

**Janak vs.state**

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**Court :** Delhi

**Decided On :** Dec-16-2017

**Appellant :** Janak

**Respondent :** State

**Judgement :**

§~4 \* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

16. h DECEMBER, 2017 + JANAK CRL.A. 510/2014 Through : Mr.M.L.Yadav, Advocate. .... Appellant Versus STATE Through : Ms.Aashaa Tiwari, APP. SI Narender, PS Kanjhawala. .... Respondent CORAM: HON'BLE MR. JUSTICE S.P.GARG HON'BLE MR. JUSTICE C.HARI SHANKAR S.P.GARG, J.

(OPEN COURT) 1. Present appeal has been filed by Janak (hereinafter the appellant) to impugn a judgment dated 25.02.2014 of learned Addl. Sessions Judge in Sessions Case No.89/2012 arising out of FIR No.176/2012 PS Kanjhawala whereby he was held guilty for committing offence punishable under Section 376(2)(f) IPC. By an order dated 03.03.2014, he was sentenced to undergo imprisonment for life with fine `10,000/-; default sentence being SI for six months.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 21.08.2012 at around 05.30 p.m. when PW-4 (Manoj Kumar) was present near House No.G-319, JJ Colony, Sawda, Delhi, he saw a crowd. On enquiry, he came

to know that the appellant had committed a wrong act (Galat Kaam) with his daughter X (assumed name). He moved the police machinery and made a call at 100 from CRL.A. 510/2014 Page 1 of 11 his mobile No.8860208127. Daily Diary (DD) No.29A (Ex.PW-2/A) came to be recorded at 05.34 p.m. at PS Kanjhawala. The investigation was assigned to ASI Bijay Singh. The Investigating Officer after recording Xs statement (Ex.PW-10/A) lodged the FIR. The appellant was arrested. X was medically examined; she recorded her 164 Cr.P.C. statement. The exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant for the commission of the aforesaid offence. By an amended charge dated 22.02.2014, the appellant was charged for commission of offence punishable under Section 376(2)(f) IPC, to which, he pleaded not guilty and claimed trial. To bring home appellants guilt, the prosecution examined twenty witnesses in all and relied upon several exhibits. In 313 Cr.P.C. statement, the accused denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred by the appellant.

3. We have heard the learned counsel for the parties and have examined the file. It is not in controversy that the victim is the real daughter of the appellant; she was aged around 10 years on the day of occurrence. PW-1 (Madhu Bala) from Nagar Nigam Prathmik Vidayala, Karkardooma, proved the relevant record whereby victims date of birth was recorded as 11.07.2002. The relevant documents are Ex.PW-1/A to Ex.PW-1/C. CRL.A. 510/2014 Page 2 of 11 4. The occurrence took place inside the house where the victim used to stay with her father and other siblings. Her mother had abandoned them a year before. The appellant did not deny his presence in the house at the relevant time.

5. The incident took place on 21.08.2012 at about 05.00 p.m. The matter was reported to the police at the earliest. Rukka (Ex.PW-17/B) was sent on 22.08.2012 at 12.35 a.m. In the complaint (Ex.PW-10/A), X gave detailed account as to how and in what manner the appellant - her father had outraged her modesty and committed rape upon her. On her raising alarm, many neighbours collected and

the appellant took her to a doctor for medical examination. In the evening, the police arrived at her house and took them to the police station. Since the appellant was implicated by name in the FIR lodged without inordinate delay, there was least possibility of the complainant / victim to have concocted a false story.

6. In her statement (Ex.PW-6/B) recorded under Section 164 Cr.P.C. on 22.08.2012 the victim gave graphic detail as to how the appellant - her father had violated her body.

7. In her Court statement as PW-1/A, she fully supported the prosecution on all material facts and proved the version given to the police and the Court without any variation. Before recording her statement, the learned Presiding Officer had put several questions to ascertain if she was capable of understanding the questions and give rationale answers. The Presiding Officer was satisfied that X was a competent witness and was comfortable while making statement before the Court. The statement was recorded in a congenial CRL.A. 510/2014 Page 3 of 11 atmosphere. The victim was given colours, drawing-sheets etc. and during her stay, she drew pictures Annexure P-1 (Colly). Beautiful drawings made by the child show that she was fully comfortable and was mature enough to give rationale answers to the questions put to her.

8. In her testimony, she implicated the appellant to be the perpetrator of the crime without any hesitation. She was examined in question-answer form and her testimony as recorded by the learned Presiding Officer reads as under : Q. Kya hua tha ?. Ans. Papa ne galatkam kiya tha?. Q. Kab kiya tha ?. Ans. Subah 5:00 baje. Q. mummy kaha thi ?. Ans. Mummy ek sal pehle chali gayi thi. Q. Us din ghar par kaon kaon tha ?. Ans. Me, mera chota bhai, dono behene, aur papa the. Q. Aap kya kar rahe the us samay ?. Ans. Me aur mere bhai behein so rahe the. Q. Phir kya hua ?. Ans. Mere papa ne mere kapde khol diye aur apne kapade bhi khol diye. Q. Phir kya hua ?. Ans. Gandi harkat kari. Q. kya gandi harkat kari ?. Ans. Apne susu ko mere susu me dala. Q. Phir kya hua ?. Ans. Phir papa ne ungli ghusa di. Q. Phir kya hua ?. Ans. Dard hua. Q. Aur kya hua ?. CRL.A. 510/2014 Page 4 of 11 Ans. Khoon bhi nikalne laga. Q. Phir kya hua ?. Ans. Me chillayi. Q. Phir kya hua ?. Ans. Chacha chachi ko pata laggaya. Q. Chacha chachi kaha

rehte hai?. Ans. Bagal me rehte hai. Q. phir kya hua ?. Ans. Phir sab ko pata lag gaya. Q. Phir kya hua ?. Ans. Papa doctor ke paas le gaye. Q. Phir kya hua ?. Ans. Doctor ne dawai di khoon band ho gaya. Q. Phir kya hua ?. Ans. Chacha chachi ne police ko phone kar diya. Q. Phir kya hua?. Ans. Police aagayi aur sath le gayi. Q. Phir kya hua ?. Ans. Police sham ko doctor ke paas le gayi. Q. Phir doctor ne kya kiya ?. Ans. Checking kiya. Q. Phir kya hua ?. Ans. Grahm me aa gayi. Q. Aaj aap kaha se aaye ho ?. Ans. Minda Bal Grahm. Q. Aap apne ghar me kaha par sote the ?. Ans. Zamin par sote the. Q. Papa kaha par sote the ?. Ans. Papa bhi zamin par sote the. Q. Papa aur kya karte the ?. Ans. Daru pite the. Usdin rat ko papa ke dost aaye the aur daru ki bottle laye the. Q. aap ne sari baat police ko bata di thi ?. Ans. Ha. The witness further stated that she had told about the entire incident to the Police, but did not sign on ekdo din thane me rehkar me Minda Bal CRL.A. 510/2014 Page 5 of 11 the complaint and proved her thumb impression on the complaint Ex.PW-10/A. She also identified her thumb impression on the statement Ex.PW-6/B, u/S164Cr.P.C. 9. The witness was cross-examined by the learned defence counsel. She admitted that her uncle resided in a nearby house. She denied if there used to be quarrels between her father and uncle. She further informed that the doctor to whom she was taken for medical treatment lived near her house. She denied if she was a tutored witness.

10. On perusal of the entire statement of the child witness, it reveals that no material inconsistency or discrepancy has been elicited to discard her version. No ulterior motive was imputed to the child witness to involve her own father in a heinous offence. Material facts deposed by the victim remained unchallenged and unquestioned in the cross-examination. The appellant did not deny his presence at the spot. The specific and definite role attributed by the child to him was not challenged in the cross-examination. The appellant did not deny if the victim had not sustained injuries on her private parts or that she was not taken to a doctor. Nothing was suggested to the child as to how she had suffered injuries on her private parts. Nothing was suggested to the witness if the appellant was under the influence of liquor or in a state of intoxication at the time of commission of the crime.

11. Xs statement has been corroborated in its entirety by her own younger sister PW-12 Y (assumed name) aged around 8 years. CRL.A. 510/2014 Page 6 of 11 Preliminary enquiry was conducted by the learned Presiding Officer before recording her statement. After recording her statement that the child was comfortable and was able to answer the questions properly, her statement was recorded in question-answer form. She also involved the appellant for the crime and her testimony reads as under : Q. Kya hua tha ?. Ans. Papa ne behein ke sath galatkam kiya tha?. Q. Kab kiya tha ?. Ans. Subah 5:00 baje. Q. mummy kaha thi ?. Ans. Mummy nahi hai, mummy bhag gayi. Q. Us din ghar par kaon kaon tha ?. Ans.Me, mera chota bhai, dono behene, aur papa the. Q. Aap kaha sote the ?. Ans. Zamin par. Q. Phir kya hua ?. Ans. Didi chila rahi thi. Me uath gayi. Papa didi ke paas the. Q. Phir kya hua ?. Ans. Me didi ke sang potti gayi toh didi ko khoon aa raha tha. Q. Phir kya hua ?. Ans. Potti karke ghar aa gaye. Q. Phir kya hua ?. Ans. Papa didi ko doctor ke paas le gaye. Q. Phir kya hua ?. Ans. Papa ne didi ke liye chowmein aur samosa bhi mangaya tha. Q. Phir kya hua ?. Ans. Bade papa ne police ko phone kara. Q. Bade papa kisko kehte ho ?. Ans. Tauji ko. Q. woh kaha par rehte the ?. CRL.A. 510/2014 Page 7 of 11 Ans. Wahi par paas me rehte the. Q. Phir kya hua ?. Ans. Police aayi thi. Policewale humko thane me le gaye the. 12. In the cross-examination, she claimed that her uncle lived nearby. She denied if there used to be quarrels between her father and uncle. She also denied if the statement given by her was at someones behest.

13. Again, nothing credible emerged in the cross-examination to disbelieve the testimony of this innocent child who had no extraneous consideration to implicate her own father upon whom she and her other brother and sisters were financially dependent.

14. PW-18 (Umesh Prasad Chaudhary) an Ayurveda doctor to whom X was taken for medical treatment, too supported the prosecution and confirmed that the child who had sustained bleeding injuries in her private part was brought to him on 21.08.2012 at about 05.00 p.m by the appellant. On examination of the child, he asked the appellant to take the girl to some hospital as he did not have the facility for treatment of gynaecological problems. The appellant, however, asked him to provide first aid to stop bleeding before he could take her to some other hospital.

He accordingly gave a tablet to the child to stop bleeding and asked the appellant to take her to the hospital immediately. This independent witness has no reasons to make a false statement.

15. Ocular testimony of the victim is in consonance with medical evidence. PW-7 Dr.Supriya from Sanjay Gandhi Memorial Hospital CRL.A. 510/2014 Page 8 of 11 proved MLC (Ex.PW-7/A) of the victim prepared by Dr.Savita. The MLC recorded that there was slight bleeding present on local perineal examination, small injury at fourchette and a superficial injury at hymen which admitted tip of the little finger. Nothing was suggested to the doctor if the injuries sustained by the victim were possible due to fall. Nothing was suggested as to how the victim had sustained injuries on her body.

16. No plausible explanation has been offered by the appellant in 313 Cr.P.C. statement to the incriminating circumstances proved against him. For the first time, it was pleaded that his false implication was due to dispute over ancestral property with his brother. This defence deserves outright rejection. Nothing has surfaced on record to infer if there was any dispute over any ancestral property with appellants brother. No such suggestion was put to the crucial witnesses in the cross-examination. It is unbelievable that due to some property dispute, innocent minor child would level serious allegations of commission of rape against her own father just to please her uncle. It has come on record that after the commission of the crime, the children are staying at children home. Apparently, no financial help has been provided by the appellants brother at whose instance allegedly the victim had given a false statement. Had it been so, the victim and other siblings must have been accommodated by the appellants brother. Both the children (the victim and her sister) have explained the relevant events of the crime without improvements or embellishments; the same inspire confidence of the Court. Their deposition does not require any further corroboration. The child at a CRL.A. 510/2014 Page 9 of 11 tender age is incapable of having any malice or ill-will against an individual particularly his / her father. There must be something on record to satisfy that something had gone wrong compelling the child witness to make a false statement in a case of serious nature. No sound reasons exist to disbelieve the testimony of the child witness. It was only she who suffered the ordeal and could narrate the

incident minutely.

17. The impugned judgment based upon fair appraisal of the evidence warrants no intervention.

18. The appellant was biological father of the victim. She and other siblings were dependent upon him for financial security. Instead of providing support and to protect them from evil eyes of others, the appellant himself betrayed their trust and ravished her own daughter X. The victim along with her siblings was forced to stay at a children home. Observations of the Honble Supreme Court in State vs. Asha Ram, 2006 Cr.L.J.

139 needs reproduction : Here is the case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. Moreso, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent CRL.A. 510/2014 Page 10 of 11 judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 a.m., he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives. 19. Considering the gravity and seriousness of the offence, no leniency is called for to modify the sentence except that the default sentence for non-payment of fine shall be Simple Imprisonment for one month instead of Simple Imprisonment for six months.

20. The appeal stands disposed of accordingly.

21. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail. S.P. GARG (JUDGE) DECEMBER16 2017 / tr C.HARI SHANKAR (JUDGE) CRL.A. 510/2014 Page 11 of 11

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