

(2015) 02 DEL CK 0019
In the Delhi High Court
Case No : Criminal Appeal 1307/2011

Ashok

APPELLANT

Vs

State (Govt. of NCT) of Delhi

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 3 AD 668

Hon'ble Judges : S.P. Garg, J.

Bench : Single Bench

Advocate : Bhupesh Narula, for the Appellant; Navin K. Jha, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.P. Garg, J.—The instant appeal is directed against a judgment dated 07.04.2010 in Sessions Case No.81/09 arising out of FIR No.247/09 PS Palam Village by which the appellant - Ashok was held guilty for committing offence under Section 376 IPC. By an order dated 12.04.2010, he was awarded RI for ten years with fine Rs. 10,000/-.

2. Briefly stated, the prosecution case as reflected in the charge- sheet was that on 24.07.2009 at about 02.15 P.M. at House No.RZ- D1A/145, Gali No.5, Mahavir Enclave, New Delhi, the appellant sexually assaulted "X" (assumed name) , a minor child, aged about 12 years. Police machinery came into motion when information about the incident was recorded vide Daily Diary (DD) No.29A (Ex.PW-13/A) at 05.00 P.M. at PS Palam Village. The investigation was assigned to SI Hansraj who went to the spot. First Information was lodged on the statement of victim's mother - Janki Devi. She disclosed as to how and under what circumstances, "X" her daughter was sexually assaulted by the appellant. During investigation, statements of the witnesses conversant with the facts were recorded. "X" was medically examined; she recorded her statement under

Section 164 Cr.P.C. The exhibits were sent to Forensic Science Laboratory for examination. The accused was arrested and medically examined. After completion of investigation, a charge-sheet was filed against him in the Court. The prosecution examined fourteen witnesses to substantiate its case. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication without examining any witness in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, he has filed the instant appeal.

3. Learned counsel for the appellant urged that in view of clear admission by the prosecutrix in her cross-examination that the accused had not removed his underwear and pant at the time of occurrence, there was least possibility of commission of rape. "X" has given a false statement due to enmity at the behest of her mother and her testimony without corroboration, cannot be relied upon to base conviction.

4. Admitted position is that "X" is a mentally retarded girl aged about 12 years. She is unable to speak but understands questions and is capable to respond. It is also admitted that the appellant lived along with his wife in the premises in question and is related to X's mother (being brother of her "devrani"). It is also not denied that on the day of incident, X's mother had handed over key of the room after locking it from outside to the appellant. "X" was in the said room when her mother - Janki Devi had gone to attend her job as maid in various houses and her father was away to his native village. PW-7 (Janki Devi) , X's mother deposed that her other children had gone to attend school that day and her daughter "X" was alone in the house. She had left for her job at 08.00 A.M. that day leaving "X" at home and had locked the house from outside. She had handed over the key of the room to the appellant with a request to open it after arrival of her children from the school. In 313 statement, this fact stands admitted by the appellant.

5. On return to the house at around 02.00 P.M., Janki Devi noticed that the room was lying unlocked and it was bolted from inside. When she knocked the door, she heard X" weeping. The door was opened by the appellant from inside and he was wearing only vest and underwear that time. When Janki Devi enquired from "X" the cause of her weeping, she by "signs" (gestures) pointed towards the accused first and then towards her private part. Janki Devi saw "X" bleeding from her private part. She also noticed blood on the "dari" (mat) placed on the bed. When she caught hold of the appellant, he apologized for committing blunder. The police was informed.

6. Undisputably, key of the room was with the appellant. He did not offer any explanation as to why and under what circumstances, he opened it when other children had not yet returned from the school. The appellant was caught red handed at the spot. When PW-7 (Janki Devi) returned to the house, he was found inside the room along with the prosecutrix. The appellant did not offer any explanation as to what had prompted him to enter inside the room where "X"

was kept alone after opening the lock with the key which was meant to be handed over to the other children. There was none else inside the room at that time. The appellant did not allege if any other individual had entered the room without the use of key and had ravished the child. Circumstance of last seen with the prosecutrix at the relevant time points an accusing finger against the appellant.

7. Prosecutrix's statement is consistent throughout. In her 164 Cr.P.C. statement (Ex.PW-10/A) , she implicated the appellant. Learned Magistrate had put numerous questions to her before recording her statement to ascertain if she was able to understand and give rational answers. Initially Smt.Vinod Khullar, from RLN Deaf School, Feroz Shah Kotla, Delhi Gate, New Delhi, was associated for interpreting the sign language used by the child. General enquiries were made putting various questions and the examining Magistrate was of the view that she understood the questions and possessed simple reasoning power.

8. In her deposition before the Court again the trial judge before recording her testimony questioned her on various aspects. After satisfying that the witness was capable to give statement, she recorded her statement without oath. Some portion of her deposition needs reproduction :

"Q. What had happened with you?

Ans. (Witness has pointed towards accused Ashok).

Q. Did he come to your room?

Ans. Yes.

Q. Who else were present in the room with you at that time?

Ans. No one.

Q. What did Ashok do?

Ans. He removed my clothes and removed his pant.

Q. What did he do then?

Ans. (Witness has pointed towards her private part).

Q. Did he do something good or bad?

Ans. Bad.

Q. Did he put his hand in your private part?

Ans. No.

Q. Did you have bleeding from your private part?

Ans. yes.

Q. Did you have pain when Ashok did the bad thing in your private part?

Ans. Yes.

Q. Was Ashok standing at that time?

Ans. No.

Q. Was he lying over you?

Ans. Yes.

Q. What did he insert in your private part?

Ans. (Witness is not able to reply as she can not speak. She is then shown the back side of MLC already Ex.PW5/A and she is asked to point out from the sketch of male body printed on the back side of the said MLC, the body part which was put by Ashok in her private part. The back page of the said MLC is now Ex.PW9/A. The child witness has pointed towards the male organ as shown at point A on Ex.PW9/A).

Q. Did you tell your mother about what Ashok did?

Ans. Yes.

Q. Did you go to Hospital?

Ans. Yes.

Q. Did some Bade Sahab and the Madam Interpreter come to your house after that and did you tell them about what Ashok did?

Ans. Yes.

Q. Is Ashok good?

Ans. No.

Xxxxxxx By Sh.Mahipal Singh, Ld.Counsel for accused.

It is wrong to suggest that Ashok did not do any Galat Kam with me.

Q. Did Ashok remove his pant?

Ans. No.

Q. Did Ashok remove his underwear?

Ans. No.

Q. Am I standing?

Ans. Yes.

Q. Am I lying down?

Ans. No.

Q. Did Ashok lie down on you on that day?

Ans. Yes.

Q. Did your father or mother tell you what to say in the court?

Ans. No. "

9. From the above deposition of the witness, it stands established that she was brutally ravished by the appellant and none else. She categorically identified the appellant to be the author of the crime. In her examination-in-chief, she was clear that the appellant removed her clothes and his pant. She denied if the appellant had put hand in her private part. When she was asked as to what was inserted in her private part, she was unable to reply. However, the Trial Judge in her wisdom to find out the truth showed her backside page of the MLC (Ex.PW-5/A) and asked her to point out from the sketch as to which part of the body was put in her private part. The child witness pointed towards the male organ as shown at point "A" in Ex.PW-9/A. The response given to the question in the cross-examination that the appellant did not remove his underwear or pant does not efface the categorical assertion of the prosecutrix. Her statement is to be read in its entirety. Reading a line out of context is not an accepted canon of appreciation of evidence. The Court should adhere to a comprehensive approach, in order to examine her version. It is to be remembered that the victim was a mentally challenged child. So innocent was the victim that she was not aware as to which body part was inserted in the vagina. It is unclear how and in what context she in the cross-examination, stated that the appellant did not remove his underwear and pant when she categorically stated in her deposition that the appellant had lied over her.

10. The Court has no valid reasons to disbelieve the statement of the prosecutrix who did not nurture any grievance or animosity with the appellant prior to the occurrence and had absolutely no reason whatsoever to falsely involve him. She had nothing to do with any personal rivalry between her parents and that of the appellant. Her evidence inspires confidence. Her testimony must be appreciated in the background of the entire case.

11. Besides this, "X"'s statement is in consonance with medical evidence. Soon after the occurrence, she was medically examined by PW- 6 (Dr.Komila) vide MLC (Ex.PW-6/B). It is recorded therein that the girl under examination was a mentally retarded spastic child. She was brought for medical examination with the alleged history of sexually assault at 01.30 P.M. at her house by a relative. Hymen was found ruptured. In the cross-examination, the doctor disclosed that when she communicated with "X", she could make out that someone had, after removing his clothes and her clothes, penetrated her private part. There is no conflict between the ocular and medical evidence.

12. Dari (mat) on which blood was noticed by PW-7 (Janki Devi) was sent for Forensic Science Laboratory for examination. As per report (Ex.PW-13/F) "human" blood was detected on Ex.3 i.e. dari. It further confirms the version narrated by the prosecution witnesses.

13. In 313 statement, the appellant admitted that the prosecutrix "X" aged about 12 years was unable to speak since birth and could explain things by signs. He further admitted that in the absence of complainant who used to leave home at about 08.00 A.M. and return at about 02.00 or 02.30 P.M. "X" remained alone at home and the main door used to be locked from outside. He further admitted that on 24.07.2009 complainant's husband had gone to his native place and she had left for her job as usual at about 08.00 A.M., locking "X" inside the room and its key was handed over to him with the direction to give it to her other children on their return from the school. It is also admitted that when complainant asked "X" as to why she was crying, she conveyed with signs pointing first towards him and then towards her private parts. The appellant, however, added to plead that he had not done anything and did not know why "X" pointed like that. The appellant also admitted about the information given to the police by the complainant and recording of complainant's statement (Ex.PW-7/A). The admissions in 313 Cr.P.C. statement lend credence to the prosecution case.

14. In 313 statement, the appellant stated that he was not aware as to why the key was entrusted to him that day when the complainant used to carry it herself daily. He alleged false implication when he returned at about 01.30 / 02.00 P.M. after search of some work. Entirely divergent and inconsistent suggestions were given to complainant - Janki Devi in her cross-examination, alleging that he had gone to his work place on the day of the alleged incident and was not present at the spot on her return to the house. The appellant did not elaborate as to at which particular place, he had gone to attend any job. In the cross-examination, PW-7 (Janki Devi) explained that she had given the key of the room to the accused for the first time that day as generally the accused used to go for his work but that day he was at home. She came to know from the accused that he would not go for his work that day. This explanation / justification for handing over the key to the appellant remained unchallenged in the cross-examination.

15. In 313 statement, the accused did not assign any strong motive of the victim or her mother to implicate him in the incident. No witness in defence was examined to substantiate his defence. It requires outright rejection.

16. The findings of the Trial Court are based upon fair and proper appraisal of evidence and warrant no interference. The victim was a mentally challenged girl aged about 12 years. The appellant was related to her. He betrayed the trust of the victim's mother. Sentence order thus needs no modification except that the default sentence for non-payment of fine of Rs. 10,000/- shall be SI for ten days instead of two months.

17. The appeal stands disposed of in the above terms. Trial Court record be sent back immediately with the copy of the order. Copy of the order be sent to Superintendent Jail for information.