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

RESERVED ON : JULY 10, 2015
DECIDED ON : AUGUST 04, 2015

+ **CRL.A.554/2013**

SUSHIL

..... Appellant

Through : Mr.Jivesh Tiwari, Advocate.

versus

STATE (GOVT.OF NCT) OF DELHI

..... Respondent

Through : Ms.Fizani Husain, APP.

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

S.P.GARG, J.

1. The present appeal is directed against a judgment dated 5.1.2013 of learned Additional Sessions Judge in Sessions Case No.98/11 arising out of FIR No.184/11 registered at Police Station Kotwali by which the appellant-Sushil was convicted for committing offences under Section 376 (2) (f)/377 IPC and sentenced to undergo RI for ten years

with fine ₹1,000/- under Section 376 (2) (f) IPC and RI for seven years with fine ₹1,000/- under Section 377 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant as reflected in the charge-sheet in nutshell were that on 29.08.2011 he sexually assaulted 'X' (assumed name) aged around 6/7 years and had carnal intercourse against the order of nature with her. PW-6 Swati, connected with Butterflies Organization (NGO) came to know from the victim that she was being abused by the appellant since long and she did not disclose it to her parents due to fear. She (PW-6) gathered courage and lodged complaint (Ex.PW-6/A) promptly; it formed the basis of FIR. During investigation 'X' was medically examined. The accused was arrested and taken for medical examination. Exhibits collected during investigation were sent to FSL for examination. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant. The prosecution examined sixteen witnesses to substantiate its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication at the behest of PW-6 (Swati). He did not adduce any evidence in defence. The trial

resulted in his conviction. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. The police machinery was set in motion by PW-6 (Swati), a Child Rights Advocate, who was not in any way related or connected with the victim or her family members. After coming to know of sexual abuse, she lodged the complaint giving detailed account as to how and under what circumstances 'X' was sexually abused and assaulted by the appellant. In her Court statement, she proved the complaint (Ex.PW-6/A) without major variation. She deposed that 'X' confided her that the accused Sushil @ Langra used to force her to sleep with him; kiss her; put his hand in her underwear and insert his penis in her mouth. In the cross-examination, she revealed that 'X' was known to her for the last about three years; she know the appellant for about one month before the incident. She denied that the accused was falsely implicated as she had warned him not to scold and beat children of the area. No tangible reasons exist to disbelieve the statement of an uninterested witness, particularly when her statement remained unchallenged in the cross-examination and no infirmities appeared therein.

4. Material and relevant evidence to establish appellant's guilt is that of victim 'X', aged around 6-7 years. Soon after the occurrence, she recorded statement under Section 164 Cr.P.C. on 30.08.2011. She narrated vivid description of the incident as to when and where she was repeatedly sexually assaulted/abused by the accused. She also charged him of committing similar acts with her younger sister. Before recording her Court statement as PW-4 various questions were put by the learned Presiding Officer to ascertain if 'X' was a competent witness, able to give rational answers to the questions put to her. After satisfying that she was competent to give statement, the Trial Court recorded her statement without oath. She corroborated the version given by PW-6 (Swati) in her complaint (Ex.PW-6/A) at the first instance in its entirety. Identifying the accused correctly in the Court, she disclosed that one night, he took her to Petiwali Market and inserted finger/hand in her private parts; he also inserted male organ in her female organ and mouth. When she felt pain, he put his hand on her mouth and slapped her. She further deposed that the appellant committed it several times after taking her with him at the time of sleep with her siblings. In the cross-examination, she denied to have been tutored by Swati (PW-6). She volunteered to add that she had advised her to tell the truth before the police. No ulterior motive was

assigned to the child witness to make false statement. Nothing has emerged if 'X' or her family members had any serious enmity or strained relations with the appellant forcing them to falsely rope him in the heinous offence. 'X' a hapless little child had no fixed place to live. She along with her siblings and parents used to sleep on the footpath and was a rag-picker. The accused used to allure her on the pretext to serve food at night. She admitted that the accused was handicap and had no left leg below the knee. On analysing the entire statement of the prosecutrix, it reveals that she has implicated the appellant without any hesitation to be the perpetrator of the crime. Despite putting number of questions, her version could not be shattered and no material infirmities or discrepancies could be elicited. 'X' and her family members had no strong motive to concoct a fake story implicating the appellant.

5. 'X's ocular testimony finds corroboration in medical evidence. PW-1 (Dr.Mona Asnani) after medically examining her vide MLC (Ex.PW1/A) noticed that hymen was torn and annular. MLC (Ex.PW-1/A) records the alleged history of sexual assault by Sushil, for the last two-three months at Red Fort, Delhi; sexual intercourse for the last time took place about 4/5 days before. FSL reports (Ex.PW-16/F-1 and F2) prove detection of human 'semen' on exhibits 1a (underwear);

2i (Cervical Mucus Collection); 2j-1 (cotton wool swab); 2j-2a and 2j-2b (two micro slides having faint whitish smear); 2n-1 (cotton wool swab); 2n-2a and 2n-2b (two micro slides having faint whitish smear). Presence of semen on these articles lends credence to the statement of the victim. PW-10 (Shan @ Shanu), 'X's brother, aged around 12 years has also corroborated her version on material aspects.

6. The appellant did not furnish plausible explanation to the incriminating circumstances proved against him. The defence deserves outright rejection as PW-6 Swati had no strong motive to involve the appellant. Innocent child 'X' suffered sexual abuse for long due to fear and avoided to bring it in the notice of her parents or police. This encouraged the appellant to repeat it several times. No sound reasons exist to disbelieve the prosecutrix, a child witness. The trial Court has discussed it elaborately in the judgment.

7. PW-5 (Shasi Prabha), MCD Primary School Principal, brought the admission register and produced its copy (Ex.PW-5/A) wherein 'X's date of birth was recorded as 17.07.2004 at the time of her admission in second class on 18.08.2011. The appellant did not challenge it. Needless to say, 'X' was below 12 years at the time of occurrence.

8. The impugned judgment based on fair and proper appreciation of evidence needs no intervention.

9. The appeal lacks merit 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

AUGUST 04, 2015

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