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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 25th May, 2022
Pronounced on: 9th September, 2022

\+ **CRL.A. 60/2014**

STATE .... Appellant
Represented by: Mr. Tarang Srivastava, APP for State with Insp. Virender, PS S.B. Dairy.

versus

RAHUL ....Respondent
Represented by: Ms. Inderjeet Sidhu, Adv. DHCLSC.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J.

1. Feeling aggrieved with the impugned judgment dated 20.10.2011 passed by learned ASJ/ Special Judge (NDPS) (West Delhi) in Sessions Case No.47/2010, arising out of FIR No.45/2010 under Sections 376/377 IPC registered at Police Station – Nabi Karim, the present appeal has been filed on behalf of the State. By way of the impugned judgment, the Sessions Court has acquitted the accused/respondent by granting him benefit of doubt by holding that the prosecution has failed to prove its case beyond any reasonable doubt.

2. As per the case of the prosecution, on 22.04.2010, at about 2.00 PM, the victim while returning from school wanted to ease herself and had gone to the public toilet situated at Multani Danda, Paharganj, Gali No.6. The accused followed her and forcibly took her to male toilet, where he removed her underwear and frock (top) and made her to lay down on the floor and committed rape upon her. The accused put his hand on the mouth of the victim and did not allow her to scream. In the meantime, one lady, PW9 heard the noise from the male toilet. She came to the male toilet and saw the accused being held by one 'K', who was known to PW9, being a resident of the same neighborhood in the area. She saw that blood was coming from the private parts of the victim. Accused succeeded in making himself free from the clutches of 'K' and ran away. The accused was apprehended on 29.04.2010 and taken to police station. The matter was not reported to the police before 29.04.2010. The clothes worn by victim at the time of the incident were not traceable as the same were allegedly thrown away by paternal Aunt of victim, PW8.

3. Charge was framed against the accused/ respondent herein for committing an offence punishable under Sections 376/377 IPC. He pleaded not guilty and claimed trial.

4. In support of its case, prosecution examined in total 14 witnesses. After trial, the learned Sessions Court by the impugned judgment acquitted the accused on the ground that there were glaring discrepancies in the testimony of the prosecutrix and that her deposition does not find corroboration from the deposition of PW9 and other witnesses. Further, other evidence i.e. clothes worn by the

victim at the time of alleged rape have not been produced in evidence and there is no satisfactory explanation for their non-production, as the witnesses in that regard have contradicted with each other as to where those clothes have gone and as to why, the same were not traceable during investigation. There is no medical evidence on record which may support the version of the victim that she was raped by the accused. Further, there is no explanation for 7 days' delay in reporting the matter and not getting the victim medically examined. Thus, by giving benefit of doubt to the accused, he was acquitted. Hence, the present appeal by the State.

5. Mr. Tarang Srivastava, learned APP on behalf of the State has vehemently submitted that the learned Trial Court has erroneously disbelieved the statement of the victim, PW6, who was minor at the time of the incident. The Court has erred in holding that the statement given by the victim was false and that she had deposed the same because she was asked to do so by her Aunt and the police officials, but has failed to appreciate the fact that the victim has further deposed that her deposition was being given of the circumstances in the same manner as had occurred. He argued that the victim both in her statement given under Section 164 Cr.P.C. as well as in the statement made in the Court had deposed the same material facts and had clearly explained the role of the accused. Further, the victim had also identified the accused in the Court. He further relied upon the deposition of PW5, Dr. Ratana Mani, who had examined the victim and had clearly mentioned in her report that the hymen of the victim was torn.

6. On the other hand, the present appeal was opposed by learned counsel for the respondent Ms. Inderjeet Sidhu, Advocate through Delhi High Court Legal Services Committee. She supported the impugned judgment passed by the learned Trial Court and urged that the respondent was entitled to benefit of doubt, as rightly given by the learned Trial Court.

7. We have heard the learned counsels for the respective parties as well as perused the record.

8. Perusal of the record shows that PW6 is the victim, who was approximately 11 years of age at the time of the incident, though her Aunt, PW8 had stated her age to be 13 years. Her age was proved by PW3, Ms.Saroj Bhardwaj, Principal, Ayuvedic Pathshala, Paharganj, Gali No.2, Multani Danda. She produced the original admission and withdrawal register of the school, wherein the date of birth of the victim was mentioned as 03.02.1999, the date of the incident being 22.04.2010.

9. The statement of the victim was recorded as PW6, without oath, as the trial Court held that she did not understand the meaning of oath. She stated that when she was returning from her school, she felt pain in her stomach, therefore, she went to public toilet for easing herself. In the meantime, the accused followed her and committed rape on her by removing her clothes and laying her down on the floor of the toilet. The victim was consistent on the said statement even during her cross-examination as well as the statement given by her under Section 164 Cr.P.C. Further, the victim had also identified the accused in the Court.

10. The learned Trial Court has based its decision primarily on the contradictions in the deposition of the victim. It has held that the deposition of the victim did not find corroboration from the deposition of PW9. The victim had stated that the accused was beaten up by PW9, who came on the spot when he was committing the act of rape with her; whereas, PW9 has stated that she had not seen the act of the rape by the accused as he was apprehended by 'K', from whose clutches, he had escaped. The aforesaid discrepancy as occurring in the deposition of the victim and PW9 does not as such deter from the fact that both the victim as well as PW9 deposed regarding the incident, wherein the victim deposed in categorical terms regarding the rape committed upon her by the accused and PW9 deposed regarding the presence of the accused, when she came to the male toilet after hearing noise, wherein she found the victim in disrobed condition and the accused being held by 'K'. The aforesaid discrepancy cannot be said to be so glaring so as to discredit the case of the prosecution.

11. The finding by the learned Trial Court on this aspect thereby doubting the prosecution case on this basis, is totally flawed. Hon'ble Supreme Court has held in categorical terms that minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. In the case of *State of Punjab vs. Gurmit Singh, (1996) 2 SCC 384,* it has been held as follows:

> *"8. ……the courts must, while evaluating evidence, remain alive to the fact that in a case of*

rape, no self respecting woman would come forward in a court just to make a humiliating" statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satiny its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is

not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances……

21. .....the Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

12. Similarly, it has been held by Hon'ble Supreme Court that conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. In the case of *Phool*

Singh v. State of Madhya Pradesh, (2022) 2 SCC 74, it has been held as follows:

> *"8. xxx xxx xxx*
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> *13. In State of HP v. Raghubir Singh (1993)2 SCC 622, this Court held that there is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate her veracity.*
>
> *14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the Accused on the sole testimony of the prosecutrix.*
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> *10.2 In Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130], it is observed and held by this Court that to hold an Accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*
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> *9. In the case of Pankaj Chaudhary (supra), it is observed and held that as a general rule, if credible, conviction of Accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix*

should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

> *"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]]. It is well-settled by a catena of decisions of this Court that there is no Rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30]]"*

10. xxx xxx xxx

> *7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are suchwhich are of*

fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an Accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635)]."

13. Considering the aforesaid observations as laid down by Hon'ble Supreme Court, there is no basis to disbelieve the credibility and reliability of the deposition of the victim. It is observed that the victim has remained steadfast and consistent in her statement throughout before the court during her examination as well as cross examination and supported her statement recorded under Section 164 Cr.P.C. Hon'ble Supreme Court in the case of *State (NCT of Delhi) v. Pankaj Choudhary, (2019) 11 SCC 570* has held that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. The deposition of the victim in the present case is reliable and trustworthy, and there is no reason to discredit or reject the same merely on the basis of minor contradiction between the deposition of the victim, PW6 and the deposition of PW9.

14. PW9 had categorically deposed that blood was coming from the private parts of the victim. The deposition of PW9 was corroborated by the deposition of PW8, Aunt (Bua) of the victim. She clearly deposed that on the day of the incident, when she reached her house, PW9 and 'K' were present at her house, who told her about the rape having been committed upon the victim. She noticed that blood was coming from the private parts of the victim, her clothes had been removed by the accused and that when she reached the house, the victim was wearing other clothes.

15. The finding of the learned Trial Court that PW8 had stated that blood was coming from the anus part and thus, the testimony of PW9 does not find corroboration, is totally erroneous. The learned Trial Court failed to appreciate that during her cross-examination, PW8 had categorically stated that blood was oozing from the vaginal part of the victim and not from the anus, and that due to lapse of time, she had forgotten this fact. The learned Trial Court erred in rejecting the prosecution case on this ground.

16. The learned Trial Court has also committed grave error in holding the victim as a tutored witness by stating that in her cross examination the victim had deposed that she had stated whatever her aunt and police aunty told her to state. This finding is totally fallacious since the victim in answer to the Court question had clearly stated that her deposition was made against the accused because the said incident had taken place and she had not deposed against the accused because her Aunt and police had asked her to state so. The relevant portion during the cross examination of the victim is reproduced as below:

"Court Question: Whether you have deposed today about the act of the accused when he put his penis in your vagina as you have gone to the toilet to ease yourself on the basis of your knowledge or because of facts told to you by your aunt and police?

Ans: The above incident of putting of penis by accused in my vagina has taken place with me and I have deposed today against him because of that reason and not because my aunt and police has asked me to state so. Vol. Stated my aunt and police has told me to state all those facts to the court about the incident having occurred with me."

17. The learned Trial Court again erred in discarding the MLC, Ex. PW5/A on the ground that it was not reported by the doctor whether it was old torn hymen or freshly torn hymen. PW5, Dr. Ratana Mani, Senior Resident, Lady Hardinge Hospital had examined the victim and had clearly deposed that on examination she found that her left upper arm was paralyzed since her birth. She further deposed that the hymen of the victim was found torn upon examination. When the deposition of PW5 in this regard is clear and straight, there was no reason to discard the MLC, Ex. PW5/A on the specious ground that she had not reported whether it was old torn hymen or freshly torn hymen. No such question was put to the said witness during her cross examination and as such the finding of the learned Trial Court on this aspect is without any basis and is liable to be rejected.

18. As regards the finding that vide MLC Ex.PW11/A no injury marks, nail scratch marks were found over the private parts of the

accused, the said fact also does not in any manner establish the innocence of the accused. This fact cannot discredit the prosecution case in view of the judgment of Hon'ble Supreme Court in the case of *State of Himachal Pradesh v. Gian Chand, (2001) 6 SCC 71*, wherein it has been held as follows:

> *"15. .....It is true that marks of external injury have not been found on the person of the accused but that by itself does not negate the prosecution case. Modi has opined that even in the case of a child victim being ravished by a grown-up person, it is not necessary that there should always be marks of injuries on the penis in such case. Further, it is to be noted that about two days had elapsed between the time of the incident and medical examination of the accused within which time minor injuries, even if caused, might have healed."*

19. Similarly the finding by the learned Trial Court that PW5, Dr. Ratana Mani who had examined the victim, had not found any injury mark on her body, again does not in any manner disparage the prosecution case. In *State of Himachal Pradesh v. Gian Chand (Supra)*, on this aspect Hon'ble Supreme Court has returned a categorical finding that *"…in case of children who are incapable of offering any resistance external marks of violence may not be found……"*. This observation of the Hon'ble Supreme Court becomes all the more pertinent in the present case in view of the fact that it has come on record that the left upper arm of the victim was found to be paralyzed since her birth. Thus, the victim could

not have put up any force and resistance against the action of the accused in view of her physical condition.

20. Learned Trial Court has again erred in holding that there is no explanation for 7 days delay in reporting the matter and not getting the prosecutrix medically examined. The learned Trial Court ignored the fact that the victim had lost her mother at a very young age and her father was also missing. The victim along with her three other sisters was staying with her aunt, PW8, who herself had 4 daughters and 2 sons. Thus, the Aunt of the victim, PW8 was looking after 10 children, 6 of her own and 4 of her brother, which included the victim. This is coupled with the fact that the victim belonged to a very poor family and her aunt met the two ends by working as a labourer. In these circumstances, PW8, aunt of the victim cannot be expected to know the importance of reporting such matters immediately. Even otherwise, considering the thought process prevailing in the society in general, there is reluctance to report such incidents of rape. Thus, delay in lodging the FIR cannot be considered as a factor to doubt the prosecution case in any manner.

21. At this stage, it would be fruitful to refer to the judgment of Hon'ble Supreme Court in the case of *State of Himachal Pradesh v. Gian Chand (Supra),* wherein it has been held as follows:

> *"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of*

delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, PW-1 - the mother of the prosecutrix is a widow. The accused is a close relation of brother of husband of PW1. PW1 obviously needed her family members consisting of her in-laws to accompany her or at least help her in lodging the first information report at the police station. The incident having occurred in a village, the approach of the in-laws of PW1 displayed rusticity in first calling upon the father of the accused and complaining to him of what his son had done. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of family. That failed. It is thereafter only that the complainant, the widow woman, left all by herself and having no male family members willing to accompany her, proceeded alone to police station. She has lent moral support by Ruldu Ram, the village Panch, whereupon the report of the incident was lodged. The sequence of events soon following the crime and as described by the prosecution witnesses sounds quite natural and provides a satisfactory explanation for the delay. It

was found to be so by the learned Sessions Judge. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained "unexplained" and hence fatal to the prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the house of the family and therefore, there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the court. A cool thought may precede lodging of the FIR. Such are the observations found to have been made by this Court in State of Punjab v. Gurmit Singh and others, and also in the case of Harpal Singh. We are satisfied that the delay in making the FIR has been satisfactory explained and, therefore, does not cause any dent in the prosecution case."

22. Much significance has been placed by the Trial Court on the MLC of the victim, Ex.PW12/G, wherein despite apprehending of the accused, the name of the accused was not mentioned/told to the doctor and even at the time of her medical examination, the person committing rape is shown to be an unknown person. The learned Trial Court has erred in unnecessarily giving weight to an insignificant thing considering the educational and economical background of the family of the victim, especially when it has come on record that the victim was staying with her aunt, her mother having expired when she was very young and her father was also missing. Such discrepancy is minor considering the facts

and circumstances of the case and the accused cannot be given benefit of doubt on such basis.

23. The finding of the learned Trial Court that the clothes worn by the victim at the time of her rape have not been produced in evidence, again does not in any manner weaken the case of the prosecution. There is no vital contradiction in the statement of the Investigating Officer, PW12, W/ASI, Sushila wherein she has deposed that she tried to trace out the clothes of the victim, which as per the statement of witness, PW8 Aunt of the victim, were thrown away in Khatta(Garbage) by her, and the same could not be traced. On the other hand, PW8 has stated that clothes of the victim which she was wearing at the time of the incident, could not be traced. Reading both the depositions in conjunction, simply mean that the clothes of the victim which she was wearing at the time of incident, were never produced. This Court has already dwelled on the aspect that the victim belongs to an economically and educationally backward family and that there was delay of 7 days in lodging the FIR. Therefore, the family of the victim cannot be expected to be vigilant enough to preserve the evidence or even know its importance. The finding that there is no satisfactory explanation for their non-production, is totally devoid of any merits, since the learned Trial Court failed to appreciate that in the present case, the investigation started after 7 days of the incident when the matter was reported. It may not be lost sight of the fact that PW8 Aunt of the victim is a labourer and is not an educated woman.

24. Considering the evidence and other documents on record, we find that the deposition of the victim, PW6 is natural, straightforward and cogent. The victim has fully supported the prosecution case. The contradictions in the deposition of the witnesses are minor in nature, which cannot be said to adversely affect the prosecution case. There is nothing in the cross examination of the victim to assail her deposition and she has successfully withstood the test of cross examination. Her version is duly corroborated by the testimonies of PW9, an independent person who witnessed the victim in the male toilet in such a condition and also by PW8, her Aunt. Thus, the prosecution has established its case against the accused beyond reasonable doubt.

25. For the foregoing reasons, we hold the judgment of the Sessions Court wholly unsustainable in law. The judgment of the Sessions Court acquitting the accused is set aside. Consequently the respondent is held guilty of and is convicted for the offence punishable under Section 376 IPC.

26. In the present case, the victim has already been proved to be a minor. The original admission and withdrawal register of the school where the victim studied, was produced by the School Principal. The date of birth of the victim was mentioned as 03.02.1999 in the said register. The date of incident being 22.04.2010, the victim was 11 years at the time of the incident.

27. Section 376 of The Indian Penal Code, in the year 2010 at the time of incident, before substitution by Act 13 of 2013, stood as under:-

"376. Punishment for rape.— (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

……"

28. Thus, in the year 2010 when the incident happened, the punishment for rape where a victim was under 12 years of age, was for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine.

29. Considering the facts of the present case and that the victim was a minor at the time of the incident, the respondent is awarded with sentence of Rigorous Imprisonment for 10 years for offence punishable under Section 376 IPC and to pay a fine of Rs.10,000/- (Rupees Ten Thousand), in default whereof to undergo Simple Imprisonment for a period of 1 month and to pay a compensation of Rs.50,000/- (Rupees Fifty Thousand) to the victim and in default whereof to undergo Simple Imprisonment for a period of 2 months. The accused is already in custody and is directed to undergo the

remaining period of sentence. Benefit of Section 428 Cr.P.C. will be provided to the respondent.

30. Appeal is accordingly disposed off.

31. A copy of this judgment be sent to Superintendent, Central Jail, Tihar, New Delhi for updation of the jail record as also for supplying a copy of the same to the respondent.

(MINI PUSHKARNA)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 9, 2022
PB/au