

\$~11

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

%

Date of Decision: 4th October, 2021

+

CRL.A. 400/2017 & CRL.M.(BAIL) 1067/2021

DEEPAK alias RANJAN

..... Appellant

Represented by: Mr. Tahir Ashraf Siddiqui, Advocate
(DHCLSC)

Versus

STATE OF DELHI

..... Respondent

Represented by: Mr. Amit Gupta, APP for the State
with SI Naveen Kumar, PS Ashok
Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT: (ORAL)

The hearing has been conducted through Physical Mode.

1. In this appeal, the appellant impugns the judgment dated 22nd December, 2016 convicting the appellant for the offences punishable under Sections 6 POCSO Act and Sections 363 and 342 IPC and the order on sentence dated 24th December, 2016, whereby the appellant was directed to undergo rigorous imprisonment for a period of 10 years and fine besides the sentences on the other count being rigorous imprisonment for 2 years and 1 year, respectively which sentences are required to be undergone concurrently.

2. Learned counsel for the appellant submits that the appellant has been falsely implicated. From the statement of the mother, it is evident that she was given a call indicating that her daughter had fallen down from the stairs by her husband. However, thereafter the version was changed and it was stated that the appellant indulged in anal intercourse. Further, the FSL report also fortifies the version of the appellant for the reason no male DNA was found in the rectal swab or the clothes of the prosecutrix.

3. Learned APP for the State, on the other hand, contends that the version of the prosecutrix before the Court, who was a four year old minor child, is consistent to the statement recorded under Section 164 Cr.P.C. There being no discrepancy in the same and is duly corroborated by the version of private doctor PW-9, where the mother took the prosecutrix, who has not been cross-examined. Further, even as per the MLC of the prosecutrix, injuries and bleeding in the anal region were detected which fortifies her case. Hence, no case for false implication is made out and the prosecution has proved its case beyond reasonable doubt against the appellant.

4. The prosecutrix, who was a minor girl aged four years, when examined before the Court stated that the appellant had done 'galat kam' with her. On a question posed by the learned trial court as to how the offence was done, the witness touched her anal region with her hand and stated 'Ranjan ne yaha par chot lagayi thi'. On being further questioned, where Ranjan was, the prosecutrix stated that she had gone to the house of Golu and Ranjan was residing near the house of Golu. While she was playing at the house of Golu, Ranjan took her to his room, took out her underwear and then climbed over her body. The witness demonstrated the

manner in which the appellant laid himself on her body. She stated that when she shouted, he closed her mouth and that after some time, he opened the gate and asked her to run away. She went to her father and told him everything, who called her mother home and then the mother took her to a doctor, who gave her medicine. Thereafter, she was taken to the hospital by the police and her MLC was prepared.

5. Version of the prosecutrix is duly corroborated by her parents, who have been examined as PW-10 and PW-11.

6. PW-9 Rajender Prasad, RMP, who examined the prosecutrix immediately after the incident, stated that he was running a clinic opposite the factory and on 17th September, 2013, at about 10.00-10.30AM, the prosecutrix was brought to the clinic. He found blood on the private parts of the minor child and he advised her parents to get her medically checked up from a good hospital and did not give any treatment or medicine.

7. MLC of the prosecutrix Ex.PW2/A, notes 5 O'clock cut and bleeding in the anal region. Even though the FSL report does not show any male DNA from the rectal swab or the pyjama of the prosecutrix, however, for an offence of rape, penetration is sufficient, which is evident from the MLC of the prosecutrix, which notes the tear in the anal region and bleeding.

8. As regards the false implication is concerned, suggestions were given to the prosecutrix as to whether there was any quarrel between her parents and Ranjan, which she denied. However, she admitted that her father used to drink at times and that when he drank, he quarreled with her mother. However, she denied the specific suggestion that when her father used to quarrel with her mother, the appellant used to save her due to which the

relations were strained. The prosecutrix reiterated that the appellant assaulted her.

9. Considering the consistent statement of the prosecutrix, which is duly supported by the version of her parents and the PW-9, Rajender Prasad to whom the prosecutrix was immediately taken after the incidence, further by the MLC, this Court finds no error in the impugned judgment of conviction and the order on sentence.

10. Appeal and application are dismissed.

11. Copy of this order be conveyed to the Superintendent (Jail) for updation of the record and intimation to the appellant.

12. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

OCTOBER 04, 2021

PB