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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 17th MAY, 2017

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CRL.A. 1580/2013

RAM @ RAM KUMAR Appellant
Through : Mr.Vikas Padora, Advocate.

VERSUS

STATE Respondent
Through : Ms.Meenakshi Chauhan, APP.

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

S.P.GARG, J. (Oral)

1. Aggrieved by a judgment dated 29.05.2013 of learned Addl. Sessions Judge in Sessions Case No. 48/2012 arising out of FIR No. 374/1993 PS Trilok Puri whereby the appellant – Ram @ Ram Kumar has been held guilty for committing offence punishable under Sections 450/376 IPC, he has preferred the instant appeal. By an order dated 03.06.2013, the appellant was sentenced to undergo RI for seven years with fine ₹2,000/- under Section 376 IPC and RI for five years with fine ₹1,000/- under Section 450 IPC. Both the sentences were to operate concurrently.

2. Initially, charge-sheet was filed against the appellant for commission of offences punishable under Sections 450 and 376 IPC read with Section 511 IPC on the allegations that on 15.06.1993 at about 10.00 a.m. after committing criminal trespass at House No.E-534, Gali No.10,

West Vinod Nagar, Mandawali, Delhi, the appellant attempted to commit rape upon the prosecutrix 'X' (assumed name) aged around 10 years. Subsequently, during investigation, it revealed that the appellant had committed rape upon the prosecutrix. Accordingly, under Section 216 Cr.P.C. charge was altered to Section 376 IPC by an order dated 22.09.2012.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix / victim was aged around 10 years on the day of occurrence. PW-7 (Harbhajan Singh), Head Master, Nagar Nigam Prathmik Vidyalaya, Trilok Puri, Delhi proved the record where date of birth of the victim recorded was 04.11.1982. The victim had taken admission in the school on 03.09.1992 in 4th standard. She was admitted on the basis of Transfer Certificated issued by the school in which she had studied previously. The witness proved the documents (Ex.PW-7/A to Ex.PW-7/D). Since the date of birth of the prosecutrix came to be recorded much prior to the lodging of the FIR, there was least possibility of her parents to manipulate her date of birth. No other date of birth has been suggested to the prosecutrix. Apparently, the victim was below 16 years of age on the day of crime.

4. It is also to be noted that the appellant remained absent during trial and was declared Proclaimed Offender by an order dated 04.07.1998. He could be arrested subsequently after a considerable period on 22.05.2012 by the police of Police Station Gandhi Nagar. The appellant did not offer any explanation as to what had prompted him to avoid the proceedings.

5. On perusal of the statements of the prosecutrix recorded at various stages of investigation / trial, it transpires that number of inconsistencies and discrepancies have emerged therein. The prosecutrix

has given conflicting versions as to how and in what manner, physical relation was established by the appellant with her. She, however, was categorical in all her statements to claim that the appellant had established physical relations with her on that day i.e. 15.06.1993. No valid reasons exist to disbelieve the statement of the prosecutrix on this account. The prosecutrix and the appellant were acquainted with each other prior to the incident. The appellant was also familiar with her family members. PW-5 (Sharda) – victim's mother, in the cross-examination, admitted that the appellant was known to her for the last 5 – 6 years though he was not on visiting terms. In the absence of prior animosity or ill-will, the prosecutrix, a child aged around 10 years was not expected to falsely implicate the appellant. In 313 Cr.P.C. statement, the appellant alleged that his false implication was due to non-payment of ₹2,200/- by the victim's mother. This defence deserves outright rejection. No suggestion to this effect was put to PW-5 (Sharda) in her cross-examination recorded on 02.07.1996. When PW-5 (Sharda) reappeared on 25.03.2013, a suggestion was put to her that she had borrowed ₹2,200/- and when the amount was demanded, the appellant was falsely implicated at the instance of Ram Naresh and Dr.Yadav. The appellant, however, did not furnish any detail particulars as to when ₹2,200/- was borrowed by the victim's mother and on what account. For a petty amount of ₹2,200/- victim's mother is not imagined to falsely level serious allegations of rape against the appellant to put the honour of her tiny child at stake. She is not expected to use her small unmarried daughter to settle score with the appellant.

6. Possibility of the prosecutrix to be a consenting party cannot be ruled out. In her complaint (Ex.PW-3/A), she informed the police that on

15.06.1993 when her mother had gone to her duty at around 08.00 a.m. and her brothers Vicky and Rakesh were playing outside, the appellant to whom she knew before came inside the house at around 10.00 a.m. He enticed her inside the room and forcibly put off her salwar. On her raising alarm, the appellant pressed her mouth and put his penis on her vagina. Meanwhile, her brother Vicky arrived and knocked at the door. She apprised her brother about the incident. The appellant confessed his guilt and apologized. In the evening, she narrated the incident to her mother.

7. In 164 Cr.P.C. statement (Ex.PW-8/B), the prosecutrix gave an entirely different version. She informed the learned Presiding Officer that on 15.06.1993 at around 11.00 a.m. she was playing with her brother Rakesh. Her mother and elder brother Charan Kumar were away to their duties. A boy aged around 18 years who was not known to her came to her house and disclosed his name as Ram. He came inside the room; he was armed with knife and revolver; she was criminally intimidated. The appellant started searching her house and mixed some substance in the curd. She was forced to consume it. Thereafter, the appellant put off his pant and threatened her to put off her salwar. When she did not do so, he gave her a slap on cheek and opened the cord of her salwar. Then he himself laid on her and put a knife on her chest. Thereafter, he put his penis in her vagina, as a result of which she started crying due to pain. Her hands were tied with a cot. She became unconsciousness and did not know as to when the appellant went out of the house. She remained unconscious for two days. After she regained senses, the appellant came to her house and she told the incident to her mother.

8. In her Court statement, the victim introduced another version. She as PW-3 deposed that at about 10.00 a.m. when she had gone to the hand pump to fetch water, the appellant followed her to her house and bolted the door from inside. The appellant took her in the room and asked her to open the cord of her salwar. Her younger brother Rakesh aged around 6 years present there was threatened to kill if she did not open it. When she did not agree, the appellant broke the cord and started doing “wrong act” with her. The accused put off his pant and committed “wrong act” with her. Due to sexual assault, for long duration, her condition deteriorated and she started weeping. The appellant showed her a vulgar book and threatened to commit rape upon her mother if she disclosed the incident. Thereafter, the appellant went out of the room. At around 08.00 p.m. when her mother arrived, her brother Rakesh told the incident to her.

9. On perusal of the statements referred above, it reveals that the prosecutrix has given divergent statements at various stages. Apparently, she was not disclosing or presenting true facts to save her own skin. She was inventing different stories as to how and in what manner, the appellant had gained entry when she was alone in the house. No external injuries were found on her person at the time of her medical examination. The ‘hymen’ was slightly torn. There were no marks of violence on her body to infer forcibly rape.

10. PW-4 (Vicky) has given a contrary account of the occurrence. He deposed that on 15.06.1993 at around 10.00 a.m. when he returned to the house and knocked at the main gate for 4 – 5 minutes, there was no response. Then he went to the other door in the back gali and knocked it. From outside, he heard the noise of weeping of his younger brother aged

around 4 years. After opening the main gate, he saw the appellant running from the house. He chased him but could not apprehend him. His sister 'X' present in the house told him that the appellant had teased her. In the evening, the incident was narrated to his mother. The prosecutrix had not revealed commission of rape to her brother soon after the occurrence. From all the circumstances, it can well be inferred that the prosecutrix aged around 10 years was willing and consenting party to the coitus.

11. As observed above, X's consent to have physical relations with the appellant is of no consequence she being below 16 years of age. The appellant was aged around 18 years and was well aware of his act. Finding the victim alone in the house, the appellant gained entry inside the house. 'X' being a girl of immature age did not know as to what was the impact of the consent given by her to have physical relations. The appellant exploited her innocence and established physical relations with her for considerable time. The prosecutrix has given natural version of the incident. When she was sexually assaulted forcibly by the appellant for long, she felt pain. While asking her to remain quiet, the appellant assured her to have physical relations slowly. Victim's condition deteriorated and she was taken to a private hospital where she got treatment for 2 or 3 days. X's consent does not absolve the appellant's guilt.

12. The investigation carried out by the Investigating Agency is not up to the mark. At first instance, the police did not lodge the report though the matter was reported on the same day. Victim's mother was advised to remain silent to save the reputation of her family. When the police machinery was put into motion by the concerned doctor at the time of her medical treatment, the police again did not record the correct version of the

prosecutrix and diluted the incident by registering case only under Section 376 read with Section 511 IPC. In 164 Cr.P.C. statement, the prosecutrix had levelled serious allegations of commission of rape but the investigating agency preferred to file charge-sheet only for attempt to commit rape. The Trial Court has rightly made certain scathing remarks in this regard.

13. Since the prosecutrix and other family members belonged to poor strata of society and were not so educated, minor discrepancies and inconsistencies in their statements which do not affect the core of the prosecution case are inconsequential.

14. Impugned judgment based upon fair reasoning and proper appreciation of the evidence deserves no intervention. The Trial Court has already taken lenient view and did not opt to award minimum sentence of 10 years prescribed under Section 376 (2)(f) IPC. No further modification and alteration in sentence is called for as the offence committed by the appellant with school going child aged around 10 years is serious and grave.

15. The appeal lacks in merits and is dismissed. Trial Court Record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 17, 2017 / tr