

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

**RESERVED ON : 25th FEBRUARY, 2015
DECIDED ON : 9th MARCH, 2015**

+ CRL.A. 636/2012

ABDUL ALIM Appellant

Through : Mr.M.L.Yadav, Advocate.

versus

THE STATE OF NCT OF DELHI Respondent

Through : Ms.Kusum Dhalla, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 20.12.2011 in Sessions Case No.254/2010 emanating from FIR No.203/2010 PS New Usmanpur by which the appellant – Abdul Alim was held guilty for committing offence under Sections 354/377 IPC, the instant appeal has been preferred by him. By an order dated 21.12.2011, the appellant was awarded RI for two years with fine ₹ 5,000/- under Section 354 IPC and RI for ten years with fine ₹10,000/- under Section 377 IPC.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 23.06.2010 at about 10.30 A.M. at House No.G-57, Gali No.3, Shastri Park, the appellant sexually assaulted 'X' (assumed name) aged four years and also committed carnal intercourse. Police machinery swung into action when intimation about the incident was reported and Daily Diary (DD) No. 29B was recorded at Police Station Usmanpur. The investigation was assigned to SI Amit Malik, who with Const.Subodh went the spot. After recording statements of the victim's mother (Ex.PW-2/A), he lodged First Information Report. 'X' was medically examined and her statement under Section 164 Cr.P.C. was recorded. The accused was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused for committing offences under Sections 376 read with Section 511 IPC and 377 IPC. The appellant was charged for committing offences under Sections 377 and 376 (2)(f) read with Section 511 IPC. However, subsequent to the recording of the testimony of the prosecution witnesses, the charge was amended and the appellant was charged under Sections 377 and 376 (2)(f) IPC. He abjured his guilt and pleaded false implication. The prosecution examined ten witnesses to establish the appellant's guilt.

In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and alleged that he was falsely implicated due to non-payment of ₹10,000/- advanced to X's father. He examined DW-1 (Gulshan), his wife in defence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, acquitted the appellant of the offence under Section 376 (2)(f) and 376 (2)(f)/511 IPC. The trial, however, resulted in his conviction under Section 377/354 IPC. Being aggrieved and dissatisfied, the appeal has been preferred. It is relevant to note that State did not challenge appellant's acquittal under Section 376 IPC.

3. I have heard the learned counsel for the parties and have examined the file. Conviction of the appellant is primarily based upon the sole testimony of the child witness 'X'. Her statement is consistent throughout. In her 164 Cr.P.C. statement (Ex.PW-2/B), she named the appellant and attributed a specific role to him in the crime. In her Court statement as PW-1, she identified the accused to be the perpetrator of the crime. Learned Presiding Officer had put number of questions to the child witness to ascertain if she was able to understand the questions and give rationale answer. After satisfying that 'X' was a competent witness and understood the questions put to her, her statement was recorded. In her

deposition before the Court, she gave detailed account as to how and under what circumstances, the appellant had taken her to his house after giving her one rupee. She also disclosed that in the house the appellant sexually assaulted her and also put his penis into her private part, he gave a cheek bite. In the cross-examination, nothing was suggested if the appellant had not taken 'X' to his house. 'X' was categorical to say that the act was done by the accused in the morning time and she was taken for medical examination to the doctor. The appellant did not deny his presence at the relevant time in his house. Her testimony remained unchallenged on material facts. No ulterior motive was assigned to the child witness to make a false statement.

4. PW-2 (Jainab), X's mother proved the version given to the police at first instance (EX.PW-2/A) without any variation. On 23.06.2010 at about 10 / 11.00 A.M. when she did not find 'X' aged four years, she went to the appellant's room which was bolted from inside. She banged the door and enquired if 'X' was inside the house. At first instance, the appellant denied her presence but when 'X' herself disclosed from inside that she was there, the door was opened. On enquiry, 'X' narrated her ordeal to her mother. The police was informed. PW-2 further disclosed that the appellant and her sister attempted to win her over and to

accept money for not reporting the matter to the police. In the cross-examination, she denied if a sum of ₹10,000/- was borrowed from the accused and for its non-payment, he was falsely implicated. The testimony of this witness is crucial as she has found both 'X' and the appellant together in the room of the accused soon after the incident. The appellant did not explain as to what had prompted him to take the child to his room without the permission of her parents and what was the necessity to bolt the door from inside and to deny her availability in the house on the asking of her mother. PW-3 (Mohd. Jilani), X's father, has deposed on similar lines.

5. 'X' was medically examined vide MLC (Ex.PW-9/A) at around 11.00 P.M. The alleged history records that the 'X' was sexually assaulted by a tenant in the same building and she was found in his room. There was no occasion for the 'X's parents to concoct a false story of her presence inside the room of the accused. Appellant's involvement had surfaced immediately after the crime and there was no delay in reporting the incident to the police.

6. Minor contradictions, improvements in the testimony of the prosecution witnesses are inconsequential as they do not affect the core of the prosecution case and absolve the appellant of the crime. 'X' and her

parents had no prior animosity with the appellant to falsely rope him in this ghastly crime. They had no reasons to level serious allegations of unnatural offence for alleged non-payment of ₹ 10,000/-. They were not expected to bring her child / daughter in disrepute and play with her life. Unless an offence has really been committed, an unmarried little girl and her parents would be extremely reluctant to make such allegations which are likely to reflect on her chastity. No evidence has surfaced if any amount of ₹ 10,000/- was ever paid by the accused or his wife if so when and by what mode, and for its non-payment, the accused was implicated. The defence deserves outright rejection. There are no sound reasons to disbelieve 'X', an innocent child who was unaware of the consequences of the act of the accused. The accused who lived in the neighbourhood took advantage of the innocence of the child and allured her in his room on the pretext to give her some cash.

7. The impugned judgment based upon fair appraisal of the evidence deserves no interference. Considering the gravity of the offence whereby a child aged four years was ravished, Sentence Order needs no modification except that the default sentence for non-payment of fine ₹10,000/- shall be Simple Imprisonment for fifteen days in all.

8. The appeal stands disposed of in the above terms. 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

MARCH 09, 2015 / tr