

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

% *Judgment Reserved on: September 01, 2014*
Judgment Delivered on: September 04, 2014

+ **CRL.A.807 of 2014**

ANWAR UL HAQUE Appellant
Represented by: Mr.K.Singhal, Advocate.

versus

STATE NCT OF DELHI Respondent
Represented by: Ms.Aashaa Tiwari, APP for the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Anwar-Ul-Haque is aggrieved by the judgment dated January 29, 2014 convicting him for offence punishable under Sections 419/363/366/376 (2) (f)/377/506 Part-II IPC and the order on sentence dated February 15, 2014 directing him to undergo Rigorous Imprisonment for three years and a fine of ₹1,000/- for the offence punishable under Section 419 IPC; Rigorous Imprisonment for five years and a fine of ₹1,000/- for the offence punishable under Section 363 IPC; Rigorous Imprisonment for seven years and a fine of ₹1,000/- for the offence punishable under Section 366 IPC; Life Imprisonment and a fine of ₹5,000/- for the offence punishable under Section 376 (2) (f) IPC; Rigorous Imprisonment for seven years and a fine of ₹2,000/- for the offence punishable under Section 377 IPC and Rigorous Imprisonment for three years and a fine of ₹1,000/- for the offence punishable under Section 506 Part-II IPC. The sentences under Sections 377

and 376 (2) (f) have been directed to run consecutively however, the rest of the sentences would run concurrently.

2. The prosecution case in brief is that on June 24, 2010 an information was received vide DD No.28A at about 8.50 PM that one person has taken away an eight years old child from her house WZ-144, Shakurpur Village, Delhi at about 4.00 PM at PS Saraswati Vihar. The same was handed over to SI Vijay Singh for investigation who went to the place and met the complainant PW-5, the mother of the prosecutrix who informed that on June 24, 2010, one person who told his name as Imran came to their house and told her that he was working under Ladli Scheme, the complainant would get clothes for her daughter and asked the complainant to give the names of her daughter. The complainant informed the name of her daughter. At about 1.30 PM the said Imran again came back and took measurement of the daughter of the complainant and stated that he would return back at 4.00 PM. When the complainant came back home at about 2.00 PM to have lunch she scolded her daughter as to why she had given her measurement to the said Imran and asked not to take anything from Imran in future. Imran again returned at 4.00 PM and told her daughter that he needed her passport size photograph and when the daughter told her that she did not have any such photograph, he told her to accompany her to Lawrence Road to the studio of a Government photographer to have her photograph. Thus Imran took away the prosecutrix and did not bring her back.

3. On the basis of this statement FIR No.236/2010 under Section 363 IPC was registered. During search the prosecutrix was found by the family near Gufa Mandir at about 7.00 AM on the next date, that is, June 25, 2010. The statement of the prosecutrix was recorded and she was medically

examined. On June 25, 2010 Anwar-Ul-Haque tried to repeat the same at the house of Jamil Ahmad who apprehended him with the help of public and got him arrested. Jamil Ahmad deposed that on June 25, 2010 Anwar-Ul-Haque came to his house and told him that he has come for Ladli Yojna of Delhi Government to distribute clothes and money. He asked him to give measurement of his daughter. He knew that one day prior one person had come to the house of Mohd.Zaharuddin at Shakarpur and taken away his daughter on the pretext of taking her photograph and she had not returned. Thus on suspicion he raised the noise and apprehended Anwar-Ul-Haque with the help of two-three persons and took him to PS Saraswati Vihar where the complainant and her daughter were present. The prosecutrix identified Anwar-Ul-Haque who has impersonated as Imran and thus Anwar-Ul-Haque was arrested.

4. Learned counsel for Anwar-Ul-Haque has assailed the prosecution case on the ground that the procedure adopted by the learned Trial Court in recording the statement of the prosecutrix under Section 164 Cr.P.C. was unknown. The grievance is that in the first instance when the prosecutrix appeared before the learned Link Magistrate, no statement was recorded and again when an application was moved then the same was recorded. A perusal of the order sheet dated June 26, 2010 would show that an application for recording of the statement of the prosecutrix was moved before the learned Magistrate who posted the matter before the learned Magistrate. The learned Magistrate posed certain question however, the prosecutrix was not in a position to answer them hence he declined to record her statement with liberty to file an application later on. When the subsequent application was filed on June 29, 2010 after ascertaining whether

the prosecutrix could give rational answers and was voluntarily making the statement, the learned Metropolitan Magistrate recorded her statement under Section 164 Cr.P.C. vide Ex.PW-2/A.

5. To find out what offences have been made out against the accused it would be appropriate to note the relevant portions of the statement of the prosecutrix recorded in Court after the Court ascertained her rationality and voluntariness and thus examined her on oath. She deposed:

“On the 24th day about one month before, again said, it was summer of this year. I was present in my house with my brother Rizwan. At about 2.00 p.m., one Uncle came to our house. I cannot identify the said person. I cannot tell the approximate age of the said person. At this stage, the witness has seen the accused present in the court today and has stated that he is the same person, who had come to her house on that day. Accused told us that he had come from Ladli Scheme. Accused told that clothes and money will be given under the Laadli Scheme. My mother was washing clothes downstairs. Accused obtained signatures of my mother on some papers and also demanded photograph, but my mother refused as no photograph was available. Thereafter, accused left our house.

My mother went to purchase vegetables. At about 4.00 p.m. accused again came to our house and asked me to accompany him to take my photograph. My brother asked the accused to take photograph in the house itself, but accused scolded my brother. My brother is aged about 10 years. Again accused told that he will arrange the photograph nearby the house. Thereafter, accused took me and made me to sit in the bus with him. Thereafter, after sometime accused boarded me in another bus with him. Accused took me to a park. I started weeping because the place where accused had taken me was unknown to me. It was right time. Accused asked me to remove my clothes, but I refused. Then accused slapped me. Thereafter, accused laid down on my side. Accused also removed my clothes. Thereafter, the accused touched my

private part. Accused also threatened me if I will disclose the same to anyone, then he will kill me. Then I put on my clothes and found accused sleeping there. Thereafter accused left me at Gufa Mandir at about 7.00 a.m. From the Gufa Mandir, I came to my house.

I told all the facts to my mother and also about the acts, which were done by the accused with me. Thereafter, we went to police. Police made inquiries from me. Thereafter, I was sent for my medical examination to Bhagwan Mahavir Hospital. Again I was brought back to PS. Then I saw accused present in the court today, in the PS and identified him as the same person.

I do not remember the date, but after some days, I went to the court. My statement was recorded by one Magistrate. At this stage, one sealed envelope sealed with the seal of "GKN" intact is opened. Statement proceedings are taken out. My statement Ex.PW2/A bears my signatures at point A. I had told all the facts to the Magistrate whatever was done by the accused with me.

Accused put his finger in my vagina. When I started weeping, he gagged my mouth. Except this, accused did not do anything with me. Accused also took me to his house. I do not remember what was done by accused with me in the house.

(At this stage, Ld.Addl.PP seeks permission to put some leading questions to the witness. Heard. Request allowed.)

In the house, accused removed my clothes and started committing wrong act with me. When I raised noise, accused threatened me to kill. Accused also gagged my mouth with handkerchief and committed wrong act with me from behind. Accused also slept over me in the night. When I demanded my clothes from the accused, he gave me beatings. It is correct that due to lapse of time, I forgot some of the facts, which I have recollected now."

6. In the cross-examination though questions have been put regarding the residential house of the prosecutrix where she was taken and kept and who met her when she returned however, with regard to the incident no question has been put. Thus this part of the testimony of the prosecutrix has gone unchallenged in the cross-examination.

7. The prosecutrix was first generally examined by Dr.Ajay Dalal PW-1 who noted that hymen was torn with tags seen circumferentially little finger can be inserted. He saw no external injury and referred the prosecutrix for Gynaecologist examination which was done by Dr.Priyanka Gupta by using the medical examination kit. The MLC was prepared by Dr.Priyanka Gupta. Dr.Roma Gupta PW-7 deposed on the basis of the MLC prepared by Dr.Priyanka Gupta, who conducted the medical examination with the medical examination kit and proved the report Ex.PW-5/B. Dr.Priyanka Gupta during examination found hymen torn with hymenal tags seen and minimal redness and mild tenderness present. She also noted minimal vaginal discharge. Dr.Neeraj Dhamija PW-12 examined the prosecutrix with reference to sodomy and he opined that on rectal examination, no external injury was found and no tenderness was found however, sodomy could not be ruled out.

8. As per FSL report Ex.PW-16/D, human semen was detected on the underwear of the prosecutrix. Thus, from the medical examination done by Dr.Priyanka Gupta which is duly proved by Dr.Neeraj Dhamija PW-12, it is proved that hymen was torn with hymenal tags seen and minimal redness and mild tenderness and minimal vaginal discharge. The medical evidence coupled with the evidence of the prosecutrix who was a girl of tender age of 8 years, it is evident that Anwar Ul Haque not only put his finger in the

vagina but also committed sexual intercourse with carnal knowledge. Even the slightest penetration is sufficient to attract the offences punishable under Sections 376 and 377 IPC.

9. Anwar Ul Haque was caught while he was trying to find yet another victim on the next day. Further when he was granted bail by the learned Trial Court, Anwar Ul Haque indulged in another similar case for which FIR No.7/2012 was registered at PS Udyog Vihar, Gurgaon. Anwar Ul Haque acted like a predator looking for young victims with every sunrise. Thus, in view of the evidence on record, we find no infirmity in the impugned judgment convicting the appellant for the aforesaid offences and the order on sentence. The appeal is consequently dismissed. Anwar Ul Haque, the appellant, who is in custody, will suffer the remaining sentence.

10. T.C.R. be returned.

11. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 04, 2014
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