

(2015) 07 DEL CK 0045
In the Delhi High Court
Case No : Criminal Appeal 795 of 2011

Chander Pal

APPELLANT

Vs

State (Govt of NCT) of Delhi

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376, 376(2)(f), 506

Citation : (2015) 07 DEL CK 0045

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

Bench : Single Bench

Advocate : Ajay Verma and Neha Singh, for the Appellant; Navin K. Jha, APP.,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.P. Garg, J.—"X" (assumed name) aged around 12 years was ravished on 16.05.2009 at about 02.30 p.m. on the roof of her House No.A-91, gali No. 15, Ambika Vihar, Karawal Nagar when she had gone there to answer call of nature. Her parents were not present at the house that time. PW-2 (Kanti Devi) who lived in her neighbourhood happened to witness the incident from the roof of her house. The appellant succeeded to flee the spot before her arrival. She brought "X" downstairs and promptly informed her father about the incident. When X's parents reached home, they approached the police. Daily Diary (DD) No. 11A (mark PW-14/AA) came into existence at 03.55 p.m. at PS Karawal Nagar. The investigation was assigned to ASI Jeet Singh who with W.Const.Pinki Chaudhary went to the spot. After recording X's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report by making endorsement (Ex.PW- 14/A) over it. "X" was medically examined. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was laid before the Court. Charge under Sections 376/506 IPC was settled against the appellant to which he pleaded not guilty and claimed trial. To bring home the appellant's guilt, the prosecution examined

fifteen witnesses. In 313 Cr.P.C. statement, the accused abjured his guilt and pleaded false implication. DW-1 (Mamta) appeared in defence. The trial resulted in his conviction under Section 376/506 IPC by a judgment dated 24.02.2010 in Sessions Case No. 142/2009 arising out of FIR No. 110/2009 P.S. Karawal Nagar. Being aggrieved and dissatisfied, the instant appeal has been preferred by the appellant.

2. I have heard the learned counsel for the parties and have examined the file minutely. The incident took place at around 02.30 p.m. on 16.05.2009. Daily Diary DD No. 11A (mark PW-14/AA) came into existence at 03.55 p.m. when intimation regarding rape upon a girl aged about 8 - 10 years was conveyed to the police. In her statement (Ex.PW- 1/A), lodged soon after the incident, "X" gave detailed account of the occurrence and implicated the appellant by name for committing rape upon her. The Investigating Officer lodged First Information Report without wasting any time by sending rukka (Ex.PW-14/A) at 07.30 p.m. Prior to that "X" was medically examined vide MLC (Ex.PW-11/A) at Guru Teg Bahadur Hospital, Shahdara, Delhi at 06.30 p.m. Since the appellant's name had emerged soon after the occurrence as perpetrator of the crime, there was least possibility of the prosecutrix, her parents and Investigation Agency to fabricate or concoct a false story to falsely implicate him.

3. In her Court statement, the victim proved the contents of the statement (Ex.PW-1/A) lodged with the police at the first instance without any variations. She categorically deposed that on 16.05.2009 when her mother and sister had gone to hospital and her father was away at his place of work, at about 02.00 p.m. she went to the roof to answer call of nature. The accused arrived there; pulled her in one of the rooms, shut her mouth and committed sexual intercourse against her wishes after disrobing her. The appellant also criminally intimidated and threatened her not to disclose the incident to anyone. When the appellant saw the incident being witnessed by Kanti Devi from her roof, he fled the spot wiping his male "organ" with a piece of cloth. In the cross-examination, the material facts stated by her remained unchallenged and uncontroverted. The appellant did not deny his presence on the roof at the relevant time. "X" reasoned that she could not raise alarm as the accused had put his hands on her mouth. She denied that the accused was falsely implicated due to enmity with his sister-in-law. No extraneous motive was attributed to the child witness to implicate him for the heinous offence. PW-2 (Kanti Devi) has corroborated X's version in its entirety. After witnessing the incident from her roof, she rushed to spot but the accused succeeded to flee before her arrival there. She brought "X" downstairs and informed her father. No reason exists to disbelieve PW-2 (Kanti Devi) with whom the appellant or his brother - Bhura had no prior animosity. It was her responsibility to take care of the children in the absence of X's parents. PW-5 (Dori Lal) disclosed that he came to know about the incident on phone received from her neighbour Kanti Devi. He made a telephone call at 100 after reaching home and subsequently, PCR officials and local police arrived there. Similar is the testimony of PW-4 (Rama Devi), X's mother. Arti, X's sister aged

11 years was sleeping at the time of occurrence. She deposed that "X" was seen by her crying in the stairs. There is no inconsistency in the ocular account given by the prosecution witnesses to suspect their reliability. Medical evidence is in consonance with ocular evidence. Soon after sexual assault, "X" was medically examined; her hymen was found torn. MLC (Ex.PW-11/A) records the alleged history of "sexual assault". FSL reports (Ex.PW-15/A to Ex.PW- 15/C) further connect the appellant with the crime. Human semen was detected on Ex.1a and Ex.1b (two micro slides having faint whitish smear); Ex.2a (baby's pyjama); Ex.2b (underwear) and Ex.3 (nikkar). It lends credence to the prosecutrix" version about sexual assault.

4. Appellant's identity is not in dispute. He lived in the neighbourhood of the prosecutrix and his brother - Bhura was a tenant in the premises. No worthwhile evidence surfaced to infer if X's parents nurtured any enmity with Bhura's wife. Defence version has been rightly rejected for cogent reasons in the impugned judgment. DW-1, appellant's sister-in-law never lodged any complaint for any quarrel with X's parents over non-payment of rent. For petty differences (if any) with Bhura's wife, X's parents would not use their little child to settle score. They would be highly reluctant to level such serious allegation to bring their own daughter in disrepute. In fact, X's parents were not present at home and it was Kanti Devi who had intimated them about the crime. Certain omissions, improvements and contradictions highlighted by the appellant's counsel are inconsequential as they do not affect the core of the prosecution case. No sound reasons prevail to disbelieve the testimony of the prosecutrix, aged around ten years. Absence of injuries on her body is of no help to the appellant. Settled legal proposition is that absence of injuries on the body of the prosecutrix does not give rise to an inference that she was a consenting party to coitus. Absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on her part. Absence of violence or stiff resistance may as well suggest helpless surrender to the inevitable due to sheer timidity. In the instant case, the victim was a child aged about 8 or 10 years. Due to fear and criminal intimidation, she was physically incapable to put resistance to the nefarious act committed by the accused. Even her consent was immaterial and irrelevant she being below 16 years of age on the day of occurrence.

5. Indisputably, findings of guilt in a case of rape can be based on the uncorroborated evidence of the prosecutrix if it is unimpeachable and beyond reproach. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix cannot be rejected on the basis of minor discrepancies or contradictions. In the case of State of Punjab Vs. Gurmit Singh and Others, (1996) 1 AD 492 : AIR 1996 SC 1393 : (1996) CriLJ 1728 : (1996) 1 Crimes 37 : (1996) 1 JT 298 : (1996) 1 SCALE 309 : (1996) 2 SCC 384 : (1996) 1 SCR 532 , Supreme Court made the following weighty observations in respect of the evidence of the victim of sexual assault :

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating" statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

6. In State rep. by Inspector of Police Vs. Saravanan and Another, AIR 2009 SC 152 : (2008) 11 JT 290 : (2008) 13 SCALE 253 , while dealing with a similar issue, Supreme Court observed :

".while appreciating the evidence of a witness, minor discrepancies on trivial

matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies."

7. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him. He did not produce any evidence to show if there was any prior enmity with him or his sister-in-law prompting X's parents to falsely implicate him in the instant case.

8. Since the judgment is based upon fair appraisal of the evidence, it needs no intervention. The victim was a child aged around ten years. Minimum sentence prescribed under Section 376(2)(f) cannot be modified. Sentence Order needs to be modified to the extent that the appellant shall undergo SI for two months in all for non-payment of fine imposed under both the heads. Other terms of the Sentence Order are left undisturbed.

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