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

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Date of Decision: May 19, 2016

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CRL.A. 175/2014

WAHIDUR REHMAN

..... Appellant

Represented by: Mr.Azhar Qayum Butt

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. As deposed to at the trial by HC Krishan Kumar PW-15, at around 12.30 mid night of October 3rd and 4th, 2010 one Ramesh Kumar and one Usha Rai brought a minor girl aged about 10 years to the police station who disclosed her name as 'Star' (pseudo name), who informed that a man had sexually assaulted her near Nizamuddin Dargah, New Delhi. In the presence of Ramesh Kumar and Usha Rai (social workers) he deputed Ct.Vinod Kumar to take the child to AIIMS for medical examination. As deposed to at the trial, Dr.Prajnanika Gurung PW-7, Senior Resident, Gynaecology at AIIMS, he examined 'Star' and recorded the MLC Ex.PW-7/A in which it is written that the hymen of 'Star' was torn and a tear was noted posteriorly. Further examination could not be conducted because the child was un-cooperated. He took a vaginal swab and the clothes of 'Star'

which he handed over to Ct.Vinod Kumar.

2. Over the telephone information aforesaid was conveyed to P.S.Hazrat Nizamuddin, where w/SI Kamini Gupta PW-16 was present and hence she was deputed to take custody of '*Star*' and conduct further investigation. She proceeded to AIIMS where HC Krishan Kumar handed over to her two sealed pullandas with seal of the hospital, one pullanda containing the vaginal swab of '*Star*' and the other her clothes, which she seized vide seizure memo Ex.PW-15/B.

3. Accompanied by HC Krishan Kumar she took '*Star*' to Prayas and produced her before the Child Welfare Committee. Before the Members of the Child Welfare Committee she recorded statement Ex.PW-2/A of '*Star*'. Ruchi PW-3 and Mohd.Usman Ali PW-2 working with a Child Welfare NGO named : Butterfly Child Helpline, were also present and have deposed to the fact that '*Star*'s' statement Ex.PW-2/A was recorded by SI Kamini Gupta in their presence.

4. FIR Ex.PW-9/A for an offence punishable under Section 376 IPC was recorded at P.S.Hazrat Nizamuddin by HC Dhiraj Kumar PW-9.

5. '*Star*' was lodged at Prayas.

6. '*Star*' was produced before Vikrant Vaid, PW-6, Metropolitan Magistrate, New Delhi on October 11, 2010. The child was traumatized and could not speak. A child councillor Ms.Megha Bhatnagar PW-4, working with Prayas was contacted. She reached the Court of the learned Metropolitan Magistrate. On October 11, 2010, '*Star*'s' statement Ex.PW-6/C was recorded by Sh.Vikrant Vaid who, at the trial proved the said statement and the proceedings conducted by him as Ex.PW-6/B.

7. Since a person around Nizamuddin Dargah had molested the young innocent girl, the investigating officer kept an eye on the males in the area, and as was to be expected, the word spread.

8. As deposed to by SI Kamini Gupta, on October 15, 2010 in the company of Ct.Padam PW-13 and Ct.Virender, she was searching for the accused when a person named Asif informed them that the accused they were looking for was sitting near a grill on the wall of the Dargah and as the three proceeded towards the place at a crossing near Ghalib Academy, Asif pointed out towards the appellant; who was arrested and arrest memo Ex.PW-13/B was prepared. He got recovered the clothes which he was wearing on the day of the incident which were seized vide memo Ex.PW-13/E.

9. The appellant was got medically examined at AIIMS. Dr.Hari Prasad PW-8, Senior Resident, Department of Forensic, opined on the MLC Ex.PW-8/A that there was nothing to suggest that the appellant was incapable to perform sexual intercourse. He collected the blood sample of the appellant on a gauze and handed it over to the investigating officer

10. The appellant was produced before Sh.Sanjeev Kumar, PW-5, the Metropolitan Magistrate for TIP proceedings and as recorded in the TIP proceedings Ex.PW-5/B (collectively) '*Star*' identified the appellant as the one who had sexually molested her.

11. The vaginal swab of '*Star*', her clothes, the clothes which appellant had got recovered and his blood sample were sent for forensic examination, but regrettably the report obtained has neither being formally tendered nor proved at the trial, and thus, as has been done by the learned Trial Judge, I

also eschew any reference to the same.

12. It is in the aforesaid backdrop of the investigation conducted, which I have interlaced with the evidence recorded at the trial, that fate of the appellant needs to be decided with reference to '*Star*'s' testimony in Court, who appeared as PW-1.

13. Highlighting that '*Star*' identified the appellant as her tormentor when TIP proceedings were conducted on October 23, 2010, I note that '*Star*' has deposed in Court that she had three siblings, a brother and two sisters and came by train to the Dargah at Nizamuddin. She was alone. She had no place to stay – obviously she had none. She deposed that she did not know the name of the appellant who had sexually molested her after removing her clothes and his pajama. He inserted his penis in her vagina. The words used by her are : *Usne Apne Peshab Wala Mere Peshab Wali Jagah Mai Dali*'.

14. The young girl, three years away from her teens, had successfully withstood the test of cross-examination, and keeping in view that at the TIP proceedings she identified the appellant as the person who committed rape upon her I have no reason to disbelieve '*Star*' when she identified the appellant in Court as the one who sexually molested her. That '*Star*' was sexually molested is apparent from what has been recorded in her MLC by Dr.Prajanika Gurung : hymen was torn and a tear was noted posteriorly.

15. Useless for me to note the testimony of the police officers who had, upon pointing out by the appellant, pursuant to his disclosure statement, got recovered the clothes which he was wearing and which were exhibited in the Court during trial.

16. Concurring with the view taken as per the impugned judgment dated December 20, 2012, convicting appellant for the offence punishable under Section 376(1) IPC, I note that notwithstanding a minimum sentence of 10 years being prescribed by the statute, with power vested in the Court to after, recording special reasons imposed a lesser sentence, the learned Trial Judge has imposed a sentence of seven years rigorous imprisonment keeping in view the poor financial status of the appellant who migrated to Delhi from the State of Assam for livelihood. Fine in sum of ₹5000/- and in default to undergo SI for one month is also maintained.

17. But that would not be the end of the matter.

18. '*Star*' needs to be compensated as per requirement of Section 357 Cr.P.C., and I note that in Delhi, Section 357A has been inserted in the statute book and the Government of NCT of Delhi has notified a Victim Compensation Scheme on February 02, 2012 as per which, for offences of rape a victim needs to be compensated minimum ₹2 lacs and maximum of ₹3 lacs. The Nodal Agency recommended for disbursement is the Delhi Legal Services Authority, to whom I direct that it be ensured that from out of the Victim Compensation Fund, '*Star*' is compensated ₹3 lacs. The money would be kept in a fixed deposit till '*Star*' attains the age of 21 years. Such interest which accrues thereon may be paid to the NGO where '*Star*' is housed as of today. If, on attaining majority, '*Star*' leaves the NGO, interest accruing be paid to her every month or on quarterly basis depending upon the nature of the fixed deposit, which would be with a nationalized bank. On attaining the age of 21 years, '*Star*' would be handed over the fixed deposit receipt.

19. TCR be returned

20. Since the appellant is in jail copy of this decision be sent to the Superintendent Jail for being handed over to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 19, 2016

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