

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

**RESERVED ON : 9th APRIL, 2015
DECIDED ON : 16th APRIL, 2015**

+ CRL.A. 597/2004

NAUSHAD Appellant
Through : Mr.M.Usman Chaudhary,
Advocate.

VERSUS

STATE (NCT OF DELHI) Respondent
Through : Mr.Navin K.Jha, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellant – Naushad impugns a judgment dated 20.07.2004 in Sessions Case No. 90/97 arising out of FIR No. 151/97 PS Rajouri Garden by which he was convicted for committing offence under Section 354 IPC. By an order dated 22.07.2004, he was awarded RI for six months with fine ₹ 5,000/-.

2. Allegations against the appellant as reflected in the charge-sheet were that on 09.03.1995 at about 09.30 P.M. on the roof of House No. F 72, Raghubir Nagar, he attempted to commit rape upon the prosecutrix 'X' (assumed name), aged four years. Intimation about the

occurrence was recorded vide Daily Diary (DD) No. 20A at 11.15 P.M. at PS Rajouri Garden on the night intervening 9/10.03.1995. 'X' was taken to hospital for medical examination. The Investigating Officer lodged First Information Report after recording statement of victim's mother – Munni Devi (Ex.PW-4/A). The accused was arrested and medically examined. Statement of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined ten witnesses. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication due to non-return of ₹ 8,000/- advanced by him to the victim's mother. DW-1 (Abdul Rehman) appeared in defence. The trial resulted in conviction under Section 354 IPC. It is apt to note that the appellant was not found guilty under Section 376 IPC read with Section 511 IPC and the said acquittal was not challenged by the State.

3. The occurrence took place at about 09.30 P.M. Intimation to the police was given without any delay at 11.15 P.M. 'X' was taken for medical examination at around 11.05 P.M. by PCR officials. The alleged history recorded therein describes 'X' a victim of sexual assault. FIR was lodged promptly after recording victim's mother's statement (Ex.PW-4/A) vide rukka (Ex.PW-10/2) sent at around 12.30 night. In the complaint,

victim's mother – Munni Devi specifically named the appellant to be the perpetrator of the crime. She gave detailed account as to how and under what circumstances, the appellant was found with 'X' on the roof where he had attempted to sexually assault her. Since the FIR was lodged promptly, there was least possibility of the victim's mother to concoct a false story. The complainant – Munni Devi expired on 31.05.1999 and could not be produced for examination. Her husband PW-4 (Balram) proved the contents of the complaint (Ex.PW-4/A).

4. Material testimony is that of the prosecutrix 'X' who was examined on 22.02.2000 and 19.02.2002. She had turned about nine years at that time. The learned Presiding Officer put number of questions to the child witness to ascertain if she understood the questions put to her and was able to give rationale answers. After satisfying herself that the child was a competent witness, her statement on oath was recorded. She implicated the appellant for the crime. She deposed that when she was playing in front of her house about 4 or 5 years back, the accused called her on the roof of her house and gave her one rupee. The appellant opened her pant and removed her underwear. He also opened his pant and inserted his male organ in her private part. She raised alarm due to pain; she started bleeding from her private part. When her mother heard her cries,

the accused fled the spot. Her mother brought her downstairs and raised voice of 'pakro - pakro'. The accused was apprehended but due to the intervention of the relatives, he was released. Her pant (Ex.P1) was seized in the hospital. In the cross-examination, she denied herself to be a tutored witness. She denied that her mother had to give ₹ 6,000/- to the accused. She deposed that the accused was known to her before the incident and she used to call him 'maternal uncle'.

5. No ulterior motive was assigned to the child to falsely rope in the accused for the heinous offence. Testimony of the witness on material facts has remained unchallenged and uncontroverted in the cross-examination. She categorically asserted that nothing was deposed by her on the tutoring of her mother. No suggestion was put to the witness if the accused was not present at the spot at the time of incident. Despite lengthy cross-examination on subsequent date, no material infirmities could be extracted to discard the version narrated by the innocent child. No sound reasons exist to disbelieve the child victim. Implicit reliance can be placed on her testimony. Her testimony has been corroborated by PW-4 (Balram) who arrived at the spot soon after the incident. He informed the police on telephone and took 'X' to DDU Hospital along with his wife. He was also informed by the complainant - his wife about the nefarious act committed

by the accused soon after the occurrence. PW-5 (Prem Chand), an independent witness, has also deposed on similar lines. He was able to apprehend the accused at the spot. However, the accused got himself free from his clutches and succeeded to run away. DD No. 20A records intimation about the apprehension of a culprit at the spot. Efforts were made by the police to find out the appellant soon after the incident but he was untraceable and could be arrested only on 14.03.1995. The accused did not explain as to what had prompted him to flee from his residence or place of work for number of days. The circumstance of abscondance is also an incriminating piece of evidence against him. Medical evidence is also in conformity with the ocular evidence. As per FSL report, semen stains of 'B' Group were detected on the Baby Pants (Ex.P1) of the victim. It lends corroboration to the testimony of the prosecutrix.

6. Contradictory suggestions have been put by the accused to the witnesses regarding any amount to have been taken by the victim's mother from him. At one place, he alleged that ₹ 6,000/- were given to the victim's mother as advance. At other place, he alleged that this payment was given as a 'loan'. In 313 Cr.P.C. statement, he introduced a new defence that ₹ 8,000/- were given to the victim's mother as 'loan' on various dates. No evidence emerged on record to substantiate any such

payment given by the appellant to the victim's mother. Moreover, for that paltry amount, 'X' and her parents were not imagined to concoct a false story of attempt to rape to defame their own daughter. Unless an offence has really been committed, victim's parents are not expected to level serious allegations of such nature that have reflection on the chastity of the little child. Defence deserves outright rejection.

7. The findings of the Trial Court on conviction are based upon fair appraisal of the evidence and warrant no intervention. The Trial Court has already taken lenient view and the appellant has been sentenced to undergo RI for six months. Considering the mitigating circumstances, no further reduction is called for.

8. The appeal filed by the appellant lacks merits and is dismissed. The appellant shall surrender before the Trial Court on 21st April, 2015 to serve out the remaining period of sentence. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

APRIL 16, 2015 / *tr*