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Md. Salim vs.state

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Court : Delhi

Decided On : May-25-2017

Appellant : Md. Salim

Respondent : State

Judgement :

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

26. h April, 2017 Decided on:

25. h May, 2017 CRL.A. 277/2015 MD. SALIM STATE Represented by: Ms. Saahila Lamba, Adv. ..... Appellant Versus ..... Respondent Represented by: Mr. Ashok Kr. Garg, APP with SI Satbir Singh PS Tilak Nagar. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 Convicted for offence punishable under Section 376 IPC, Mohd. Saleem challenges the impugned judgment dated 22nd February, 2014 and the order on sentence dated 1st March, 2014 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of `3,000/-.

2. Assailing the conviction, learned counsel for Mohd. Saleem submits that there were discrepancies in the manner of reporting the incident by the prosecutrix to her mother. The Trial Court failed to notice that neither the medical evidence or the prosecutrix nor the FSL report support the allegations of the prosecutrix against the appellant. Though the alleged incident took place on 30th August, 2011 and the prosecutrix was examined immediately thereafter however as per the opinion

of the doctor the injuries on the body of the prosecutrix were old and not fresh. There is unexplained delay in lodging the FIR. Statements of the witnesses are inconsistent and CRL.A. 277/2015 Page 1 of 6 hence cannot be relied upon.

3. Learned APP for the State on the other hand submits that the impugned judgment suffers from no illegality. The version of the prosecutrix is not only supported by medical evidence but also the FSL report. Despite extensive cross-examination, nothing material has been elicited either from the prosecutrix or her mother.

4. Process of law was set into motion on 31st August, 2011 at 3:50 P.M. when information was received stating that a girl has been raped at WZ- 21 Chaukhandi Village, Tilak Nagar. The aforesaid information was recorded by PW-7 Constable Anil Kumar as DD entry number 35B and assigned to PW-12 ASI Madan Singh. He went to the place of incident where he met PW-6, mother of the prosecutrix. In the meantime, PW-14 W/ASI Rishali Yadav also reached the spot and further investigation was handed over to her. She recorded the statement of PW-1 the prosecutrix wherein she stated on 30th August, 2011, she had come to her parents. For the last five years, she was working at FN-9, First Floor, Mansarover Garden, Delhi and looking after children there. Her mother was in the hospital as her younger sister was unwell. On 31st August, 2011, around 11:00 A.M., when she was alone at home, her father, Mohd. Saleem came home and sent her brother outside on the pretext to buy some articles. Thereafter, he locked the room and did 'galat kaam' with her. When she resisted, he again did 'galat kaam' and he opened the door and left. Thereafter, she went to her Nana Islam's house and took him to her mother, whom she met on the way. When they reached home, she narrated the entire incident to her mother who in turn called up at 100 number. She further stated that her father, Mohd. Saleem had raped her. CRL.A. 277/2015 Page 2 of 6 5. On the basis of the aforesaid statement Ex. PW-1/A, FIR No.292/2011 was registered at PS Tilak Nagar under Section 376 IPC. Thereafter, the prosecutrix was taken to DDU hospital along with her mother for her medical examination. From the hospital, PW-14 W/ASI Rishali Yadav along with the prosecutrix and her mother PW-6 reached the place of incident and prepared the site plan. Mohd Saleem was arrested on the same day around 11:30 P.M. vide

arrest memo Ex. PW-1/C. Personal search of Mohd Saleem was conducted, his disclosure statement was recorded and thereafter he was sent with PW-4 Constable Jagdish to DDU hospital for his medical examination. Subsequently, an application seeking permission for determination of the age of the prosecutrix through ossification examination was filed. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded by PW-13 Ms. Harleen Singh, Metropolitan Magistrate.

6. The prosecutrix deposed in conformity with her statement made before the police and statement recorded under Section 164 Cr.P.C. She further stated that when Mohd. Saleem had bolted the room, he tied both her hands and gave her beatings on her chest and hands. He also threatened her that if she will tell about the incident to anyone, he would beat and burn her mother.

7. Mother of the prosecutrix, corroborated the version of the prosecutrix.

8. PW-11 Islam Khan stated that mother of the prosecutrix, who is his niece, had come to his house on 31st August, 2011. She was weeping and told him that Mohd. Saleem had raped the prosecutrix. He along with PW-6 went to their house, where other neighbours were also present whereafter information was given to the police. CRL.A. 277/2015 Page 3 of 6 9. PW-9 Dr. Sunita Seth, Specialist Obst. Gynae, DDU Hospital was deputed to depose on behalf of Dr. Arpita who had prepared the MLC of the prosecutrix and had left the services. As per the MLC Ex. PW-9/A, there were multiple pink to red pin point bruises on both breasts, more on left breast caused by biting on the breast. Vulva was red and congested. Hymen was red congested and admitting one finger fully, however, two fingers were inserted with difficulty. Per Vaginal cervix felt uterus AV bilateral fornices free and non tender.

10. PW-15 Dr. Sunil Kakkar, HOD Radiology, DDU Hospital, stated that on 5th September, 2011, the prosecutrix was brought for age determination. The medical board, which was headed by him, after physical, dental and radiological examination opined that the estimated age of prosecutrix was above 12 years and below 14 years on the date of examination. The original report is Ex. PW-15/A.

11. As per the FSL report Ex. PW-14/X, human semen was detected on exhibits '2' being microslide having faint whitish smear described as 'Vaginal swab', exhibit '3' being dirty cotton wool swab on a stick described as 'Vaginal swab stick' kept in a tube, Exhibit '4a' being pyjamee having few dirty stains described as 'salwar' and exhibit '4b' being dirty cloth piece.

12. The alleged incident took place on 30th August, 2011 when neither the mother nor any other elder member of the family of the prosecutrix was present. Thus, she went to the house of maternal grandfather from where she proceeded to the hospital and met her mother on the way who had been to the hospital because younger sister of the prosecutrix was unwell. Only after the prosecutrix narrated the incident to her mother and her mother spoke to the neighbor and uncle of the prosecutrix, a call was made at 100 number at CRL.A. 277/2015 Page 4 of 6 around 3.00 PM on 31st August, 2011. Thereafter statement of the prosecutrix was recorded and she was examined thus resulting in delay and the FIR being lodged at around 8.00 PM on 31st August, 2011. Considering the nature of the offence alleged and that the prosecutrix was a minor aged between 12 to 14 years and there was no one to whom she could inform the incident immediately, it cannot be said that there is unexplained delay in lodging of the FIR which is fatal to the prosecution case.

13. Version of the prosecutrix is corroborated by her MLC which notes bite marks on both the breasts and also the FSL report as per which human semen was detected on the vaginal swab, vaginal swab stick, salwar and the cloth piece. Contention of learned counsel for the appellant that the injury marks on the prosecutrix were old is not based on evidence on record as no cross-examination of Dr. Sunita Seth was conducted on this count.

14. The discrepancies pointed out by learned counsel for the appellant in respect of the version of the neighbour does not go to the root of the matter and even in the absence of examination of that neighbor, conviction can safely be based on the testimony of the prosecutrix, who is the daughter of the appellant.

15. Considering the cogent and convincing testimony of the prosecutrix duly fortified by the medical evidence being MLC Ex. PW-9/A stating the nature of bite

marks on the breast of the prosecutrix and the FSL report Ex. PW-14/X, I find no infirmity in the conviction of the appellant for offence punishable under Section 376 IPC and the order on sentence. Appeal is accordingly dismissed. CRL.A. 277/2015 Page 5 of 6 16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

17. TCR be returned. MAY25 2017 v mittal (MUKTA GUPTA) JUDGE CRL.A. 277/2015 Page 6 of 6

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