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Ram Bahadur Vs. State

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Court : Delhi

Decided On : Jul-08-2015

Judge : S. P. Garg

Appellant : Ram Bahadur

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : JULY02 2015 DECIDED ON : JULY08 2015 + CRL.A.1284/2011 RAM BAHADUR ..... Appellant Through : Mr.Ravi Chaturvedi, Advocate. versus STATE ..... Respondent Through : Ms.Fizani Husain, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Being aggrieved by a judgment dated 12.10.2010 in Sessions Case No.43/08 arising out of FIR No.252/07 registered at Police Station Hari Nagari by which the appellant-Ram Bahadur was convicted under Section 376 (2) (f)/366/325 IPC, the instant appeal has been preferred. By an order dated 19.10.2010, the appellant was awarded various prison terms with fine. The sentences were to operate concurrently.

2. The victim is a helpless child aged around five years who was brutally ravished by the appellant. The police machinery came into motion when intimation was conveyed vide daily diary (DD) No.3A (Ex.PW-1/C) on on 01.05.2007 at 12:32

night to the effect that a child aged two years was sexually assaulted and the perpetrator of the crime had been caught at the spot. The investigation was assigned to ASI Kishan Chander. DD No.4A (Ex.PW1/D) came into existence at 1:05 night on getting information from DDU hospital where X was admitted after being sexually assaulted. After recording statement of victims mother (Ex.PW-5/A), the Investigating Officer lodged First Information Report. During investigation, the prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was recorded. The accused was arrested and medically examined. Exhibits collected were sent for examination to FSL. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was laid before the court. The prosecution examined eighteen witnesses to establish its case. In 313 statement, the accused denied his involvement in the crime and pleaded false implication without producing any evidence in defence. The trial resulted in his conviction. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. There is overwhelming evidence adduced by the prosecution to bring home the appellants guilt. The accused was apprehended red handed inside his room along with the prosecutrix. Xs mother Ram Dulari used to earn her livelihood by selling tea on the footpath at Som Bazar. Her husband was mentally unsound and she had the responsibility to take care of her three daughters and a son. As usual, on the day of occurrence, X was present with her mother at her tea shop. At around 11:00 p.m., Ram Dulari went to her nearby house to drop her husband leaving behind X at the shop. In the meantime, the appellant, who lived as a tenant in the premises owned by PW-3 (Pushpa Kumari) arrived there and took X in her lap to his room. On return, Ram Dulari did not find X at the shop and came to know that the appellant had taken her while she was in sleep. She and others rushed to the appellants room and repeatedly knocked at it. The appellant deliberately did not open it. Finally, it was pushed and broken. X was found in the appellants company therein. She was bleeding profusely and had sustained injuries on her body parts. It led the public to beat the appellant. The police was informed and the accused was apprehended there. In her statement (Ex.PW-5/A) recorded soon after the occurrence, Ram Dulari gave detailed account as to how and under what

circumstances X was taken by the appellant and how she was recovered from his room. In her 164 statement, X in brief in her own words implicated the appellant to be the perpetrator of the crime. Crl.A.1284/2011 She informed the learned Metropolitan Page 3 of 8 Magistrate that she was sexually assaulted by the accused who broke her tooth and inflicted injuries on her eyes. In her Court statement as PW-2, she proved the version given to the learned Metropolitan Magistrate in 164 Cr.P.C. statement in its entirety without any variation. Before recording her statement, preliminary inquiry was conducted by the learned Presiding Officer to ascertain if X was competent to depose. The learned Presiding Officer was of the view that X was a competent witness and she fully understood the questions and was capable to give rational answers. In her statement, she identified the appellant to be the perpetrator of the crime. She attributed specific / definite role whereby he after disrobing her committed rape upon her. She even accused the appellant for breaking her tooth. In the cross-examination, she answered the queries put to her efficiently and did not deviate from her initial version. She elaborated that the accused lived in their neighbourhood at some distance and her mother knew him. She categorically denied to be a tutored witness. She even deposed that after the accused was found in the room, he asked her parents to pardon him. Apparently, the material facts deposed by the child witness in examination-in-chief remained unchallenged and unrebutted. No ulterior motive was attributed to the child for implicating him in the crime. In the absence of prior animosity, the little child was not imagined to name the appellant to be the author of His name emerged soon after the occurrence. X had the crime. absolutely no strong motive to name the appellant to be the rapist. In fact, he was found red handed in the company of the child in his room. Corroborating the prosecution version PW-3 (Pushpa Kumari), landlady, stated that after her door was knocked by some individuals, she got up and The door of the appellants room was being knocked came out. repeatedly and he was not opening it. The crowd pushed the door and accused along with the the girl child was found present there. The accused was lying on the bed and was attempting to do the wrong act. The child was nervous and blood spots were there on her thighs, legs and private parts. This independent witness had no reasons, whatsoever, to make a false statement. The accused did not offer plausible explanation as to how the child was

found in his room in injured condition at odd hours. The circumstance of last seen is a material incriminating piece of evidence to connect the appellant with the crime.

4. PW-10 (Virender Singh) who also used to sell chappals on the footpath near Ram Dularis stall corroborated the prosecution case and identified the accused to be the individual who had taken the child in the absence of her mother Ram Dulari. He deposed that the accused was a regular visitor at the tea shop. On the day of occurrence at around 11:00 p.m. when Ram Dulari had gone to her house to leave her husband, the accused arrived there and took X with him. He informed Ram Dulari and her husband and they started searching her. In the cross-examination, the witness gave plausible reason for not preventing the appellant to take the child with him as he thought that he was going to leave the child to her house. Since the appellant was a regular visitor at the shop of Xs mother, there were no reason to suspect any foul play that time. PW-6 (Sonu), another shopkeeper on the weekly market, accused the appellant for taking the sleeping child X. In his testimony, he deposed that he informed his neighbour, Virender Singh who in turn informed Xs mother. PW-8 (Mainuddin) had informed the police at 100 after the recovery of girl from the appellants room.

5. Xs version has been supplemented by her mother PW-5 (Ram Dulari) without any variation. No valid reasons prevail to disbelieve her as she did not have any prior animosity with the appellant. Medical evidence is in consonance with ocular testimony. X was taken to DDU hospital and was medically examined. Vide MLC (Ex.PW-9/A), number of injuries were found on various body parts of the child. Similar is the testimony of PW-14 (Dr.Poonam Aggarwal), who medically examined X. FSL reports (Ex.P-X and P-Z) are other pieces of unimpeachable evidence. Blood was deducted on Ex.2 (underwear); Ex.4 (underwear); Ex.5a (T-shirt); Ex.5b (pant); Ex.6 (gauze); Ex.8a (bedsheet); Ex.8b (sandow banian); and, Ex.8c (cloth piece). Blood group A on Exhibits 4, 5a, 5b, 6 and 8b was ascertained. Semen stains were found on Ex.4 (underwear) and it was also of A group. The accused did not explain as to how and under what circumstances, semen happened to be there on the aforesaid clothes of the prosecutrix while she was in the room.

6. It was informed by the prosecution witnesses that at the time of incident, when the appellant had taken the child in his lap, he was under the influence of liquor. PW-7 (Dr.Ajay Sharma) confirmed and testified that on 01.05.2007, at about 3:20 a.m., when Ram Bahadur was brought for medical examination with the alleged history of sexual assault he was found positive for smell of alcohol in breathing and did not cooperate for alcohol-meter test.

7. The prosecution case is crystal clear and no detailed elaboration of evidence and relevant law is required to be discussed. During the pendency of the appeal, the appellant moved Crl.M.A.10448/2014 for release on the period already undergone by him. This application was dismissed vide order dated 14.07.2014 considering the heinous nature of the offence.

8. The impugned judgment is based upon fair and proper appreciation of evidence and needs no intervention. Minimum sentence prescribed under Section 376 (2) (f) is ten years which cant be modified or reduced.

9. The appeal lacks merits and is dismissed. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation. (S.P.GARG) JUDGE JULY08 2015/sa

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