



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

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+ **CRL.A. 90/2017**

IRFAN

.....Appellant

Through: Mr. M.L. Yadav (DHCLSC) and
Mr.Prashant, Advocates

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Raghuraj Singh, P.S. Sangam
Vihar
Mr. Vibhor Garg (Amicus Curiae)
and Ms. Yadavi Malhotra, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 25.11.2016 and the order on sentence dated 29.11.2016 passed by the learned Additional Sessions Judge-01, South District, Saket Courts, New Delhi in SC No. 149/2015 arising out of FIR No. 270/2013 registered under Sections 376/506 IPC at P.S. Sangam Vihar.

Vide the impugned judgment, the appellant came to be convicted for the offences under Sections 376/506 IPC and Section 4 POCSO; and vide the impugned order on sentence, he was sentenced to undergo RI for 7 years alongwith fine of Rs.25,000/-, in default whereof he was directed to undergo



SI for 6 months, for the offence punishable under Section 376 IPC and Section 4 POCSO. For the offence under Section 506 IPC, he was sentenced to undergo RI for a period of 6 months. Both sentences were directed to run concurrently.

The appellant's sentence was suspended during pendency of the present appeal vide order dated 20.03.2017.

2. The prosecution case, in brief, is that the prosecutrix, aged less than 17 years at the time of the incident, was residing in room no. 1 with her family in a multi-tenanted building at Sangam Vihar; and the appellant (aged about 21 years at the time), residing in the same building on the same floor (1st) in room no. 5, approached her early in the morning of 17.06.2013 when she had finished filling water in her container and the appellant was also taking water. He told her that he wanted to talk to her, whereafter he caught hold of her hand and took her to room no. 02, which was lying vacant. After taking her inside, he shut the door, forcibly put her on the floor, removed her clothes as well as his own half pant and underwear, and had sexual intercourse with her for about 10 minutes. The appellant threatened to kill her brother if she disclosed the incident to anyone. She remained silent for many days, did not take her meals properly, and when her mother questioned her about her condition, she narrated the incident, whereafter the police were informed and the appellant was apprehended.

3. The learned counsel for the appellant contends that the prosecution version cannot be relied upon as the mother of the prosecutrix, who was the first person to whom the incident was allegedly disclosed, was not examined. It is further submitted that neither the MLC nor the FSL report support the allegations. He also submits that the prosecutrix has given



different timings of the incident at different stages: around 5:00 AM in her Section 161 Cr.P.C. statement, between 2:00 AM and 4:00 AM in her statement recorded under Section 164 Cr.P.C., and about 4:00 AM (2-3 days before 21.06.2013) in her Court deposition. It is argued that these shifting versions, along with the delay of 4 days in lodging the FIR, cast a shadow of doubt over the prosecution case. Learned counsel further submits that allegations such as the assertion that he had packed his belongings and was attempting to run away on 21.06.2013 were never stated in the earlier versions and appeared for the first time during the Court deposition of the prosecutrix, thereby creating further doubt about the truthfulness of the prosecution story.

4. Learned APP for the State, as well as learned *Amicus Curiae* appointed to represent the victim, support the impugned judgment, contending that the testimony of the prosecutrix is cogent, credible, and consistent. He submits that the medical evidence does not weaken the prosecution case, as the MLC specifically records the hymen to be torn, and the absence of external injuries does not negate the allegation of rape.

5. The prosecution examined 10 witnesses in support of its case. The material witnesses are the prosecutrix (PW-1); Dr. Nisha (PW-3); Ct. Chanchal (PW-4); Ct. Harinder (PW-5); and the I.O., SI Kamini Gupta, who was examined as PW-10. Insofar as the age of the prosecutrix is concerned, PW-9, the Principal of the school attended by the prosecutrix, is the primary witness. The remaining witnesses were largely formal in nature.

6. The prosecutrix/PW-1, a student of class XII at the time, deposed that on the day of incident at about 4.00 AM, she was filling water at the common tap when the appellant called her to his room on the same floor.



When she went near him, he suddenly gagged her, dragged her into the room, removed the *nada* (string) of her *salwar*, and committed rape upon her. She categorically stated that the appellant threatened to kill her brother if she disclosed the incident. She remained silent for 2-3 days out of fear. When she was unable to behave normally, her mother questioned her, whereafter she disclosed about the incident. The police were then called. She identified the appellant in Court.

In cross-examination, PW-1 stated that she informed her mother about the incident in question as the appellant was leaving his room with luggage on 21.06.2013. She denied the suggestion that the appellant has been falsely implicated due to a monetary dispute, or that she and her mother fabricated the allegations when the appellant demanded his money back.

7. PW-3/Dr. *Nisha*, Senior Resident, AIIMS, conducted the medical examination of the prosecutrix on 21.06.2013 and proved the MLC. She was not cross-examined by the appellant despite opportunity.

8. PW-4/Ct. *Chanchal*, on instructions of the I.O., took the prosecutrix for medical examination, collected the MLC as well as sealed exhibits from the hospital and handed over the same to the I.O. She also deposed briefly as to the apprehension of the appellant, subsequent interrogation, and the recording of her statement by the I.O. She denied the suggestion that she never joined the investigation.

9. PW-5/Ct. *Harinder* accompanied the I.O., and witnessed the apprehension of the appellant at the instance of the prosecutrix from a neighbouring house. He stated that the appellant was interrogated thereafter and also proved the arrest and the personal search memo. The next day, he took the appellant for medical examination, collected the consequent MLC



along with sealed exhibits, and handed over the same to the I.O. In cross-examination, he stated that the appellant was arrested around 8.30 PM, that *rukka* was prepared on the statement of the prosecutrix, and that the statement of the prosecutrix was recorded in his presence. Nothing was extracted to undermine the genuineness of the arrest or preparation of documents.

10. PW-10/SI *Kamini Gupta*, the I.O., recorded the statement of the prosecutrix, arranged for medical examination, seized exhibits, arrested the appellant at the pointing out of the prosecutrix, prepared site plan, recorded statements, and filed the charge-sheet. In cross-examination, she explained the sequence of events and denied suggestions of ante-timing of FIR or fabrication of documents.

11. PW-2/ASI *Dharambir Singh* proved the FIR and denied that it was ante-timed. PW-6/Dr. *Rajesh Kumar* proved the potency test of the appellant, opining that there was nothing to suggest that he was incapable of performing sexual intercourse. PW-7/Ct. *Sanju* took the *rukka* to the police station for registration of the FIR. PW-8/Ms. *Preeti Parewa*, the learned MM, recorded the statement of the prosecutrix under Section 164 Cr.P.C. PW-9/*Tara Chand Mahawar*, school Principal, proved the date of birth of the prosecutrix as 11.08.1996.

12. In his statement under Section 313 Cr.P.C., the appellant admitted that he was residing as a tenant in the same building as the victim's family. He denied the allegations put to him and claimed that he had been falsely implicated. In response to the final question, he stated that the prosecutrix and her mother wanted him to marry the prosecutrix, and upon his refusal, he was falsely implicated in the present case. Notably, the appellant, in this



Section 313 statement, did not raise the defence of a monetary dispute between him and the family of the prosecutrix, despite suggestions to this effect having been put to the prosecution witnesses during cross-examination.

13. At this stage, it is appropriate to state the position of law regarding the appreciation of the testimony of a child victim, as recently analysed by the Supreme Court in State of Madhya Pradesh vs. Balveer Singh, reported as **2025 SCC OnLine SC 390**, wherein it was held as under:

“58. We summarize our conclusion as under:-

- (I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.*
- (II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*
- (III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*
- (IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*
- (V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*
- (VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-*



examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

- (VII) *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*
- (VIII) *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirable or required, and would depend upon the peculiar facts and circumstances of each case.*
- (IX) *Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*
...”

14. Earlier, in State of Punjab Vs. Gurmit Singh, reported as (1996) 2 SCC 384, the Supreme Court, while dealing with the case of rape of a victim, had held that the evidence of the victim of sexual assault is sufficient for conviction and does not require any corroboration unless there are compelling reasons for seeking the same.

15. Again, in Ganesan Vs. State, reported as (2020) 10 SCC 573, the



Supreme Court, dealing with a case of sexual assault of a victim, held that the sole testimony of the victim, if found worthy of credence and reliable, requires no corroboration and may be sufficient to invite conviction of the accused.

16. In view of the above, the settled position of law is that even if the victim is the sole witness to the incident, a conviction can be sustained if her testimony is found to be credible and reliable.

17. Now turning to the evidence led in the present case, this Court finds the testimony of the prosecutrix/PW-1 to be wholly credible. Her narration of the events has remained consistent from the history recorded in her MLC to her statements under Sections 161 and 164 Cr.P.C., as well as her deposition before the Court. Her version appears natural, and nothing material was elicited in cross-examination to discredit her account. Her conduct in not immediately reporting the incident stands explained in view of the threats issued by the appellant. Even non-examination of mother of victim is inconsequential as the mother came to know about the incident only on 21.06.2013.

18. The medical and forensic evidence on record does not contradict the prosecution case, as contended. Rather, the MLC of the prosecutrix (Ex. PW-3/A) specifically records the hymen to be torn. Although no external injuries were noted, the absence of such injuries does not *ipso facto* negate rape, particularly when the victim was examined 4 days after the assault. Notably, the incident took place on 17.06.2013, whereas the medical examination of the prosecutrix was conducted only on 21.06.2013.

19. During the respective medical examinations of the prosecutrix and the appellant, relevant samples were collected, sealed, and later sent to the FSL.



The FSL report (Ex. P-1) notes that semen could not be detected on the microslides of the victim. As already noted above, the samples were collected 4 days after the assault.

20. Minor inconsistencies in timing are inherent in human recollection and do not dent the core of the prosecution version. The alleged monetary dispute, projected as the motive for false implication, is a bald suggestion unsupported by any credible witness or document. Nothing has come on record to dilute the credibility of PW-1.

21. In view of the above discussion, the present appeal is without merit and is accordingly dismissed. The conviction and sentence imposed by the Trial Court are upheld. The appellant is directed to be taken into custody.

22. A copy of this judgment be communicated to the Trial Court as well as to the concerned Jail Superintendent for information and necessary compliance.

23. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Vibhor Garg, Advocate, learned *Amicus Curiae*.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 22, 2025

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