

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.02.2020

+ **CRL. A. 1125/2017**

CHHEDI PASWAN

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr SB Dandapani.

For the Respondent: Mr Tarang Srivastava, 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 16.08.2017 and order on sentence dated 16.08.2017 passed by the ASJ (Spl. Court of POCSO Act), East, Karkardooma Courts, whereby the appellant was convicted of the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and under Sections 342/363/376 of the Indian Penal Code, 1860 (IPC). The appellant was sentenced to (a) undergo ten years of rigorous imprisonment with a fine of ₹10,000/- and in default of payment of fine, to undergo imprisonment for a further period of six months for committing the offence under Section 376 of the IPC; (b) undergo rigorous imprisonment for a period of five

years and pay a fine of ₹1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for the offence under Section 363 of the IPC; and (c) undergo rigorous imprisonment for a period of one year for the offence under Section 342 of the IPC. All the aforesaid sentences were directed to run concurrently.

2. The appellant contends that the impugned judgment dated 16.08.2017 ought to be set aside by this Court, since it does not extend the benefit of doubt to the appellant in view of inconsistencies in the testimonies of various witnesses. The appellant contends that he was implicated as an afterthought and further, the MLC of the victim shows that her hymen was normal and the doctor, who was examined for the prosecution, (PW13) had confirmed that the hymen could be ruptured for other reasons as well. Further, the appellant contends that the victim was actually raped by PW-7 (Ashish Kumar) and not by the appellant.

3. The case of the prosecution is that a missing person's complaint was lodged on 11.02.2013 by the mother of the victim (who, at the material time, was thirteen years old). She stated that the victim had gone to the market on 10.02.2013 at about 08:00 pm but had not returned back. Thereafter, an FIR under Section 363 of the IPC was registered. Due to certain suspicion, the factory premises located in front of the residence of the victim, in which the appellant resided, was searched. The victim was found in the said premises wrapped in a blanket (*loi*). The appellant was arrested and was charged with the

commission of the offences punishable under Sections 363/342/376 of the IPC and Section 4 of the POCSO Act. The appellant pleaded not guilty and the matter was set down for trial.

4. Sh Ashok Narula deposed as PW-5. He deposed that he has been working as the Principal of the MC Co-Ed School, Geeta Colony, Block-9, Delhi. He proved the school record of the victim and stated that the victim was admitted to the Ist standard on 05.07.2005 and her date of birth recorded in the school records was 04.03.2000.

5. Dr Anuradha Tyagi deposed as PW-13. She stated that on 11.02.2013, she was posted at SDN Hospital, Shahdara, Delhi as Senior Resident. On that day, the victim was brought by W/Ct Poonam. PW-13 testified that she had examined the victim and upon doing so, found that the victim's hymen was not intact. In her cross-examination, she affirmed that she had stated that in her opinion (Ex. PW13/A) that the hymen of the victim appeared to be normal externally and there was no tear. No blood was found either. She also accepted that there could be extraneous reasons for the hymen to be ruptured. She also deposed that she had collected the necessary samples and had handed the same over to Ct Poonam.

6. The FSL report was exhibited as PW16/C. The said report mentions that human semen was detected on certain exhibits (such as, underwear of the victim, cotton wool swab of the victim, microslide of the victim, blood gauze of the accused, *loilchader* obtained from the spot) using which a DNA profile was generated. The FSL report records that there was sufficient material to conclude that the allelic

data of DNA from the source (blood gauze of the accused) was accounted in the allelic data of the DNA profile from the articles collected from the victim. Thus, the FSL report supported the case of the prosecution that the victim had suffered sexual assault(s) by the accused.

7. In his statement under Section 313 of the CrPC, the accused denied all the evidence put to him and pleaded his innocence. He stated that three-four days prior to the alleged incident, a quarrel had broken out between him and the mother of the victim due to which, he had been falsely implicated in the case.

8. The learned counsel appearing for the appellant submitted that the MLC of the victim clearly belied the allegation that the prosecutrix had been raped. He drew the attention of this Court to the MLC in question (Ex. PW 13/A). The said MLC had clearly recorded that *“hymen appears to be normal (externally) no tear – absent – no BP/V No tear or any bleeding”*. He submitted that since the physical evidence did not corroborate the charges levelled against the appellant, he ought to be acquitted. He earnestly contended that the evidence available on record did not establish the prosecution’s case of the appellant committing the offence beyond reasonable doubt.

9. Next, he submitted that the statement of the victim recorded under Section 164 of the Cr.P.C. was not consistent with her testimony or the case of the prosecution. Whereas, she had stated that she was removed by an uncle and taken to hospital on a scooter; in her testimony, she claimed that she had been rescued by the police along

with her mother and one uncle and the police had taken her to the hospital.

10. This Court does not find the contention advanced on behalf of the appellant to be persuasive. The evidence obtaining in this case clearly establishes, beyond any reasonable doubt, that the appellant is guilty of the offences for which he was charged.

11. The Vice-Principal of the school where the prosecutrix was admitted, testified as PW 1. He produced a copy of the Register where the date of birth was recorded as 04.03.2000. The mother of the prosecutrix deposed as PW 3. She also testified that the prosecutrix was about thirteen years. In view of the above, it was established that the prosecutrix was a minor at the material time.

12. PW 3 has further testified that on 10.02.2013, she had gone to the hospital for the treatment of her husband after leaving her three children at home. Subsequently, she had also called the elder daughter to the hospital. This left her minor daughter (prosecutrix) and her son at home. She stated that when her elder daughter returned to the house, the prosecutrix was not present at their home. On being so informed, PW 3 came back to her house and searched for the prosecutrix but she was not found. Thereafter, after 12.00 a.m. (night), she had gone to the police station to lodge an FIR. She stated that the police also came to her home and prepared a site plan. They also searched for her daughter (prosecutrix) but she was not found the entire night. She stated that she had also gone to the factory occupied by the accused (appellant) but it was locked and there was darkness. Her elder daughter had also

contacted the appellant on his mobile but he had stated that he was not present in his house and had not seen the prosecutrix. She testified that the police officials had entered the factory premises in question and had found the prosecutrix lying on a slab in an unconscious condition. She testified that when the prosecutrix was recovered, she was wrapped in a blanket. She further testified that the appellant had disclosed the whereabouts of the prosecutrix after he was beaten by the police. She also stated that she was present when the appellant was beaten.

13. There is overwhelming evidence to establish that the prosecutrix was recovered from the factory premises occupied by the appellant and the same was closed from outside. PW 3 (the mother of the prosecutrix) has testified to the aforesaid effect. ASI Pawan Singh (PW 4) had also affirmed that the premises in question were bolted from outside and were opened in the presence of the complainant (PW 3), one Ashish, a neighbour (PW 7), Constable Dinesh Kumar (PW 12) and Constable Sandeep Kumar (PW 11). All the aforesaid witnesses have corroborated the said fact. All of them have stated that the premises were opened in front of them and the prosecutrix was lying wrapped in a blanket on a slab in the room. All the aforesaid witnesses, namely, PW 7, PW 11 and PW 12 have corroborated the aforesaid fact.

14. The statement of the victim (prosecutrix) was recorded under Section 164 of the Cr.P.C. In her statement, the prosecutrix had stated that she was thirteen years old and on 10.02.2013 at about 8.45 p.m.,

she had left her house to buy a chocolate. On her way back, she met the appellant who told her that her sister was calling on the phone and she should receive the same. She asked him for the mobile phone but he said that the mobile did not have any charge and therefore, she should speak while the phone is still charging. She stated that she entered his room and he kissed her. She threatened that she would slap him. On this, Ranjeet (the appellant) slapped her. He then closed the gate. She stated that somebody had come to the lane outside and Ranjeet tied her face with a sheet and had wrapped her in a blanket and thereafter, he had put her on a loft (*Chajja* - also explained as *Saman Rakhne Wala*). She stated that after the person who was outside in the lane had left, Ranjeet brought her down and started opening her pants. She stated that she tried to remove the cloth from her face but the appellant had put her hands behind her back and had forcibly made her lie down. She stated that he had made her lie down on a bed and then started having sex with her. She stated that he had again wrapped her in a blanket and had placed her on the loft above (*Chajje ke Uper*). She stated that he brought her down about 5 O'clock. She tried to slap him but the appellant had once again wrapped her in the blanket and put her above (*Mujhe Kambal Se Dhak Kar Upar Rakh Diya*). She stated that she felt suffocated and started losing her consciousness. She stated that one uncle who lives in front of her house came in the morning and he brought her down and had taken her to the hospital in a scooter.

15. She also recorded her statement before the Court as witness for prosecution (PW 6) and her testimony is consistent with her narration except that she states that the morning police and an uncle, who used to reside in her neighbourhood, had come and removed her from the slab and thereafter, she was taken to the hospital. Although, in her statement recorded under Section 164 Cr.P.C., she had not stated that the uncle who had rescued her in the morning was accompanied by the police and her mother. This Court does not consider that to be a material inconsistency, which raises any doubt as to her narration of the incident. It is also important to note that at the material time, the prosecutrix was only a child of thirteen years, she had suffered immense trauma and as deposed, was in an unconscious condition when rescued and thus, any minor inconsistency in her narration regarding her rescue ought to be ignored.

16. It is also clear from the evidence that the blanket and sheets were seized.

17. Mr Ashish Kumar deposed as PW 7. The prosecutrix has referred to him as the uncle residing in the neighbourhood. He also testified that the prosecutrix was recovered in an unconscious condition and was wrapped in a blanket and after she was recovered, she was taken to the hospital for a medical examination.

18. Insofar as the MLC is concerned, Dr Anuradha Tyagi (who had noted the said MLC) was examined as PW 13. She testified that the hymen of the prosecutrix was not intact and a PV examination was not done as she was an unmarried girl. She stated that the examination of

the prosecutrix regarding sexual assault was done and she had collected the necessary samples and sealed the same. In her cross-examination, she was confronted with the MLC Ex. PW 13/A. She stated that it was correct that the hymen of the victim appeared to be normal (externally) and as per P/R examination, no tear or bleeding was found. However, she reiterated that the hymen of the prosecutrix was not found to be intact. She also stated that the samples are taken in case the hymen is found to be not intact and in this case too, samples were taken. She further stated that at the time of her examination, the prosecutrix was following her instructions but not uttering anything.

19. In view of the consistent testimony of the witnesses, there is little room for entertaining any doubt whether the appellant had committed the offences for which he was charged. However, the forensic evidence fully establishes the case of the prosecution beyond any pale of doubt. The forensic report confirmed that human semen was detected on the underwear, vaginal swab, vaginal micro slides having smeared of the vaginal secretion, washings from the vagina and the sheet (woollen *loi/Chaddar*). The DNA profile of the blood from the appellant was accounted in the allelic data of the DNA profile from the said exhibits.

20. In view of the above, the appeal is unmerited. This Court concurs with the view of the Trial Court that the prosecution had established beyond reasonable doubt that the appellant was guilty of

the offences for which he was charged. The appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 17, 2020

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