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

% *Date of Decision: October 25, 2017*

+ **CRL.A. 19/2011**

VIJAY @ BITTU

..... Appellant

Through: Mr.M.L.Yadav, Advocate
(DHCLSC).

versus

STATE

..... Respondent

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

PRATIBHA RANI, J. (Oral)

1. The instant appeal has been preferred by the appellant Vijay @ Bittu assailing the judgment and order on sentence 14th May, 2010 and 17th May, 2010 respectively whereby he has been convicted for committing the offence punishable under Section 376(2)(f) IPC and sentenced to undergo RI for ten years with fine of ₹10,000/- and in default of payment of fine, to undergo SI for one year.

2. Briefly stating, the case of prosecution is that on 25th May, 2007 on receipt of DD No.25A regarding rape of a girl, W/ASI Sushila reached the spot where ASI Karan Singh, Ct.Suresh and W/Ct.Sharmila were already present. W/ASI Sushila recorded the statement Ex.PW2/A of Smt.Padma – mother of the child victim ‘P’ (name withheld to conceal her identity) aged about nine years wherein she stated that ‘P’ was studying in 1st Standard in a School (name of

school withheld) in Ishwar Colony. Her husband was running a grocery shop in Ishwar Colony. On the date of occurrence at about 1.00 pm, her daughter 'P' came to the shop directly from the school. After sometime accused/appellant Vijay, who was their nephew (*jeth ka ladka*) also came there. The complainant asked him to accompany her to their house. She also made her daughter 'P' sit on the bicycle of accused/appellant and she followed them on foot. On the way, she met classmate of 'P' and while she was talking to her, the accused/appellant alongwith her daughter went ahead. When she reached home, she did not find her daughter at home. She searched for her daughter and accused and also informed her husband. After sometime, the accused/appellant was seen coming from the side of canal. When she asked appellant/accused as to where he was, he started looking here and there. Thereafter the accused/appellant went alongwith her husband to the shop. Suspecting something wrong, she checked the clothes of her daughter which she found to be stained with blood. 'P' informed her that the accused/appellant took her to a room near the canal and made her to remove her clothes and lie down on the grass. Then he did 'galat kaam' with her. The complainant took her to the shop of her husband and informed him about the incident. Thereafter the matter was reported to the police.

3. On the basis of above statement, FIR No.282/2007 under Section 376(f) IPC was registered against the accused/appellant at PS Bawana. Child victim was sent for medical examination. Accused was arrested and after completion of investigation, chargesheet was filed.

4. Accused/appellant was charged for committing the offence punishable under Section 376(2)(f) IPC to which he pleaded not guilty and claimed trial. The prosecution has examined 15 witnesses to prove its case. Accused/appellant was also examined under Section 313 CrPC to enable him to explain the incriminating evidence appearing against him wherein he stated that he has been falsely implicated by the family of the child victim due to enmity.

5. After trial, believing the coherent and cogent testimony of prosecutrix supported by the medical evidence, the learned ASJ, convicted the appellant for committing the offence punishable under Section 376 (2)(f) IPC and sentenced him in the manner stated above.

6. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing this appeal.

7. I have heard Mr.M.L.Yadav, Advocate (DHCLSC) and Mr.Kewal Singh Ahuja, learned APP for the State.

8. Mr.M.L.Yadav, learned counsel for the appellant has submitted that the learned Trial Court has failed to note the material contradictions and discrepancies in the testimony of prosecution witnesses which go to the root of the case and shake the foundation of the case. As per the MLC of the child victim, at the time of her examination she was conscious and oriented and there was no external injury on her private part. Learned counsel for the appellant has submitted that the appellant has been falsely implicated in this case by the family of the child victim as the appellant had a fight with the father of the child victim nine month prior to the alleged date of incident, which was resolved with help of common friends. The

statement under Section 164 CrPC of the child victim has been got recorded after thirteen days of the date of occurrence and there was ample time for the family to tutor the child victim to ensure conviction of the appellant. Learned counsel for the appellant has prayed for acquittal of the appellant.

9. Mr.Kewal Singh Ahuja, learned APP for the State has supported the views taken by the learned Trial Court and submitted that there is no iota of doubt in the conclusion arrived at by the learned Trial Court that the child victim has been raped by the appellant. Learned APP for the State submitted that the child victim in this case is a young child aged about 9 years. On inquiry, the child victim had informed her mother that appellant took her to a room near canal where he made her remove her clothes and lie down on the grass on the floor and then he committed rape on her. The mother of the child victim saw her daughter coming alongwith the appellant/accused after the incident. Further, there is no dispute about the identity of the appellant as he is related to the family of the child victim and child victim also called him '*Bittu Bhaiya*'. Learned APP for the State prays for dismissal of the appeal.

10. I have considered the rival contentions and carefully gone through the record.

11. Perusal of the LCR reveals that the appellant was well known to the family of the child victim and was trusted by them to the extent that when the child victim returned from the school, just to make her comfortable the appellant was asked to take her on his bicycle to the house and the mother followed on foot. It was only on not finding the

child at home that the mother panicked and started searching for her daughter and also informed her husband. The appellant was seen coming along with the child victim on the bicycle and when the mother questioned him as to why he was coming from the canal side that he started looking here and there and tried to avoid the questioning. When PW-2 Smt. Padma – the mother suspected, she checked the clothes of her daughter and found them stained with blood. The child victim (PW-1) informed that she was taken by *Bittu Bhaiya* (appellant/accused) in a room near the canal and committed rape on her.

12. In her statement under Section 164 CrPC, the child victim narrated the incident by saying that '*Bittu ne apni toilet meri toilet mein ghusa di*'.

13. During her examination as PW-1, the child victim 'P' also stated that after taking her to a deserted room, she was made to lie down on the grass on the floor and then accused put his *susu* in her *susu*.

14. The statement of the child victim throughout remained consistent about the manner in which she was taken by the appellant/accused when she returned from the school and her mother sent her to be dropped at him. But instead of taking the child victim to home, the appellant took her to a room in a canal where fodder was stored and she was raped.

15. No doubt, the child victim is of tender age but her statement has been duly corroborated by PW-2 Smt. Padma – her mother on all vital aspects as well by her MLC Ex. PW7/A. The testimonies of PW-1 –

the child victim 'P', PW-2 Smt.Padma – her mother and PW-3 Sh.Pramod Kumar – her father are credible, corroborative and reliable. The medical and scientific evidence point out to the guilt of the accused who has been duly identified by the child victim to be the person who instead of dropping her at home, took her to a room near the canal and raped her.

16. The impugned judgment and order on sentence does not warrant any interference by this Court.

17. Finding no merit, the appeal is dismissed.

18. Vide order dated 23rd October, 2017 production warrant was ordered to be issued against the appellant for today i.e. 25th October, 2017. Pursuant to the production warrants issued against the appellant, nominal roll of the appellant has been sent by the concerned Jail Superintendent as per which the appellant has already been released from jail on 17th October, 2015 after completion of sentence awarded to him in this case.

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

न्यायमेव जयते

PRATIBHA RANI
(JUDGE)

OCTOBER 25, 2017

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