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

DECIDED ON : 30th MARCH, 2016

+ **CRL.A. 719/2014 & CRL.M.A.No.19051/2015**

KASIM

..... Appellant

Through : Mr.Sumeet Verma, Advocate with
Mr.Amit Kala, Advocate.

versus

THE STATE (NCT of Delhi)

..... Respondent

Through : Mr.Tarang Srivastava, APP.

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

S.P.Garg, J. (Oral)

1. The appellant – Kasim impugns a judgment dated 21.02.2011 of learned Additional Sessions Judge in Sessions Case No.20/2010 arising out of FIR No.85/2010 PS Aman Vihar by which he was held guilty for committing offences punishable under Sections 363/366/376 (2)(f) IPC. By an order dated 26.02.2011, he was awarded various prison terms with fine. The sentences were to run concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 16.03.2010 at around 12.00 (noon), the appellant

kidnapped the prosecutrix 'X' (changed name), aged around 8 years out of the lawful guardianship of her parents while she was playing outside tea stall being run by him. The appellant, thereafter, committed rape upon her inside the shop. The police machinery came into motion on receipt of information about the incident vide Daily Diary (DD) No.13A (Ex.PW-8/A) recorded at 01.08 p.m. at PS Aman Vihar to the effect that a girl aged around 10 years was sexually assaulted. The investigation was assigned to SI Surya Prakash who after recording victim's statement (Ex.PW-3/A), lodged First Information Report. 'X' was medically examined. 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 to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. To prove its case, the prosecution examined 12 witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. During pendency of the appeal, CrI.M.A.No.19051/2015 was filed by the appellant for release as he had already undergone more than

seven years incarceration. Learned counsel for the appellant, on instructions, stated that the appellant has opted not to challenge the findings of the Trial Court on conviction. He prayed to modify the sentence order and to release the appellant for the period already undergone by him in custody which is more than seven years; he is the only earning member in the family and is to take care of his four minor children. Despite grant of suspension of sentence, he could not avail it due to his inability to arrange the required surety.

4. Since the appellant has voluntarily given up challenge to the findings on conviction, the conviction recorded by the Trial Court for various offences is affirmed. Besides this, overwhelming evidence exist on record to establish the appellant's guilt on merits. In the occurrence that took place at around 12.00 p.m., the accused was apprehended at the spot and was thrashed by the crowd gathered there. The incident was conveyed to the police promptly without any delay at around 01.08 p.m. and Daily Diary (DD) No.13A (Ex.PW-8/A) came into existence. In her statement (Ex.PW-3/A), the victim named the appellant to be the perpetrator of the crime and gave graphic detail as to how and in what manner, she was ravished by the appellant in the shop. In her Court statement, she identified the appellant to be the author of the crime and

implicated him for committing rape upon her inside the shop. She deposed that after taking inside the shop, the accused removed her panty and did “Galat Kaam”. Blood started oozing out from her private parts; it caused pain to her. The appellant allured her with ₹10 and asked her not to reveal the act to anyone. On her raising alarm, her mother and other neighbours arrived at the spot; the accused was beaten by them. In the cross-examination, she disclosed that the appellant had tried to forcibly give her ₹10 but she threw it. She denied that no such rape incident had taken place in the shop or that the appellant was falsely implicated for the act done by someone else.

5. On scanning the testimony of the child witness, it reveals that material facts deposed by her have remained unchallenged and uncontroverted. No oblique motive was assigned to the child to level serious allegations of rape. The act of sexual assault as stated is not under challenge. Appellant’s contention that it was the handy work of someone else is devoid of merit as ‘X’, the victim, is not expected to spare the real offender and to implicate an innocent one with whom she had no prior animosity or enmity. The accused was running a tea shop in the vicinity since long. The victim’s father had shifted to the said locality about three months before and there was no history of hostility between the two

during that period prompting them to implicate the appellant in the crime. Parents of a minor daughter cannot think to level such serious allegations to spoil the reputation of their unmarried daughter of tender age. Nothing has emerged on record if the statement was tutored to the victim; her statement is consistent throughout.

6. PW-3 (Sitara), victim's mother, has corroborated her version in entirety without any major deviation. On hearing her daughter's cries, she went to the appellant's shop and found him indulging in sexual act with 'X'. Victim's ocular testimony is in consonance with medical evidence. Soon after physical sexual assault she was medically examined at Sanjay Gandhi Memorial Hospital, Mangolpuri at about 02.00 p.m. by PW-6 (Dr.Brijesh Singh) who noticed swelling over her forehead. PW-9 (Dr.Shalini) deposed that her ('X') medical examination was done under anaesthesia, tear was present in the vagina; posterior vaginal wall was found torn; fourchette tear with bleeding was present; hymen was found torn. Vaginal stitches were given to the victim. In the cross-examination, she disclosed that hymen torn was fresh. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. Since impugned judgment is based

upon true appreciation of the evidence, it needs no intervention. Appellant's conviction is affirmed.

7. Regarding appellant's contention to take lenient view, it transpires that the minimum sentence of ten years prescribed under Section 376(2)(f) IPC has been rightly awarded by the Trial Court. The victim was an innocent child of tender age of 10 years. The appellant aged around 25 years a married person and father of four children was well aware of the consequences of his nefarious act. Victim was like his daughter. The appellant ravished her and attempted to suppress it by offering ₹10 to her. The victim was an immature child and did not comprehend as to what had happened with her. The appellant who lived in the neighbourhood not only betrayed the trust of X's parents but also defiled a girl of 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. Apparently, there are no adequate and special reasons not to award the minimum sentence mandated under Section 376 (2)(f) IPC.

8. Learned counsel for the appellant relied upon judgment in '*Suresh vs. State of Delhi*' in CrI.A.792/2001 decided on 16.07.2013 whereby the sentence was modified by this Court from 10 years to 8

years. In the said case / appeal, certain documents and other materials were reconstructed as the original Trial Court record was not traceable. The victim in the said case had not suffered any injury on her body including private parts. In the instant case, the child has suffered injuries on her private parts and her medical examination was done under anaesthesia; vaginal stitches had to be given. Moreover, the appellant therein was aged around 20 years.

9. The appeal lacks merits and is dismissed. Pending application also stands disposed of. Trial Court record be sent back forthwith along with the copy of the order. A copy of the order be sent to Superintendent Jail for information.

(S.P.GARG)
JUDGE

MARCH 30, 2016 / tr