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

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Date of Decision : May 24, 2016

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CRL.A. 71/2014

RAJESH SHAH

..... Appellant

Represented by: Mr.Azhar Qayam, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. On February 03, 2013 Rahul Jain PW-1, who was accompanied by his friend Jai Yadav PW-2 brought the appellant and an infant girl to PS Inder Puri at 11:40 P.M. and disclosed to the Duty Officer that the appellant was committing an indecent act with the infant girl, taking cover behind cars parked in Block F, Inder Puri. The Duty Officer recorded said fact in DD No.32/A, Ex.PW-5/A. Investigation was entrusted to W/SI Meena Yadav PW-10. The parents of the infant girl were called and she was sent to RML hospital for examination where Dr.Shweta Mendiratta PW-4 examined her and recorded MLC Ex.PW-4/A to the effect that the child was normal and there were no injuries. The appellant was also taken to RML hospital where Dr.Sayyed Wasim Hassan recorded MLC Ex.PW-6/A opining that the appellant was potent. The MLC has been proved by Ms.Laxmi PW-6, the

Record Clerk from the hospital because Dr.Sayyed had left the hospital.

2. FIR No.19/13 PS Inder Puri for offence punishable Under Section 376/511 IPC and Section 9/10 of POSCO Act was registered on the statement Ex.PW-1/A recorded by the Investigating Officer and made by Rahul Jain. In his statement he disclosed that as per his daily routine he had parked his car No.DL 2AD 2932 in the night near the boundary wall of F Block, Inder Puri and was waiting for his friend Jai Yadav PW-2, when he heard some noise of a baby emanating from amongst the cars that were parked and as he approached the site he saw a man aged about 30 years sitting between the cars with his back on the wall and pant and underwear lowered till his knees. On his left lap was a girl about three years old without clothes, who was crying for her mother and the man told her to wait for five minutes. Realizing that the man was going to sexually abuse the child he immediately rescued the child and caught the man who told his name as Rajesh Shah whom he had brought to the Police Station.

3. In his testimony in Court Rahul Jain has deposed in sync with his statement Ex.PW-1/A. His friend Jai Dev Yadav PW-2 who did not see the incident corroborated him by deposing that when he met Rahul Jain he saw him holding a girl child who was frightened and Rajesh Shah nearby.

4. I have perused the testimony of both witnesses and find that they had withstood the test of cross-examination.

5. Questioned as to how come Rahul Jain managed to catch hold of the appellant and at the same time hold the young victim in his arms, he told that there was hardly any occasion to hold the accused because he was so heavily drunk that the question of his running away did not arise. Corroboration to said fact is to be found in appellants MLC Ex.PW-6/A

which records against the column : SMELL OF BREATH – Alcohol ++.

6. Rita PW-3, the mother of the infant girl has disclosed a very startling fact. The appellant being the younger brother of her husband and he took the infant girl from her house in the presence of her mother on the pretext that he would be buying her a biscuit.

7. Examined under Section 313 Cr.PC the appellant did not deny he being caught by Rahul Jain but said that he had been falsely implicated inasmuch as Rahul Jain had asked him to clean his car and he had refused to do so. A plea which is fantastical. I find that no such suggestion has been given to Rahul Jain when he appeared as PW-1.

8. There being no rape committed the appellant has rightly been convicted under Section 9 of POSCO and sentence of 5 years RI with fine in sum of ₹5,000/- has rightly been inflicted.

9. The appeal is accordingly dismissed.

10. Copy of this decision be sent to the Superintendent, Tihar Jail for updation of Jail record and thereafter to be supplied to the appellant who is in custody.

(PRADEEP NANDRAJOG)
JUDGE

MAY 24, 2016
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