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Attar Singh Vs. State

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Court : Delhi

Decided On : Jan-24-2014

Judge : Indermeet Kaur

Appellant : Attar Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

16. 01.2014. Judgment delivered on:

24. 01.2014. CRL.A. 539/2000 ATTAR SINGH Through: ..... Appellant Mr.S.H.Ansari, Adv. versus STATE Through: ..... Respondent Mr.Navin K.Jha, APP along with SI Uma Dutt. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment dated 17.08.2000 and order on sentence dated 18.08.2000 whereby he had been convicted under Section 376 of the IPC and had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.3,000/- and in default of payment of fine, to undergo SI for a period of 6 months. 2 The version of the prosecution was unfolded in the statement of the mother of the victim Smt. Geeta (PW-2). She was the complainant of the case. As per her statement, on the fateful day i.e. on 15.08.1996 when she came back from work, she found the door of her jhuggi

closed from inside; her daughter Rekha (PW-1) aged 8 years was standing near the jhuggi. PW-2 inquired about from her about the younger daughter, the victim Kumari P aged 4 years. PW-1 told her that accused Attar Singh had taken Kumari P inside the jhuggi. On peeping inside the room, she found that underwear of Kumari P had been removed; she was wearing a frock only. The accused was committing rape upon her daughter. Alarm was raised. Police was informed. Her statement (Ex.PW-2/A) was recorded. Her daughter was bleeding from her vagina; there was blood on the rope twining of the cot as also on her underwear and on her frock. Kumari P remained admitted in the hospital for 4-6 days. In her cross-examination, PW-2 denied the suggestion that she is deposing falsely and that her husband and two other persons including the accused were consuming liquor; they had a quarrel and Kumari P fallen down pursuant to which she sustained injuries. She reiterated that even though 15.08.1996 was a holiday but her husband has gone for work. 3 PW-1 was the elder sister of Kumari P. She was 8 years old on the date of the incident. A preliminary round of questions had been put to the child witness before she was finally examined in Court. This was after the Court satisfied that the questions put forth and answered by PW-1 were understood by her. PW-1 had deposed that they were two sisters and their younger sister is Kumari P. PW-1 was studying in 5th class. On the fateful day i.e. on 15.08.1996 being a holiday at around 22:30 pm her sister was playing outside the jhuggi. PW-1 was washing utensil outside the jhuggi. Accused came and lifted her sister. He took her inside the jhuggi and locked the door from inside. The door of the jhuggi was broken from below. On peeping inside, she saw that accused was putting his hand inside the underwear of her sister. He removed her underwear. Her mother reached. Alarm was raised. Neighbours collected. The door of the jhuggi was broken open and the accused was apprehended on the spot. Police reached. There was blood from the underwear of her sister. PW-1 saw the blood on the bed as also on the floor. In her cross-examination, she admitted that at the time of deposition in Court, a police official was sitting outside the court and was briefing her; she denied the suggestion that she was a tutored witness. She further denied the suggestion that her father along with two other persons were consuming liquor; there was a quarrel and her sister fallen down and had sustained injuries. 4 One vehement submission of the learned counsel for the

appellant is based on this admission by PW-1 wherein she had stated that a police official was sitting outside the Court and was briefing her at the time of her examination in Court; submission being that this by itself substantiates that PW-1 was a tutored witness. This has been refuted by the learned counsel for the State who points out that the Investigating Officer was well within his right to refresh the memory of the witness. This submission of the learned counsel for the State carries weight. PW1 has reiterated her statement (Ex.PW-1/DA) which she had been made to the police; she has categorically denied the suggestion that she was tutored. Merely because she was refreshing her memory does not tarnish her credibility on this count. 5 The Supreme Court in Dattu Rama Rao Shakare vs. State of Maharashtra reported in 1997 (5) SCC341, it was held as under:

The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness.

6 In State of Karnataka vs. Shantappa Madivalappa Galapuji and This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

7 In no manner can it be said that the testimony of PW-1 is tarnished. 8 The father of Kumari P was a rickshaw puller. He is Kailash examined as PW-3. He has deposed that on the fateful day i.e. on 15.08.1996, he was doing the work of rickshaw puller. He has two daughters. The accused had done galatkaam on his younger daughter; when he came home, he saw blood on the cot; police had arrived at the spot. He admitted that the doors of his jhuggi were made of phatas. The learned public prosecutor on this count submits that the version of PW-1 and PW-2 is substantiated who have both stated that it was from these phatas that PW-1 and PW-2 had witnessed the incident although the accused had closed the

doors of the jhuggi. 9 Rukka had been received in the local police station at 07:20 pm pursuant to which FIR (Ex.PW-4/A) has been registered by SI Dinesh Chandra examined as PW-4. 10 The victim was examined on the same day by Dr. Anuradha, Senior Resident (Gynae) in the DDU Hospital. She was examined as PW-8. She had proved the MLC of the victim as Ex.PW-8/A. On local examination, hymen of Kumari P was torn; there was bleeding P.V. per vagina. Slides from vaginal swab were prepared. The undergarments of the victim were also blood stained. In her cross-examination, the witness admitted that hymen can be torn due to fingering or by hectic schedule. It is however not the case of the appellant that hymen were torn for any of the afrenoted reason. 11 Learned counsel for the appellant has however submitted that the version of PW-1 who had first witnessed the incident only makes out a case under Section 354 of the IPC; it is at best molestation; the offence of rape for which the appellant has been convicted is not made out. 12 While refuting this submission, learned Public Prosecutor has submitted that there is no answer by the appellant to the MLC of the victim which has corroborated the otherwise uncontroverted version of PW-1 and PW-2. 13 The most vehement submission of the learned counsel for the appellant is that the testimonies of PW-1 and PW-2 are in conflict with one another; PW-1 had disclosed that this is a case of molestation covered under Section 354 of the IPC; whereas version of PW-2 had been different and she had given an exaggerated version and had implicated the appellant for the offence of rape. It is submitted that these two versions are irreconcilable. 14 This is in fact the main thrust of the argument of the learned counsel for the appellant. This submission of the learned counsel for the appellant is totally devoid of merit. 15 PW-1 was the first person who had witnessed the incident; she had peeped from the door and had seen the accused removing the underwear of her sister; she had seen him putting his hand inside her underwear. Meanwhile, her mother reached there. 16 PW-2, the mother of the victim, had witnessed the incident. She has, in the second phase, categorically stated that when she peeped inside the jhuggi, she saw that the underwear of her daughter had been removed and she was only wearing a frock. The accused was committing rape upon her. This has been the categorical version of PW2 not only in her first complaint made to the police (Ex.PW-2/A) but also reiterated in her deposition on oath in Court. 17 There is no conflict whatsoever in

these versions of PW-1 and PW-2. When PW-1 had witnessed the incident, the accused was in the first stage; at the time when PW-2 had witnessed the incident, the accused was committing the act of rape upon the victim. In no manner can it be said that there is conflict in the versions of PW-1 and PW-2. 18 The MLC of the victim also speaks volume. She was examined on the same day. She was bleeding from her vagina. Her hymen was torn. There is no answer by the learned counsel for the appellant on this material document. This medical evidence fully corroborates the ocular version of both PW-1 and PW-2. 19 A Division Bench of this Court in 1995 (33) DRJ (DB) Veer Bahadur Vs. State has noted as under:

Even otherwise, even if it is to be assumed that the hymen of the child has been torn not because of penile penetration but has been torn because of digital penetration, even then, in the present case, it is proved beyond shadow of reasonable doubt that the appellant had committed rape on the child as even slight penetration of appellant's penis within the labia majora or the vulva or pudenda of the child is sufficient to bring home the offence to the appellant. The doctor had noticed swelling on the vagina of the child and the lady doctor had found hymen being torn and lacerated a little. The appellant was found in naked condition and so also the little child when he was surprised by Radha when she pushed open the door of his room. So, keeping in view these facts, it has to be held that the appellant had committed rape on the said infant child and had taken this child to his room with such intention.

20 The accused has tried to project a defence in the cross- examination of the witnesses which was largely to the effect that there was a quarrel between the father of the victim and two other persons who had consumed liquor. Kumari P had fallen down and had sustained injuries. This defence was projected by the accused till the cross-examination of most of the witnesses. However at the stage when the Investigating Officer SI Sunil Kumar (PW-9) had come into the witness box; the defence sought to be projected was that there was a dispute between the mother of the victim and the accused with regard to the jhuggi and for this reason, she has falsely implicated the appellant. Relevant would it be to state that PW-9 was examined in 2000. The incident is dated 15.08.1996. The defence in the first stage of the proceedings and in the later part completely vacillated. So also in the

statement of the accused recorded under Section 313 of the Cr.PC wherein also he had projected a defence that there was a dispute between the mother of the victim and him over the jhuggi over which both of them were claiming their right. 21 The submission of the learned public prosecutor that this defence is false is clearly borne out from the fact that there were two wholly irreconcilable defences adopted by the accused; they could be for no other reason but for the fact that they are fabricated and under ill-legal advice. There is also no reason whatsoever as to why the accused would have been falsely implicated by the victims family. 22 The conviction of the appellant in no manner calls for any interference. 23 Learned counsel for the appellant has placed reliance upon AIR 1985 SC1278 Rajbir Vs. State of Haryana to substantiate a submission that if the offence under Section 354 of the IPC is made out, benefit of probation of the offender should be applied. This judgment is in no manner helps the case of the appellant. That was a conviction under Section 323 of the IPC. 24 While sustaining the conviction, the Court is conscious of the fact that the offence relates to the year 1996. The appellant was present in Court in the course of hearing. As per his nominal roll, he has already suffered incarceration of 4 years and 8 months. His conduct and behavior in jail in this period has been satisfactory. He has also not abused the process of bail. As on today, he is a married man with a family and on query he has informed the Court that he is working as a labourer . 25 The appellant has however been convicted for rape of a child victim. The victim was aged 4 years. Even in the unamended IPC (which would be applicable as the offence relates to the year 1996) the minimum punishment prescribed for a child rape is 10 years which has been awarded to the appellant. Sentence of the appellant accordingly remains unaltered. The appellant is present in Court. He be taken into custody to serve the remaining sentence. 26 Appeal disposed of in the above terms. 27 A copy of this order be sent to the Jail Superintendent for information and necessary compliance. INDERMEET KAUR, J JANUARY24 2014 A

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