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

DECIDED ON : 18th MAY, 2015

+ **CRL.A.No.293/2015**

STATE

..... Appellant

Through : Mr.Navin K.Jha, APP.

versus

NASHRULLA @ NAJRULLA @ BABBIA Respondent

Through : Mr.Jivesh Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. State has preferred the instant appeal to challenge the legality and correctness of a judgment of learned Addl. Sessions Judge, Dwarka Courts, New Delhi in Sessions Case No.28/10 arising out of FIR No. 280/09 under Section 376 IPC registered at Police Station Palam Village by which the respondent – Nashrulla @ Najrulla @ Babbia was acquitted of the charge. It is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. Allegations against the respondent were that on 25.08.2009 before 10.45 p.m., the prosecutrix 'X' (assumed name) aged

around 5 / 6 years was sexually assaulted. On that day, at about 10.45 p.m., one Anand Singh passing from Red Light of Sector 2, 6 and 5, Dwarka on motorcycle found 'X' wearing only underwear and carrying a T-shirt in her hands near bushes. She had blood stains on her body parts and was crying. Anand Singh informed the police and FIR No.280/09 came into existence. 'X' was taken for medical examination. Her family members were informed. The assailant could not be identified / arrested.

3. On 10.10.2009, the respondent was arrested in case FIR No.284/09 PS Binda Pur and pursuant to disclosure statement recorded by him, the Investigating Officer arrested him in this case and took him on police remand. He allegedly recovered a black colour shirt worn by him at the time of incident. During investigation, he was identified by 'X' in judicial Test Identification Proceedings. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the respondent. The prosecution examined 21 witnesses to establish his involvement in the crime. In 313 statement, the respondent denied his involvement in the crime and pleaded false implication. The trial resulted in his acquittal as mentioned previously. Being aggrieved and dissatisfied, the State has come in appeal.

4. The incident was not witnessed by anyone as the occurrence had taken place behind bushes. None of the passersby heard 'X's cry to attract his or her attention. The perpetrator of the crime succeeded to flee the spot and was not seen by anyone at the spot and escaping the spot. Most crucial witness in the occurrence was 'X' aged about 5 / 6 years. However, she was unable to give her statement during trial because of her tender age. She could not record her statement under Section 164 Cr.P.C. for that reasons. Though she identified the respondent in TIP Proceedings during investigation but was unable to identify him in her Court statement. The Trial Court has discussed this aspect in detail and was of the opinion that identification during investigation was inconsequential particularly when the accused had alleged that he was shown before her participation in TIP Proceedings. Mere identification in TIP Proceedings is immaterial particularly when substantive evidence regarding his identification has not been spoken to in the Court by any witness. 'X' did not raise an accusing finger against the accused for sexually assaulting her. The prosecution did not collect cogent circumstantial evidence to connect the respondent with crime. The prosecution was unable to find out the assailant for long two months. Respondent's involvement emerged only when allegedly disclosure statement was made by him in case FIR No.284/09. No

evidence was collected to establish the respondent's presence at the spot at the relevant time. It is also not clear as to when and under what circumstances, the respondent had met 'X'. The examination report at FSL of various exhibits did not establish the respondent's involvement with certainty.

5. Since there is no worthwhile, direct, circumstantial or scientific evidence on record, findings of the Trial Court recording acquittal cannot be faulted.

6. The appeal lacks merit and is dismissed. Trial Court record (if any) be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for intimation.

(S.P.GARG)
JUDGE

MAY 18, 2015 / tr