment at the hospital and was not even able to walk. Due to the quarrel on the above mentioned issue, the complainant has falsely implicated me in this case.”

Learned counsel for appellant submits that in pursuance of production warrants, appellant was produced in custody before the Court on the last date of hearing and he has already interacted with appellant and submits that he has been instructed by appellant to argue this appeal on merits.

Challenge to appellant's impugned conviction by learned counsel for appellant is on the ground that the version put forth by prosecutrix's father of her underwear being soaked in blood does not stand substantiated from the FSL report and that no public persons were joined in the investigation of this case and the false implication of appellant is due to the quarrel which appellant had with family of the prosecutrix regarding one of the children of prosecutrix's mother defecating in front of appellant's house. It is pointed out that as per evidence of prosecutrix's mother (PW-1) and Investigating Officer (PW-12), public persons had

gathered at the spot but none of them was got examined to corroborate prosecution version, which ought not to be relied upon in view of the stand taken by appellant before trial court.

It is submitted by appellant's counsel that prosecution version of there being abrasions and scratches on the body of prosecutrix do not stand substantiated. It is pointed out by appellant's counsel that as per version of prosecutrix's father, they were first taken to police station and from there to the hospital, but there is no corroboration of this version by prosecutrix or her mother. To discredit the version put forth by prosecutrix, learned counsel for appellant points out that there is variation in the version put forth by prosecutrix in her statement under Section 164 of Cr.P.C. and her evidence before the Court and so, the inconsistencies between the two versions entitle appellant benefit of doubt. Lastly, it is submitted that appellant deserves to be acquitted as the prosecution case is not established beyond reasonable doubt.

On the contrary, learned Additional Public Prosecutor for respondent-State supports impugned judgment and submits that appellant has committed a heinous crime and the offence committed by him stands duly proved from evidence on record and the so-called infirmities pointed out by appellant's counsel in the prosecution case are immaterial and so, this appeal deserves to be dismissed. Nothing else is urged on behalf of either side.

After having duly considered the submissions advanced by both the sides and on perusal of impugned judgment, order on sentence and the evidence on record, I find that the crucial evidence is of prosecutrix

(PW-2), from which it is quite evident that she was sexually assaulted. Infact, prosecutrix has clearly stated in her deposition that after the sexual assault, there was blood and she felt hurt. Pertinently, there is no cross-examination of prosecutrix regarding her bleeding after she was sexually assaulted. Non-mention of bloodstains on prosecutrix's panty in the FSL report, is inconsequential in the facts of the instant case.

Supreme Court in its recent decision in *State of H.P. Vs Sanjay Kumar*, (2017) 2 SCC 51 while dealing with the case of child victim, who was subjected to rape, has reiterated as under:-

“.....it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her

claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.”

Non-joining of public witnesses in a case like instant one is immaterial because the veracity of version put forth by prosecutrix has to be objectively considered. Since I find that the deposition of prosecutrix is trustworthy, therefore, I hold that non-joining of public witness in the investigation of this case is of no consequence. On a bare perusal of prosecutrix's MLC, I find that there is mention of brown scabbing on the face and chest of prosecutrix and also an oval shape bite mark was found on the chest of prosecutrix. Thus, the version put forth by father of prosecutrix does not get diluted from the medical evidence. Simply because no semen was detected on the vaginal slide, would not justify an inference that there was no sexual assault on the prosecutrix. MLC of prosecutrix does reveal that there was some kind of injuries on her private parts which fortifies prosecutrix's assertion of sexual assault by appellant. It is pertinent to note that it has come in the evidence that appellant was residing in the house of prosecutrix and was having cordial relations with the family of prosecutrix and the above-said evidence remains unchallenged and so, in the instant case, no prudent person can conclude that appellant has been falsely implicated because he objected to children of prosecutrix's mother defecating in front of house or because of quarrel

on this count. Neither parent would stake the honour of their minor daughter and the family, to level such a serious accusation of rape against appellant, to settle the scores on account of such a trivial quarrel, particularly when the relations were cordial. Whether prosecutrix and her parents were first taken by police to police station or straightaway to hospital, would not be of any consequence in the facts of the instant case and on such inconsequential plea, appellant cannot earn acquittal in a case like instant one.

It is true that prosecutrix in her statement under Section 164 of Cr.P.C. narrated the entire incident in a forthright manner as said statement was recorded on the next day of the incident whereas the evidence of prosecutrix was recorded in the court after more than one year. Still, there is no variation or contradiction between the version put forth by prosecutrix in her statement under Section 164 of Cr.P.C. and her deposition before the court. The only difference is that prosecutrix's initial version of the incident in her statement under Section 164 of Cr.P.C. recorded by a Magistrate is more detailed, whereas before the court, she has briefly deposed, but has stated essential facts from which it can be easily gathered that she was raped. Infact, it has come in the cross-examination of prosecutrix that she was alone with appellant-accused in the room at the time of this incident. Nothing more needs to be said, to conclude that appellant had committed this heinous offence. Minimum sentence as provided in law has been awarded to appellant.

In the considered opinion of this Court, evidence of prosecutrix is consistent and it stands amply corroborated from evidence of parents and

the medical evidence. There is no material infirmity in the prosecution case, to justify granting of benefit of doubt to appellant. In view of foregoing narration, I find no substance in this appeal and as such, it is dismissed. The concerned Jail Superintendent to apprise appellant about fate of his appeal.

This appeal is disposed of while appreciating the able assistance rendered by learned counsels on both the sides.

JUNE 16, 2017

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**(SUNIL GAUR)
JUDGE**