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

RESERVED ON : MAY 31, 2016

DECIDED ON : JULY 12, 2016

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CRL.A1338/2014

WAZID ALI ANSARI & ANR. Appellants

Through : Mr.Siddharth Yadav, Advocate.

versus

STATE

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellants Wazid Ali Ansari (A-1) and Mumtaz Ali Ansari (A-2) impugn a judgment dated 27.06.2014 of learned Additional Sessions Judge in Sessions Case no.138/11 arising out of FIR No.245/11 registered at Police Station Govindpuri by which they were held guilty for committing offences under Sections 376 (2)(f) and 506 IPC. By an order dated 22.07.2014, they were sentenced to undergo RI for ten years with fine ₹60,000/- each under Section 376 (2) (f) IPC and Rigorous Imprisonment for one year with fine ₹5,000/- each under Section 506 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that in the month of May/June 2011 at House No.C-116, Bhumiheen Camp, Govind Puri, New Delhi, the appellants committed rape upon the

prosecutrix 'X' (assumed name) aged around 11 years and criminally intimidated her. Police machinery was set into motion when information about the incident was reported on 24.07.2011 at around 12.35 noon vide DD No.12A (Ex.PW-9/A). The investigation was assigned to SI Sahiram who with Ct.Deep Chand went to the spot. After recording victim's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused persons were arrested and medically examined. Statements of witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to FSL for examination. Upon completion of investigation, a charge-sheet was filed against the appellants in the court. The prosecution examined twelve witnesses to establish its case. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their 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. At the outset, it may be mentioned that A-2's counsel on instructions did not opt to challenge the findings on conviction. He, however, prayed to modify the sentence order considering the mitigating circumstances. For A-1, learned counsel urged that delay in lodging the FIR has not been explained. Both the appellants are brothers. A-1's MLC reveals that he was not physically capable to perform physical relation. Material contradictions have been emerged in the statements of prosecution witnesses. A-1 was falsely implicated due to a dispute over a piece of land

in the village in U.P. Learned Additional Public Prosecutor urged that no sound reasons exist to disbelieve the prosecutrix aged around 11 years.

4. Admitted fact is that both the appellants are brothers. They were acquainted with the victim's parents before the occurrence.

5. In her complaint 'X' gave graphic account as to how and in what manner, the appellants used to sexually abuse her. She informed that she was a student of 7th standard. Her cousin Rajesh lived on the upper floor of the house. The appellants also used to live with him. In May/June, 2011 when she had gone upstairs to pick clothes, A-2 dragged her inside the room and committed rape upon her. She was threatened not to disclose the incident to anyone. Thereafter, A-2 established physical relations with her against her wishes 3 or 4 times. When A-1 came to know about it, finding her alone, he, in June 2011 also took her inside the room and committed rape upon her. On 12.07.2011, A-1 again took her to his room to have physical relation but on her raising alarm, she was released. On enquiry by her mother, about her sadness, she apprised her about the entire incident.

6. In 164 Cr.P.C.statement (Ex.PW-3/A), she implicated both the accused persons for committing rape upon her. She disclosed that during summer vacation in June, the appellants had arrived from their village. They used to visit their house to watch T.V. Her mother had informed that they were her 'uncles'. After coming from their village, they started living upstairs. She further deposed that one day A-2 called her in the room. When she went there, she found him alone. He committed rape upon her; she started bleeding. When she raised alarm, her mouth was gagged. When she narrated the occurrence to A-2's brother, he sent him somewhere else. After 5 or six days, A-1 called her inside the room and committed rape upon her.

She was criminally intimidated by him. A-1 established physical relations four times with her. Finally fed up with all that, she informed her brother who in turn narrated the incident to her parents.

7. In her Court statement as PW-3, she proved the version given to the police and before the magistrate without any variation. She implicated both the accused persons for committing rape upon her in May/June 2011 during summer vacation when she used to go upstairs to pick clothes lying on the terrace. She further disclosed that on 12.07.2011, A-1 had caught hold of her and took her to his room. He started compelling her for sexual intercourse. When she raised alarm, he let her go. In the evening when her mother enquired as to why she was depressed, she told the incident to her. In the cross-examination, she denied that the accused persons did not stay in the room upstairs of their house and they were falsely implicated over a dispute regarding a piece of land in the village.

8. On scrutinizing the testimony of the child witness, it reveals that despite indepth cross-examination, no infirmity could be elicited to suspect her version. This child witness had no extraneous consideration to make a false statement against the appellants who were from their village and were distantly related to them. She is consistent throughout. Specific and definite role has been assigned to each of the appellants in committing rape upon her on various different dates. Taking advantage of the immaturity and innocence of the child, aged around 11 years, the appellants turn by turn on several occasions sexually abused her. Firstly, A-2 committed rape upon her. When A-1 got inkling about it, he took advantage of the situation and established physical relations with her. Her consent to have physical relations with the appellant was of no consequence, she being

below 16 years of age. She was not aware as to what were the consequences of the act of having physical relations with the appellants. No adverse inference can be drawn against the child witness for not raising alarm as she, aged about 11 years, was under the influence and pressure of the appellants who were distantly related to them.

9. PW-5 (Sunita) and PW-7 (Surender Nath Sharma), the victim's parents, have corroborated her version in entirety. They denied to have any dispute over a piece of land with the appellants or with their relatives in the village.

10. In 313 statement, the appellants did not furnish any plausible explanation to the incriminating circumstances proved against them. No evidence has surfaced to show if there is any dispute over any plot of land in the village and it was the reason to falsely implicate the accused persons. In defence, attempt was made to show that the said dispute existed about 15 years before the occurrence. It is unbelievable that after 15 years, the victim's parents would implicate the appellants in a false rape case. They did not anticipate that both the appellants would come to stay in their house. It has come on record that they had permitted both of them to stay in the upper room of the premises and the accused persons used to visit their house to watch T.V. No history of previous hostile relations has emerged. Moreover, the child aged around 11 years was not expected to make serious allegations of rape to falsely implicate the appellants over a trivial dispute for a piece of land that occurred before her birth. Victim's parents were not expected to use their tiny child to settle the score. Appellants had sexually abused the child on many occasions. Finally the child fed up with these activities spilled the beans and informed her parents.

11. The accused persons have not denied the age of the prosecutrix to be below 16 years. The prosecution has examined PW-2 (R.S.Rana), Sub-Registrar, Birth and Death, Central Zone, MCD, New Delhi, who has proved the birth certificate (Ex.PW-2/A). Date of birth of the victim recorded therein is 15.08.2000. This witness was not cross-examined. The genuineness and correctness of the birth certificate has not been suspected.

12. Submission that A-1 was not capable to perform physical relations is devoid of merit. PW-4 Dr.Shashank Pooniya had medically examined A-1 vide MLC (Ex.PW-4/A). He categorically stated that after examination, he was of the opinion that there was nothing to suggest that A-1 was not capable of performing sexual intercourse under normal circumstances. There are no good reasons to disbelieve the prosecutrix. Her sole testimony is sufficient to base conviction.

13. Complainant's ocular testimony is in consonance with the medical evidence. PW-10 (Dr.Sumita Agarwal) has proved the MLC (Ex.PW-10/A) whereby Dr.Meenakshi Maurya examined the prosecutrix on 24.07.2011 at around 7 P.M. Hymen of the prosecutrix was found torn; vagina admitted one finger with ease.

14. The Trial Court has discussed all the relevant facts. The impugned judgment based upon fair appreciation of evidence needs no intervention. Considering the gravity of the offence whereby a child aged around 11 years was sexually assaulted and abused for number of times by the appellants who were quite grown up and were well aware of the consequences of their acts, sentence order based upon fair reasoning deserves no modification or alteration. The appeal lacks merits and is dismissed.

15. Trial Court record along with the copy of the order be sent back forthwith. Information be also sent to Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 12, 2016/sa

