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

+ **CRL.REV.P. 357/2013**

STATE

..... Petitioner

Through: Mr. Kewal Singh Ahuja, APP for the
State with ASI Prem Chand, PS Ali
Pur.

versus

ROHIT & ORS.

..... Respondents

Through: Mr. Bharat Dubey, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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26.07.2016

Crl. M.A. No. 9708/2013 (delay)

For the reasons stated in the application the delay of 50 days in filing the petition is condoned.

Application is disposed of.

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1. Aggrieved by the order dated 29th September, 2012 whereby the respondent Nos. 3 and 4 in the present petition, that is, Amar @ Nittu and Deepak @ Sunny were discharged, the State prefers the present petition.
2. The learned Trial Court noted the distinction in the two statements of the prosecutrix in para-6 and came to the conclusion that name of Amar @ Nittu had not been mentioned in the statement under Section 161 Cr.P.C. and even assuming both of the names were mentioned no role had been

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attributed to the two of them. They were merely sitting in the Alto Car which was taken to Village Palla. The relevant portion of the impugned order is as under:

“6. In order to appreciate the argument of counsel of these accused, it is necessary to go through both the statements of the prosecutrix. After going through these statements, following differences appear between them:

<i>Sl. No.</i>	<i>U/s 161 Cr.PC</i>	<i>U/s 164 Cr.PC</i>
<i>1.</i>	<i>Accused Shalu asked her to accompany her to school and so, she sat in Alto car.</i>	<i>Shalu pulled her into Alto car by catching her hand</i>
<i>2.</i>	<i>At that time, Shalu’s friend Sunny @ Deepak was also in the Alto car. There is no mention of Amar @ Nitu.</i>	<i>Accused Amar @ Nitu was also in the Alto car.</i>
<i>3.</i>	<i>Then, they went to village Palla to bring her friend Akanksha and she came to them.</i>	<i>They forcibly took her to village Palla. She is silent about her friend Akanksha.</i>
<i>4.</i>	<i>In village Palla, accused Rohit allured her and made her to sit in the Accent car.</i>	<i>She was made to sit forcibly in Accent car on the threat that her family members would be got killed in default.</i>

7. Above differences show that name of accused Amar @ Nitu is missing in her statement u/s 161 Cr.PC and no role has been attributed to accused Sunny @ Deepak. Even if the contents of statement u/s 164 Cr.PC are taken true, it was Shalu who pulled prosecutrix into the Alto car by catching her hand. No role has been attributed to accused Sunny @ Deepak and Amar @ Nitu even u/s 164 Cr.PC.

They were merely sitting in the Alto car which reached village Palla. After reaching Palla, accused Rohit and Pankaj Tyagi came into picture with Accent car. That Accent car is driven by accused Pankaj Tyagi and prosecutrix is made to sit on the back seat by accused Rohit. Rohit also sits in the back seat and tries to outrage her modesty. She is taken to a room in village Tajpur. Accused Pankaj Tyagi drops them there and returns and thereafter, rape is committed.

8. So, there is no material against Sunny @ Deepak and Amar @ Nitu to proceed further. They are discharged.”

3. Heard learned counsel for the parties. FIR No.409/2011 was registered on the complaint of the prosecutrix under Sections 109/363/366A/376/506 IPC wherein she stated that she was a student of 10th standard. On 19th November, 2011 one ‘S’ a minor came with her friend Sunny @ Deepak in an Alto Car at around 7.00 AM, the time to go to school ‘S’ told the prosecutrix that she would take her to the school. Thus the two friends sat and went to village Palla to take their third friend. The third friend also accompanied him. Thereafter, Rohit who lives in the neighbourhood came there and started alluring the prosecutrix. He allured her to sit in the Accent Car on the back seat which was being driven by a person whose name she did not know. Thereafter Rohit started touching her private parts and Rohit took off his clothes and despite her protest committed rape on her. In the statement under Section 164 Cr.P.C the prosecutrix named both Sunny and Nittu along with ‘S’ who were sitting in the Alto car when ‘S’ pulled her hand and dragged her inside the car. She stated that she was forcibly taken to Palla village from where she was made

to sit in a white Accent car. She further alleged that she was threatened that if she did not sit in the white car her family members would be killed.

4. A perusal of the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. itself would show that that Sunny @ Deepak was driving the car wherein Shalu pulled her into as per statement under Section 164 Cr.P.C. In statement under Section 164 Cr.P.C. the name of Amar @ Nittu has also been mentioned. Though no role could have been attributed for the offence of rape which happened after the prosecutrix was forced to sit in Accent Car, however, Sunny @ Deepak and Amar @ Nittu cannot be discharged on the ground that they were merely sitting in the Alto car. In offences of kidnapping or confinement, the driver of the vehicle and the person accompanying him, if the victim is taken into car forcibly, is equally responsible and cannot be discharged on the ground that no role has been attributed.

5. Without commenting any further as to whether offences of kidnapping or confinement etc. are made out against Sunny @ Deepak and Amar @ Nittu, the impugned order to the extent it discharges Sunny and Amar is set aside. The matter is remanded back to the learned Trial Court who on the basis of the two statements would see whether Sunny and Amar are liable to be charged for offences punishable under the Indian Penal Code.

6. Petition is disposed of.

MUKTA GUPTA, J.

JULY 26, 2016/‘vn’

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