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

+ CRL.A. 662/2015

NAVEEN @ GUDDU

..... Appellant

Through: Mr.Kamal Sharma, Advocate.

versus

STATE

..... Respondent

Through: Mr.Sudershan Joon, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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30.05.2016

1. The present appeal has been preferred by the appellant impugning the judgment dated 21.01.2015 and order on sentence dated 01.05.2015 whereby he has been convicted for committing the offence punishable under Sections 363/367/506 Part-II as well as Section 377 IPC and sentenced as under :

- (i) U/s 363 IPC - to undergo RI for 3 years with fine of ₹ 5000/- and in default of payment of fine to undergo SI for three months.
- (ii) U/s 367 IPC - to undergo RI for 7 years with fine of ₹ 7000/- and in default of payment of fine to undergo SI for four months.
- (iii) U/s 377 IPC - to undergo RI for 7 years with fine of ₹10,000/- and in default of payment of fine to undergo SI for five months.
- (iv) U/s 506 IPC - to undergo RI for 1 year

All the sentences were ordered to be run concurrently.

2. Learned counsel for the appellant has filed an application today in the Court to the effect that appellant is not challenging his conviction, however a lenient view may be taken on the point of sentence.

3. Learned counsel for the appellant has submitted that the appellant was 18 years and 3 months at the time of occurrence. He was a student of undergraduate course B.Sc. (General) 1st year. He is not having any criminal antecedents. Learned counsel for the appellant has also submitted that it is a rare case where not even a single mark of injury or scar was found during medical examination of the child victim, who was aged about nine years. The FIR in this case has been registered after inordinate delay. He has further submitted that the appellant is not challenging his conviction but a lenient view may be taken on the quantum of sentence to give him a chance to reform and complete his education.

4. In the case **Abdul Salam vs. State** 2005(2) C.C. Cases (HC) 224, the it was held as under:-

'4. It is important to see that in this case there is no evidence except that of Mohd. Wasil, the victim. It cannot be denied that conviction can be based on the sole testimony of one witness provided however the testimony of this witness inspires sufficient confidence in the mind of the Judge. In the present case an inconsistency between the statement of the witness and the medical witness is very clear. PW-4 has stated that in view of the tender age of the victim it was very likely that there would be some injury in the anus of the boy and that even if he had examined the child five days after the incident some mark of injury would have been found by him. The Metropolitan Magistrate also holds that actually no anal intercourse had taken place. He proceeds to convict the petitioner for the offence of an attempt to commit unnatural act. For this, however, there is no evidence on the record. The Magistrate has disbelieved Mohd. Wasil on his statement that an anal

intercourse had taken place. Mohd. Wasil does not say that the petitioner merely made an attempt but did not succeed. Mohd. Wasil in fact says that he suffered pain but was prevented from shouting. There was nothing on the record on the basis of which such a finding could be registered by the learned trial court.

5. It is further to be seen that the prosecution case was severely damaged by PW-1 & PW-2 who were named in the FIR itself as eye witnesses to the incident. Both the witnesses said that they had not seen anything at all. The medical evidence is also against the prosecution case. In this situation it is very unsafe to record a finding of guilt against the petitioner.'

5. Taking into consideration the MLC of the child victim, wherein no mark or fresh injury was noticed at the time of her medical examination and that the appellant was student of B.Sc.(General) 1st year and aged about 18 years and 3 months at time of his arrest in this case, he has inclination to reform himself and become a good citizen, I am inclined to take a lenient view on the quantum of sentence.

6. As per the nominal roll of the appellant available on record, as on 21.08.2015, the appellant has undergone two years, eleven months and one day, meaning thereby that as on date, he has undergone more than three years and eight months out of the total sentence of seven years awarded to him in this case.

7. In the facts and circumstances of the case, I am inclined to reduce the sentence awarded to the appellant by learned ASJ from seven years to four years with benefit under Section 428 CrPC.

8. So far as sentence to be undergone in default of payment of fine is concerned, learned counsel for the appellant has specifically mentioned that

the appellant belongs to a poor family and his father is not in a position to deposit a fine of Rs.22,000/-. In the given circumstances, the sentence to be undergone by him in default of payment of fine is reduced from twelve months to one month.

9. Accordingly, the appeal is partly allowed to the extent that while maintaining conviction of the appellant under Sections 363/367/377/506 IPC, the substantive sentence of the appellant is reduced from seven years to four years. It is made clear that the sentence of fine of Rs.22,000/- is maintained, however, in default of payment of fine, he shall undergo SI for one month.

10. TCR be sent back alongwith copy of this order.

11. Copy of this order be also sent to the concerned Jail Superintendent for information and necessary compliance.

12. As prayed, copy of the order be also given dasti to learned counsel for the appellants.

PRATIBHA RANI, J.

MAY 30, 2016

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