

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.10.2020

+ **CRL. A. 750/2016 and CRL.M. (BAIL) 1865/2019**

JITENDER PRASAD

.....Appellant

Versus

STATE (NCT OF DELHI)

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr Padam Kant Saxena, Advocate with Mr
Deepak Dahiya and Ms Aeshna Dahiya,
Advocates.

For the Respondent : Mr Ravi Nayak, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 16.07.2016 passed by ASJ-01, Rohini District Courts, whereby the appellant was convicted for committing aggravated penetrative sexual assault on a child victim – an offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereafter the 'POCSO Act'). He was also convicted under Sections 376/342 of the Indian Penal Code, 1860 (hereafter the 'IPC').

2. The appellant also seeks to challenge the order on sentence dated 19.07.2016, whereby the appellant was sentenced to rigorous imprisonment for a period of fourteen years along with a fine of ₹5,000/- for committing the offence punishable under Section 6 of the POCSO Act and in default of payment of fine, to undergo simple imprisonment for a further period of three months. The appellant was sentenced to rigorous imprisonment for a period of one year for the offence punishable under Section 342 of the IPC with a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one week. All sentences were to run concurrently. Additionally, the Id. ASJ directed the Secretary, DLSA, North West Dist., to grant compensation of ₹2,00,000/- to the child victim for her welfare and rehabilitation.

3. The appellant was prosecuted pursuant to registration of an FIR bearing FIR No. 577/2014 under Sections 376/342 of the IPC, registered with PS Keshav Puram. The said FIR was registered on 07.09.2014 at the instance of the mother of the victim. The victim's mother stated that, at about 8:00 pm, she sent the prosecutrix – a girl aged about eleven years, to the shop (downstairs) to call her grandfather for dinner and after ten-fifteen minutes, her daughter came back weeping. She stated that the prosecutrix informed her that the accused had pulled the prosecutrix into a room and bolted the door. He made her lie on the ground. She stated that the accused then gagged the mouth of the child victim with his hand and raped her. She stated that she also noticed blood stains on the clothes of the prosecutrix. After coming to

know of the alleged incident, she went downstairs to accost the assailant along with the prosecutrix who pointed towards the accused as the person who raped her. She stated that the accused managed to run away on seeing her and the prosecutrix.

4. The accused was apprehended and thereafter, charges under Section 342 of the IPC and Section 5(m) of the POCSO Act were framed against the accused. The accused pleaded not guilty and the matter was set down for trial. The prosecution examined seventeen witnesses to prove its case.

5. After evaluating the evidence the Trial Court, by impugned judgment, held that the appellant (accused) was guilty of the offences punishable under Sections 376 and 342 of the IPC and Section 6 of the POCSO Act and accordingly, convicted him.

6. The appellant contended that the statement made by the prosecutrix is not sufficient to substantiate the allegation that the appellant had committed the offence. The appellant also contended that even the MLC did not record any fresh external injury. The appellant further contended that the Trial Court has erred in not appreciating that the appellant was a tenant residing on the ground floor and the family of the prosecutrix, who were the landlords of the premises wanted to evict the appellant. Since he was not vacating the premises, he was falsely implicated. He contended that the mother of the prosecutrix had tutored the prosecutrix to falsely implicate the appellant to put pressure on him to leave.

Reasons and Conclusion

7. The case of the prosecution mainly rests on the statement of the prosecutrix; the testimony of her mother; the medical evidence and; the forensic evidence.

8. The information regarding the said incident was received at PS Keshav Puram at about 12:05 am. Ct. Dharamraj (who was examined as PW1) testified to the aforesaid fact and affirmed that he had recorded the said information vide DD No. 2 PP (Ex.PW1/A). The inquiry in respect of the said DD was entrusted to SI Ram Manohar. Thereafter, at 12:20 am, PW1 recorded DD No. 4 PP (Ex.PW1/B) pursuant to a call received from the hospital regarding rape of the prosecutrix (aged about 10 years). It was reported that she had been admitted to Baba Saheb Ambedkar Hospital vide MLC No. SER 168/14. The inquiry relating to the said entry was also entrusted to SI Ram Manohar.

9. SI Ram Manohar was examined as PW14 and he testified that in the intervening night of 07.09.2014 – 08.09.2014, he was posted as In-charge of the Police Post Shanti Nagar, PS Keshav Puram and was present at the said police post at about 12:10 am. He stated that a call was received regarding rape of the daughter of the caller at the given address (address of the prosecutrix). He stated that he along with Ct. Sanjay left for the spot of the incident, where he was given to understand that the prosecutrix had been raped. The victim had been taken to the Hospital. He left Ct. Sanjay at the spot and proceeded to Ambedkar Hospital. He testified that at the hospital he met the prosecutrix and obtained her MLC. He made inquiries from the doctors

who were treating her. The doctors also handed over the sexual assault evidence collection kit sealed with the seal of BSAH Casualty along with the sample seal and another *pullanda* containing the outer clothing of the prosecutrix sealed with the seal of BSAH Casualty. In the meantime, WSI Suman Bajaj (who was examined as PW15) also reached the hospital and he handed over the articles along with the copy of the MLC to WSI Suman Bajaj. She prepared the seizure memo (Ex.PW14/A) and PW14 identified his signatures on the same. He testified that at the material time, the treating doctors informed them that the prosecutrix was not in a fit state to make any statement. Accordingly, WSI Suman Bajaj recorded the statement of the mother of the prosecutrix in the presence of a NGO Counselor. He testified that he along with WSI Suman Bajaj went back to the spot of the incident where WSI Suman Bajaj prepared a *tehrir* and handed it over to Ct. Sanjay for registration of the FIR. He stated that thereafter, WSI Suman Bajaj prepared a site plan at the instance of the mother of the prosecutrix in his presence. She also took into possession a knicker and one jeans stained with blood from the second floor of the said house. It was stated that the prosecutrix was wearing the same at the time of the incident. In addition, a blood stained pink coloured shirt was also seized from the store room on the second floor of the house (which was the residence of the prosecutrix). He testified that WSI Suman Bajaj had sealed the said articles with her seal. Thereafter, the room occupied by the appellant (accused) was also searched and a green coloured mat (*chatayi*), which was stained with blood, was also seized as the accused had allegedly sexually assaulted the prosecutrix after laying her down

on the said mat. He identified his signatures on the seizure memo (Ex.PW6/C).

10. The testimony of WSI Suman Bajaj (PW15) is consistent with the testimony of SI Manohar (PW14). She testified that SI Ram Manohar had handed over the sexual assault evidence collection kit (sealed with the seal of BSAH Casualty) along with the sample seal and a *pullanda* sealed with BSAH Casualty containing the clothing of the prosecutrix. She stated that she took the same in her possession and prepared a seizure memo (Ex.PW14/A). She identified her signatures on the same. She also confirmed that the treating doctors had informed him that the prosecutrix was not fit for making statement at that time and accordingly, she recorded the statement of the mother of the prosecutrix (Ex.PW6/A) in the presence of SI Ram Manohar as well as the NGO Counselor, whom she had called at the hospital. She testified that after recording of the statement of the mother of the prosecutrix (Ex.PW6/A), she prepared a *tehrir* (Ex.PW2/B) and handed them over to Ct. Sanjay for registration of the FIR. On the basis of the aforesaid information, the FIR in question was registered.

11. On the same date, that is, on 08.09.2014, further investigation with regard to the case was handed over to WSI Anita (who was examined as PW13). She testified that further investigation of the case was handed over to her on 08.09.2014 and on that date, she along with Ct. Makhan Lal, Ct. Sanjay and a secret informer reached Hansha Puri Road, Jai Mata Market in search of the accused. She testified that she apprehended and arrested the appellant near Shankar Chowk, Gali No.

5. She identified her signatures on the arrest memo (Ex.PW13/A) and identified the appellant in Court. She testified that, thereafter, they took the appellant to BJRM Hospital for his medical examination. After his medical examination, the concerned doctors handed over two sealed parcels with the seal of BJRM Hospital and one sample seal to Ct. Makhan who in turn handed it to her. She seized the same under seizure memo (Ex.PW13/C). She identified her signatures on the said seizure memo. She stated that thereafter, they came back to PS Keshav Puram and she deposited the case property in *malkhana*. One of the said two *pullandas* contained the medical samples of the appellant and the other contained his underwear.

12. On 15.09.2014, WSI Anita applied for recording the statement of the prosecutrix under Section 164 Cr.PC and the same was recorded on that date (Ex.PW4/B).

13. In her statement recorded under Section 164 of the CrPC, recorded before the Ld. MM on 15.09.2014, the victim stated that on 07.09.2014, at around 8-9 pm, after she had called her grandparents for dinner from downstairs, the accused pulled her inside the room and bolted the door. She stated that the accused gagged her mouth and then raped her. She stated that she managed to escape and immediately narrated the entire incident to her mother. She also stated that she did not know the name of the accused however, she was aware that the accused was residing as a tenant on the ground floor since five-six months.

14. The prosecutrix was examined as PW-5. She stated that she was studying in the VIth standard. On being asked she stated that she resides with her parents, grandparents, paternal uncle and aunt, one sister and one brother. She stated that her grand-father has a grocery shop on the front portion of the ground floor while the rear side of the ground floor has been rented out to three-four people. She deposed that on 07.09.2014, around 8:00pm, she went downstairs to call her grandfather for dinner and when she was coming back, the accused grabbed her, took her inside a room and bolted the door. She stated that the accused made her lie down and took off her clothes. She stated that the accused gagged her mouth and raped her. She also stated that she then managed to escape and narrated the entire incident to her mother. She also deposed that her clothes were stained with blood. On narrating the incident to her mother, the mother (PW-6) took her downstairs and she pointed towards the accused as the person who raped her. The accused then ran away. Thereafter, she was taken to Saroj Hospital and then to Ambedkar Hospital where she was admitted for five-six days.

15. In her cross-examination she stated that the accused rented the room four-five months ago. She stated that there was no dispute regarding the property between her father and the accused. She also stated that no one else was present when the accused pulled her inside the room.

16. The mother of the prosecutrix deposed as PW-6. She stated that her father-in-law (the prosecutrix's grandfather) was running a grocery shop in the front portion of the ground floor. She also stated that besides

the shop, there was a room on the ground floor which was let out to three-four boys, including the accused. She deposed that on 07.09.2014, around 8:00 pm, she sent her daughter to call her father-in-law for dinner from the grocery shop. She stated that after ten-fifteen minutes, the child victim came back weeping and informed her that the accused had pulled the prosecutrix into his room, the accused removed his clothes and then committed rape on her. She deposed that there were blood stains on the clothes of her daughter. She also deposed that at that time, the accused was alone in his room as the other tenants had gone to their native place. She further deposed that on receipt of such information from her daughter, she immediately went downstairs along with her daughter, who pointed towards the accused as the one who raped her. On seeing the prosecutrix with her mother, the accused ran away. She voluntarily stated that out of nervousness, she washed the blood-soaked clothes of the prosecutrix. Thereafter, she took the prosecutrix to a nearby clinic, then to Saroj Hospital and finally to Ambedkar Hospital where the police recorded her statement (Ex. PW-6/A). She deposed that the site plan was made at her instance and the clothes of the prosecutrix were seized and sealed. She stated that the mat on which the rape was committed was seized and sealed vide seizure memo Ex. PW-6/B. She also stated that on 10.09.2014, she handed her daughter's birth certificate to the IO (Ex. PW-6/D), who seized the same vide seizure memo Ex. PW-6/E. In her cross-examination, she stated that on the date of the incident no document was prepared by the police in her presence and only her statement was recorded.

17. The grand-father of the child victim was examined as PW-7. He deposed that on one day last year he was called for dinner by his grand-daughter at around 7/8 pm when he was present at the shop and he told her that he would come after a few minutes. He also deposed that on hearing the cries of his daughter-in-law, he came to know that the accused had raped his grand-daughter. He further deposed that initially the accused was present; however, when his daughter-in-law raised an alarm, the accused ran away. He stated that his grand-daughter was bleeding profusely and was taken to the hospital. In his cross-examination, he stated that no one dialed 100 from the spot and the accused was not chased by any person.

18. The MLC of the prosecutrix (Ex.PW11/A) on examination indicates that the vaginal wall of approximately three centimeters in length was torn and the same was stitched in layers. Her blood pressure was also low. Dr Richa, S.R. (Obs. and Gynae), Dr B.S.A. Hospital was examined as PW11. She testified that on 08.09.2014, she was posted as S.R. (Obs. and Gynae) at B.S.A. Hospital and the victim was brought by the police for her examination at 12:25 am. She examined her and prepared the MLC (ExPW11/A) in her own handwriting. She identified her signature on the same. Her testimony as to the state of the victim is important and is set out below:

“At the time of examination, the girl child was in a state of shock because of bleeding. Her pulse was low volume, her B.P. was 80/50 only. On local examination, there was bleeding per vagina. Her clothing was soaked in blood. Patient was immediately admitted, resuscitated and taken in operation theatre

with consent. Her posterior vaginal wall tear around 3 cm in length was stitched in layers. Rest of the examination was unremarkable. All the samples collected, sealed and handed over to the Investigation Officer.”

19. PW11 was cross-examined but her aforesaid testimony regarding the medical condition of the prosecutrix was not challenged. The only suggestion put to her was that the injuries suffered by the prosecutrix were possible due to fall on a sharp pointed object. She categorically denied the said suggestion.

20. There is no doubt that the samples and exhibits collected by the Investigating Officers (WSI Suman Bajaj and WSI Anita) were sent to the FSL in intact condition. HC Manoj (who was examined as PW3) was posted as MHC(M) at the material time. He had testified that on 08.09.2014, WSI Suman Bajaj had deposited seven sealed *pullandas* which were duly entered in Register No. 9 at serial no. 2823 (Ex.PW3/A).

21. The exhibits were sent under RC No. 250876 to FSL, Rohini. The said RC duly records that seven *pullandas* including one containing the blood sample of the appellant and another containing his under garments, both sealed with the seal of BJRM Hospital, were sent to FSL. The FSL report (Ex.PW17/A) clearly indicates that the DNA profile generated from the exhibits of the prosecutrix was similar to the DNA profile generated from the blood sample of the prosecutrix. The DNA profile generated from the blood stains on the mat (*chatayi* recovered from the room occupied by the appellant on which the prosecutrix was

allegedly made to lay down and subjected to the assault) and the blood stains on the underwear of the appellant, matched the DNA profile generated from the blood sample of the prosecutrix. Thus, the said report established that the blood stains on the mat recovered from the appellant's room as well as blood stains on his underwear were that of the prosecutrix.

22. There is no inconsistency in the statements made by the prosecutrix, regarding any of the material aspects. The testimony of the mother of the prosecutrix (PW6) is also consistent with her statement made earlier in all material aspects.

23. In the circumstances, this Court is of the view that the prosecutrix is a reliable witness and the appellant's conviction can be sustained solely on her testimony. However, in this case the same is further corroborated by unimpeachable evidence – the testimony of the mother of the prosecutrix; the medical evidence; and the forensic evidence.

24. In view of the above, the impugned judgment convicting the appellant warrants no interference. This court finds no error in the impugned order on sentence as well.

25. Accordingly, the appeal is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

OCTOBER 13, 2020/RK