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

**RESERVED ON : OCTOBER 05, 2015
DECIDED ON : OCTOBER 14, 2015**

+ **CRL.A. 1260/2013 & CrI.M.B.3054/2015**

ZUBER Appellant

Through : Ms.Suman Chauhan, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through : Mr.Amit Gupta, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 13.09.2012 of learned Additional Sessions Judge in Sessions Case No.75/2011 emanating from FIR No. 211/2011 registered at Police Station Khajuri Khas by which the appellant-Zuber was held guilty for committing offences under Section 376(2)(f)/363/366/354/506 IPC, he has filed the instant appeal. By an order dated 19.09.2012, the appellant was awarded various prison terms with fine. The substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 11/07/2011, the appellant after kidnapping the prosecutrix 'X' (assumed name), aged around 11 years from the lawful guardianship of her parents, took her at his residence at House No.10/711, A-Block, Shri Ram Colony, Khajuri, Delhi and committed rape upon her. Information about the incident was conveyed to the police and Daily Diary (DD) No. 10A (Ex.PW12/A) came into existence at 9.50 AM at PS Khajuri Khas on 13.07.2011. The investigation was assigned to ASI Tejawati who along with HC Roshni went to the spot. After recording statement of victim's mother (Ex.PW-2/A), the Investigating Officer lodged First Information Report. 'X' was medically examined; she recorded her statement under Section 164 Cr.P.C. The accused was arrested and taken for medical examination. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent for examination to Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed in the Court. The prosecution examined fourteen witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication without examining any witness in defence. The trial

resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. The victim in the instant case is a girl of tender age. She was a student of Vth standard. PW-10 Anand Mittal, School Incharge, Nigam Girls School, Rajeev Nagar-I, Shahdara (North), Delhi, produced and proved the school record where at the time of admission, 'X's date of birth was recorded as 21.05.2000. It was recorded on the basis of an affidavit filed by the victim's mother. The relevant documents proved are Ex.PW-10/A to Ex.PW-10/D. These have been issued by a Government official in the discharge of his official duties and there are no reasons to disbelieve the same. Entries in the school register and admission forms regarding date of birth constitute good proof of age. 'X' got admission in the aforesaid school in Ist standard on 22.08.2008. 'X's parents never anticipated such an unfortunate incident to happen in future to manipulate her date of birth in 2008. The appellant did not claim if the prosecutrix was more than 16 years of age and it was a case of sex with consent. 'X' in her

deposition claimed that she was aged around 11 years on the day of incident.

4. The incident whereby 'X' was sexually assaulted is not under challenge. Appellant's only plea is that he was not the author of the crime and it was the handy work of someone else. In this regard, material testimony is that of the prosecutrix 'X' (PW-1). In her 164 Cr.P.C. statement (Ex.PW1/A), recorded on 14.07.2011, 'X' named the appellant to be the perpetrator of the crime. She gave detailed account as to how and under what circumstances she was ravished by the appellant. She elaborated that when she was coming back from her school on 11.07.2011, the accused took her inside his house and served her bread, chorma and sweets. Thereafter, he committed rape upon her. She was threatened not to disclose the incident. When her mother inquired from her about blood stains on her wearing clothes, she narrated her ordeal to her. Before recording 164 Cr.P.C. statement, the learned Presiding Officer had put various questions to the child witness to ascertain if she was making her statement voluntarily without any fear or pressure. In her Court statement as PW-1, the learned Presiding Officer before recording her statement conducted a preliminary inquiry

and satisfied himself that the witness was competent to make statement. In her Court deposition, she identified the appellant, who lived in her neighbourhood and to whom she used to call 'Abba', to be the individual who had ravished her in his room after taking her there. She gave vivid description as to how and under what circumstances she was defiled. The accused even gave ₹20/- to her for not disclosing the incident to any one. She further deposed that due to fear, she did not disclose the incident. On the next morning when her mother was getting her ready for school, she saw blood on her salwar and on inquiry she divulged the entire incident to her. In the cross-examination, she reiterated that the accused had committed 'wrong act' with her. She denied that she was taken by one 'Churanwala' from the gate of her school on the date of incident. She denied that her mother had tutored her to make the statement. She further denied that there was any quarrel between her father and the accused.

5. On scanning the testimony of the prosecutrix as a whole it reveals that despite lengthy examination, no material discrepancy could be extracted to suspect her version. No ulterior motive was assigned to the child witness to implicate the appellant with whom there was no

history of hostility prior to the incident. 'X' used to call the appellant aged around 65 years 'Abba'. She had no valid reasons to make a false statement to implicate him for the serious offence of rape to have reflection on her own chastity. PW-2 (Samsheeda) has corroborated 'X's version in its entirety. In her complaint (Ex.PW-2/A) lodged without inordinate delay, she had given detailed account of the incident and had named the appellant to be the author of the crime. While appearing as PW-2, she proved the version given to the police without any variation. In the cross-examination, she disclosed that her daughter had low Intelligence Quotient (I.Q). She informed that the victim who was semi-mentally retarded used to remain alone in the house in her absence. The accused used to live alone in a rented accommodation nearby. She denied that there was a quarrel between her and the accused before the incident. She further denied that the victim had sustained injuries on her private parts while playing with children in the gali. She was emphatic to say that no one would like to implicate falsely any person using her daughter. PW-3 (Naimuddin) has supplemented the version narrated by her mother and sister.

6. The defence put by the appellant is devoid of merits and deserves outright rejection. He has taken different contradictory pleas at different stages of the trial. Nothing has come on record to show if any serious quarrel had taken place between the appellant and 'X's family members any time. No complaint for the said quarrel was ever lodged with the police. The appellant did not examine any witness from the locality to corroborate his version on this aspect. Moreover, for a petty quarrel (if any), 'X's parents are not imagined to falsely implicate the accused to spoil the reputation of their unmarried daughter of tiny age. In the absence of prior animosity or enmity, the parents of a minor daughter can't think to level such serious allegations. 'X's mother was not aware of the incident and became suspicious only when she noticed blood on 'X's clothes. 'X's testimony is found reliable and trustworthy. Conviction can be recorded on the sole testimony of the prosecutrix if her evidence inspires confidence and there is absence of circumstances which militate her veracity.

7. PW-13(Dr. Geetika Trivedi) proved 'X's MLC (Ex.PW-13/A). On local examination on 13.07.2011, victim's hymen was found

ruptured. There was mild bleeding. Apparently, there is no conflict between the ocular and medical evidence.

8. Settled law is that the testimony of a child witness cannot be rejected out-rightly. The evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and a child witness is an easy prey to tutoring. The Court has to assess as to whether the statement of the victim before the court is voluntarily expression of the victim and that she was not under the influence of others. As observed above, there is no indication if the prosecutrix was tutored; her statement is consistent throughout. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him.

9. The impugned judgment based upon fair appraisal of evidence requires no intervention. Considering the gravity of the offence whereby a child, aged around 11 years was ravished by the appellant aged about 65 years, he deserves no leniency. 'X' was like his daughter and she had reposed trust in him. The appellant who lived in the neighbourhood not only betrayed the trust of 'X's parents but also defiled her at her tender age. Rape on a tender aged girl is bound to

create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely. Sentence order deserves no modification.

10. The appeal lacks merits and is dismissed. All pending application(s) stand disposed of.

11. Trial Court record be sent back forthwith with the copy of the order. Intimation be also sent to Superintendant Jail.

(S.P.GARG)
JUDGE

October 14, 2015/sa