

**Pradeep Vs. State**

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**Court :** Delhi

**Decided On :** May-13-2014

**Judge :** Mukta Gupta

**Appellant :** Pradeep

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. Sanjay Kumar, Ms. Parul Sharma, Mr. Neeraj Kumar Singh

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 172/2012 Reserved on:

02. d April, 2014 Decided on:

13. h May, 2014 % Pradeep Through: ..... Appellant Mr. Sanjay Kumar and Ms. Parul Sharma, Adv. Through: ..... Respondent Mr. Neeraj Kumar Singh, APP for the State. versus State Coram: HON'BLE MS. JUSTICE MUKTA GUPTA1 By this appeal, the Appellant challenges the judgment dated 15 th December, 2011 convicting the Appellant for offence under Sections 363/376/511 IPC and the order on sentence dated 19th December, 2011 directing him to undergo Rigorous Imprisonment for a period of 5 years and fine of Rs.10,000/- for offence under Sections 376/511 IPC and Rigorous Imprisonment for 3 years and fine of Rs.10,000/- for offence under Section 363 IPC.

2. Learned counsel for the Appellant contends that the Appellant has been falsely implicated. Though the prosecutrix was 8 years old, however, her medical examination does not support the case of the prosecution. PW13 Dr. Preeti has stated that there was no external injury on the prosecutrix. There are inherent contradictions in the statement of the prosecutrix as on the one hand she stated that the Petitioner took her for showing the picture and on other that the Appellant took her for giving toffee. Even FSL report does not prove that offence of rape was committed much less an attempt to rape. If the prosecutrix is held to be reliable and conviction to be based on it then the Appellant ought to have been convicted for offence under Section 376 IPC and not with the aid of Section 511 IPC and if the prosecutrix is not reliable then the conviction for offences under Sections 376/511 and 363 IPC is liable to be set aside. Hence the Appellant is entitled to be acquitted.

3. Learned APP for the State on the other hand contends that the version of the prosecutrix is supported by her grandparents. Further PW4Mamta Saini, the landlady where the Appellant was staying has proved that the Appellant pointed out towards the place of occurrence. This statement of PW-4 is admissible under Section 8 of the Indian Evidence Act (IE Act). In view of the consistent and reliable testimony of the prosecutrix and other witnesses, the learned Trial Court committed no error in convicting and sentencing the Appellant as noted above.

4. The case of the prosecution is based on the statement of PW-1 the prosecutrix who was aged 8 years. She stated that she was studying in Class I in a school near her house. On 12th December, 2010 in the evening she was playing outside her house with the friends when the Appellant who was staying nearby came there and lifted her in his lap. The Appellant took her to his room and removed her clothes. She felt pain and something white came out. He cleaned it and allowed her to go home. She informed her nanaji about the incident who took her to the police station. The police took her to medical examination and thereafter she returned home with Nanaji. On cross-examination, this witness clarified that the Appellant took her to his room on the pretext that he will give her toffee. The light of the room was off and TV was also switched off at that time. Despite cross-examination, nothing material could be elicited from this witness nor any inherent

contradiction brought out.

5. PW-2 is the grandfather of the prosecutrix, who stated that on 12th December, 2010 his granddaughter came at about 4.15-4.30 pm and she was in a perplexed condition. She told that she was having pain around her stomach and whereafter she was medically examined. He also stated that when he went to the room of the accused, the same was found locked. PW-5 the grandmother of the prosecutrix has also deposed on the same lines.

6. PW-12 learned Metropolitan Magistrate exhibited the statement of the prosecutrix recorded under Section 164 Cr.PC as Ex.PW12/B. In her statement under Section 164 Cr.P.C. the prosecutrix reiterated her version. PW-13 Dr. Preeti, who prepared the MLC of the prosecutrix Ex.PW13/A has stated that on local examination of the prosecutrix, she found no injury mark over perineum. The hymen was intact and no bleeding per vagina was seen. Vaginal swab was also taken and sent to the FSL. The FSL report was negative about human semen or blood either on the clothes of the prosecutrix or the vaginal swab.

7. It has been consistently the case of the defence that since the grandparents of the prosecutrix owed the money and the Appellant demanded back the same, he has been implicated in the said false case. However, besides suggestion no evidence has been led by the accused to prove that the maternal grandfather of the victim owed him some money. Further the defence of the Appellant is that at the time of alleged incident the Appellant had gone to his native place to give examination. Again no evidence were led by the Appellant on this count. Rather when the Police went to arrest the Appellant immediately after the incident, it was informed that the Appellant had not attended the work on that day and not that he was on long leave. Thus the Appellant has not been able to prove the defense taken.

8. Thus, no doubt that the conviction can be based solely on the testimony of the prosecutrix. However, a note of caution is required in the present case as the prosecutrix is a minor girl of 8 years. In the present case the version of the prosecutrix is corroborated by her grandparents. The contention of the learned counsel for the Appellant that if the prosecutrix is held to be reliable then the

Appellant ought to have been convicted for the offence of rape and not attempt to rape is also misconceived. The prosecutrix has stated that the Appellant put his susu into her susu, she had pain and something white had come out of her susu which was wiped by the Appellant, shows that the Appellant attempted to insert his penis in the vagina of prosecutrix due to which she had pain but before he could do so there was discharge. The prosecutrix being of tender age would not have known the difference between the penetration and attempt to penetrate. This fact is also fortified by her medical examination.

9. In view of the aforesaid discussion, I find no infirmity in the impugned judgment convicting the Appellant or the order on sentence passed. Appeal is consequently dismissed. (MUKTA GUPTA) JUDGE MAY13 2014 V MITTAL

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