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

% *Judgment reserved on : 01.12.2015*
Judgment delivered on : 04.12.2015

+ CRL.A. 864/2013

AVDESH KUMAR Appellant

Through Mr.Rajender Chhabra, Adv.

Versus

STATE NCT OF DELHI Respondent

Through Ms. Kusum Dhalla, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 21.01.2013 and 29.01.2013 respectively wherein the appellant stands convicted under Section 376 of the IPC. He has been sentenced to undergo RI for a period of 7 years and to pay a fine of Rs.5000/- in default of payment of fine to undergo SI for 1 month.

Benefit of Section 428 Cr.P.C. had been granted to him.

2 Nominal roll of the appellant has been requisitioned. This reflects that as on date he has undergone incarceration of about almost 5 years which includes the remissions earned by him.

3 The version of the prosecution was unfolded in the testimony of the prosecutrix examined as PW-2. She was a resident of Jharkhand and she came to Delhi and working as a maid servant in the house of Ms. Vidyut Gulati (PW-8). The appellant was also working as a cook in the said house. On the fateful day i.e. on 20.08.2011, when the family of her employer had gone out of station, the appellant had taken her in a room and had forcibly committed rape upon her. She had pleaded with him but he did not listen anything. She made a complaint to the father-in-law of her employer who was in Delhi namely Yashvant Malhotra (PW-11). The complaint was lodged at the police station and investigation was set into motion. Apart from the aforementioned witnesses, the driver working in the same family since the last 4 years Rajender Kumar was examined as PW-6. He had deposed that after he had returned from taking bath, the prosecutrix narrated to him that she had been raped by the appellant. He corroborated the version of PW-2 that she and the appellant were working in the same house and were alone at the time of the incident.

Her statement was recorded by the learned MM Ms.Monika Saroha (PW-10) under Section 164 of the Cr.PC (Ex.PW2/B). The victim was medically examined by Dr. Nivedita Raizada whose signatures were identified by Dr. Nidhi Siddharth (PW-12). The exhibits which included the vaginal swab and salwar of the victim (Ex.PW-13/E) had also been sent for analysis but neither any semen and nor any blood could be detected on the said exhibit.

4 In the statement of the accused recorded under Section 313 of the Cr.PC, he pleaded innocence. No evidence was led in defence.

5 On the basis of the aforementioned evidence, both oral and documentary, the appellant was convicted and sentenced as aforementioned.

6 On behalf of the appellant, the foremost submission of the learned counsel for the appellant is that this was a clear case of consent. The victim was adult on the date of the offence and she was working as maid servant in the same house where the appellant was also employed. The appellant was employed in the house since the last 4 years. He had gone to his village and then had come back. The parties had a friendship and it was on a consent that this relationship had been established. The appellant has been falsely implicated in the present case. The scientific

evidence has not corroborated the version of the victim. Benefit of doubt should have been given to the appellant.

7 Needless to state that these arguments have been refuted.

8 Arguments have been heard and record has been perused.

9 The star witness of the prosecution was the prosecutrix herself examined as PW-2. She was an adult. She had disclosed that she had come to Delhi in the year 2007 and was employed in the house of Vidyut Gulati (PW-8). The appellant was also working in the same house. On the fateful day, her employer had gone out of station. The appellant caught hold of her hand and had taken her to the room of her employer where he committed rape upon her inspite of pleadings by her not to do so. She immediately after the incident called her lady employer's father who had come into the witness box as PW-11. Relevant would it be to note that this version of PW-2 was fully corroborated by PW-11 who had stated that the narration given by PW-2 was cogent. The police complaint was lodged and investigation was set into motion.

10 The statement of the victim (Ex.PW-2/B) recorded under Section 164 of the Cr.PC is fully corroborative of her version on oath in Court.

She was subjected to a lengthy cross-examination. She admitted that she knew the appellant. They used to work in the same house and both of them were in fact from Jharkhand. She could not beat the accused as he had caught hold of both her hands. She denied the suggestion that she wanted to marry the appellant and as he refused to marry her, she had implicated him in this false case. Relevant would it be to note that this line of defence which has been adopted in the cross-examination of PW-2 did not surface at the time when the statement of the accused under Section 313 of the Cr.PC was recorded wherein he simplicitor pleaded innocence. This line of defence was also not adopted at the time of cross-examination of the other witnesses of the prosecution.

11 Testimony of PW-2 was clear, cogent and coherent. The victim has passed the test of credibility. Her version recorded under Section 164 of the Cr.PC was also in conformity with her version on oath in Court. It was her narration which had formed the basis of the FIR and this version which was given at the inception was fully corroborative of her later two versions. There also appears to be no reason for her to have falsely implicated the appellant. The defence adopted by the appellant that the victim wanted to marry him is also not noteworthy. In fact it has

been brought to notice of the Court that the appellant was a married man and as such her seeking a promise from him to marry him would have little relevance.

12 The statement of PW-11 who had reached the spot immediately on phone call having been received from PW-8 also corroborates the testimony of PW-2. PW-8, the employer of the victim had gone out of station and when she returned home, the victim had narrated the incident to her.

13 The MLC of the victim (Ex.PW-12/A) shows that her hymen was torn and ragged. Injuries were not noted upon her person but as explained by the victim herself that she could not retaliate to ward off the appellant as he had caught hold of both her hands. The version of the prosecutrix appears to be honest and coherent and cannot be washed away merely because no injury was reflected upon her person which at the cost of repetition has been explained by PW-2. The absence of semen would also not be of much help to the appellant as it is not in all cases that smega has to be detected. It is only a corroborative piece of evidence.

14 The observations of the Hon'ble Apex Court in State of Himachal
Crl. Appeal No. 864/2013

Pradesh v. Raghbir Singh (1993) 2 SCC 622 in this context had held as under:-

“There is no legal compulsion to look for any other evidence to corroborate 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 against her veracity.”

15 The conviction of the appellant in this background calls for no interference. The appellant has already been granted the minimum sentence i.e. sentence of 7 years which is the minimum for the offence of rape. The conviction and the sentence call for no interference.

16 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 04, 2015

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