

\$~R-11

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

% Date of Decision: November 20, 2017

+ **CRL.A. 63/2011**

MOHD. JAFFAR @ CHOTU Appellant

Through: Ms.Bhumika Kapoor, Advocate
for Ms.Anu Narula, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms.Rajni Gupta, APP for the
State with SI Prakash, PS Sadar
Bazar.

PRATIBHA RANI, J. (Oral)

1. This appeal has been preferred by the appellant challenging the judgment dated 16th July, 2010 and order on sentence dated 17th July, 2010 passed in Sessions Case No.72/2009 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 ₹5000/- and in default of payment of fine, to undergo RI for one year.

2. The facts of the instant case recorded by the learned Trial Court in the impugned judgment are as under:-

'The case of the prosecution is that on 14.05.2008 DD No.47-B Ex.PW8/A was lodged at PS Sadar Bazar at about 2.50 pm near Akhara Police Post Motia Khan, Sadar Bazar, Delhi that a person has been apprehended who committed rape upon a minor girl. The investigation was handed over to W/ASI Shakun (PW-18) who along with ASI Nissar Ahmed (PW-8), HC Chander Singh (PW-6) and Lady Ct.Krishna (PW-4) reached the

spot where prosecutrix and her parents were found present. Statement of the mother of the prosecutrix was recorded which is Ex.PW1/A to the effect that she is a house wife and her husband is running a Kamela i.e. a cattle house keeping some buffaloes; that they have four boys and three daughters and the youngest one is the prosecutrix aged about six years; that accused Mohd. JAffar @ Chotu was employed by her husband for about two years and the accused had been acquainted with all the members of the family; that on 13th May, 2008 sometimes in the afternoon she had gone to offer bananas to monkeys in the nearby park; that at about 6.00 pm her daughter i.e. prosecutrix went to the bathroom located on the roof of the house and she experienced some pain while passing urine; that on being asked she disclosed that Mohd. Jaffar @ Chotu had committed some Galat Kaam with her; that she physically inspected the private part of her daughter and suspected something fishy; that accused Mohd. Jaffar @ Chotu was missing from the house; that she took her daughter to Kalawati Hospital where the Doctor on duty advised her to take the girl to Gynaecology Department but since it was late at night they came back. She further stated that later during the day time they were looking for accused Mohd. JAffar @ Chotu who was sighted near Sadar Thana Road and she raised an alarm and with the help of the people the accused Mohd. Jaffar @ Chotu was apprehended.'

3. During investigation, the child victim as well as the appellant/convict were sent for medical examination. The appellant/convict refused to give the sample of his semen. The MLC Ex.PW16/A of the child victim, which was prepared on 14th May, 2008 at 5.05 pm records the alleged history of sexual assault 24 hours back. Her medical examination revealed that :

'No external injury mark.'

Vulva - reddened
hymen - ragged (her mother has applied some ointment on vulva for pain)

4. During her examination, PW3 'T' - the child victim has stated that she was a student of 2nd Standard and on 13th day of the month a year ago when she had gone to the bathroom on the first floor to ease herself she was called by the appellant who was employee of his father. The appellant took her in a room near the toilet and bolted the room from inside and thereafter he made her to lie down on the mattress and he also laid down on her after taking out his clothes. She also stated that the appellant took out his penis and tried to enter his penis (while pointing out towards her vagina) due to which she sustained injuries and had pain while passing urine. She informed her parents. She was taken to the hospital. Her parents also searched for the appellant who was caught by them.

5. PW-5 Suraj - the brother of the child victim had stated that the appellant used to take care of their buffaloes and also have his meals at their house and sleep on the first floor every day. He had stated that his sister 'T' (PW-3) informed their mother in his presence about the wrong act committed by the appellant.

6. PW-1 Smt.Sunita and PW-2 Sh.Rishi Pal – parents of the child victim had fully supported the prosecution case.

7. In the instant case, the identity of the appellant is not in dispute as he was employee of the father of the child victim and used to have his meals at their house and sleep in a room near the toilet on the first floor in their house. The testimony of the child victim about she being

sexually assaulted has been proved from the MLC Ex.PW16/C. Mere delay of 24 hours in reporting the matter is not fatal to the case of the prosecution as has been rightly observed by the learned Trial Court that the parents of the child victim were in a state of confusion about the future course of action by them.

8. The only defence taken by the appellant is that his salary for about six months amounting to ₹36,000/- was payable by father of the child victim and when he demanded the same, he has been falsely implicated in this case, which has been rightly rejected by the learned Trial Court. A person would not work without salary for a long period of six months and secondly for such a petty amount, the parents of the child victim had no reason to involve their daughter of tender age who was just studying in 2nd Standard at that time.

9. It is 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.

10. From the evidence coming on record, it is established that PW-3, 'T' was subjected to rape by the appellant. The medical evidence corroborated the testimony of the prosecutrix to the extent that her hymen was found ragged.

11. 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.

12. The impugned judgment which has been passed on appreciation of oral evidence duly corroborated by medical evidence, does not suffer from any illegality. The appeal has no merit and the same is hereby dismissed.

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

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

PRATIBHA RANI
(JUDGE)

NOVEMBER 20, 2017

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