

\$~R-10, 10A & 10B

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

% *Date of Decision: 25th May, 2016*

+ **CRL.A. No.804/2015**

MOHD. NADEEM Appellant

Through: Mr.K.K.Manan, Senior Advocate
with Ms.Anjali Rajput, Mr.Nihit
Dalmia and Mr.Sandeep Rana,
Advocates.

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State with SI Dinesh Kumar, PS
Jamia Nagar.

AND

+ **CRL.A. No.793/2015**

JUHI KHANAM @ FARHANA TALAT Appellant

Through: Mr.K.K.Manan, Senior Advocate
with Ms.Anjali Rajput, Mr.Nihit
Dalmia and Mr.Sandeep Rana,
Advocates.

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State with SI Dinesh Kumar, PS
Jamia Nagar.

AND

+ **CRL.A. No.797/2015**

FARHIN TALAT Appellant

Through: Mr.K.K.Manan, Senior Advocate
with Ms.Anjali Rajput, Mr.Nihit
Dalmia and Mr.Sandeep Rana,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for the
State with SI Dinesh Kumar, PS
Jamia Nagar.

PRATIBHA RANI, J. (Oral)

1. Crl.A. No.804/2015 filed by appellant Mohd. Nadeem has come up for hearing pursuant to the directions issued for expediting hearing in appeals filed by persons in custody (with sentence more than seven years and upto ten years).
2. Since vide impugned judgment dated 06.06.2015, two other accused persons namely Juhi Khanam @ Farhana Talat and Farhin Talat, who are mother and sister of appellant Mohd. Nadeem, have also been convicted, the appeals preferred by them i.e. Crl.A. No.793/2015 and Crl.A. No.797/2015 have also been ordered to be listed for today alongwith Crl.A. No.804/2015.
3. Pursuant to the production warrants issued against the appellant Mohd. Nadeem, he has been produced from J/C.
4. These three appeals have been preferred by the appellants challenging their conviction and sentence in case FIR No.268/2012 under Section 376/377/323/324 IPC, under Section 23/26 of J.J.Act and under Section 3/14 of Child Labour Act.
5. Vide impugned judgment dated 06.06.2015 and order on sentence dated 03.07.2015, the appellants have been convicted and sentenced as under:

Appellant Mohd. Nadeem (in Crl.A. No.804/2015)

U/S 376 IPC

- to undergo RI for ten years
with fine of ₹5000/- and in
default of payment of fine, to

undergo SI for thirty days.

U/S 377 IPC

- to undergo RI for ten years with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

U/S 323 IPC

- to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

U/S 23 of Juvenile Justice Act

- to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for ten days.

Appellant Juhi Khanam @ Farhana Talat (in CrI.A. No.793/2015)

U/S 323 IPC

- to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

U/S 23 of Juvenile Justice Act

- to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for ten days.

Appellant Farhin Talat (in CrI.A. No.797/2015)

U/S 324 IPC

- to undergo RI for one year with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

U/S 23 of Juvenile Justice Act

- to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for ten days.

6. I have heard the appellants as well as their counsel.
7. The appellants submit that they are not challenging their conviction and limiting their prayer only to the extent that lenient view may be taken on quantum of sentence.
8. In view of the submissions made on behalf of the appellants, the conviction of the appellants Mohd. Nadeem, Juhi Khanam @ Farhana Talat and Farhin Talat is maintained.
9. Mr.K.K.Manan, learned Senior Advocate submits that so far as appellant Mohd.Nadeem is concerned, he has been convicted for committing the offence punishable under Sections 376/377/323 IPC and under Section 23 of J.J.Act. The appellant was a student of Engineering when this case was registered against him. He has no criminal antecedents except this case. Learned Senior Advocate submits that the appellant Mohd. Nadeem is not challenging his conviction. He has already undergone more than four years of sentence. The only prayer made by appellant Mohd. Nadeem is that keeping in view his young age and clear antecedents, the substantive sentence awarded to him may be reduced.
10. Mr.K.K.Manan, learned Senior Advocate submits that appellant Juhi Khanam @ Farhana Talat is mother of appellant Mohd.Nadeem. She is aged about 53 years and suffering from various ailments. She has already faced the stigma of society. Learned Senior Advocate submits that she has already spent about one-an-a-half months in judicial custody. Her only prayer is that the substantive sentence may be reduced to the period already undergone by her in this case.
11. In respect of appellant Farhin Talat, who is sister of the appellant Mohd. Nadeem, Mr.K.K.Manan, Advocate submits that she is aged about 26 years and unmarried. She has just completed Bachelor of Physiotherapy and

now planning to pursue Masters Degree. Due to the substantive sentence awarded to her in this case, her career and marriage prospects may be ruined. Mr.K.K.Manan, learned Senior Advocate submits that the appellant Farhin Talat has undergone thirty days in judicial custody and prays that appellant Farhin Talat may be sentenced to fine.

12. I have considered the submissions made on behalf of the appellants. Perusal of the MLC Ex.PW4/B of the Prosecutrix reveals that it was prepared on 11.04.2012 at 2.20 am and the history recorded on the MLC and observation made on local examination are as under:-

'Girl is brought by police. Girl is working as housemaid in Jamia Nagar as above address. Girl is recovered by Child Helpline on a neighbour complaint.

There is history of physical assault and the son of owner named Nadeem has also sexually assault the girl 1 wk. ago. Patient has changed her clothes and bathed.

*There is no h/o intoxication.
LMP – Menarche not yet attained
Pt. Conscious well oriented.*

*P/A soft
L/E – No sign of external injury.
No bruise, no hematoma
No scratch marks
Hymen ruptured.'*

13. She was again medically examined on 14.04.2012 at 1.30 pm when she was accompanied by SI Jitender and Ms.Ravinder Kaur from Butterfly NGO. At that time, she has mentioned about beating being given to her with danda and burnt with Chimta.

14. In view of the observation made by the examining doctor at the time of her examination on 11.04.2012 wherein no injury was noticed, I am

inclined to take lenient view on the quantum of sentence.

15. It is relevant to mention here that as per the order on sentence dated 03.07.2015, the learned Trial Court while awarding substantive sentence of RI for two month to the appellants Mohd. Nadeem and Juhi Khanam @ Farhana Talat for the offence punishable under Section 323 IPC, sentenced them to pay a fine of ₹5000/- each. However, as per Section 323 IPC, the maximum fine of ₹1000/- can be imposed on the accused for the said offence. Further, as per Section 23 of J.J.Act, limit of fine to be imposed on the accused persons is not specified.

16. In the given circumstances, the sentence of the appellants is modified as under :

Appellant Mohd. Nadeem

<u>Under Section</u>	<u>Earlier Sentence</u>	<u>Modified Sentence</u>
U/S 376 IPC	to undergo RI for ten years with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for seven years with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.
U/S 377 IPC	to undergo RI for ten years with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for seven years with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.
U/S 323 IPC	to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for thirty days.

U/S 23 of J.J. Act	to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

Appellant Juhi Khanam @ Farhana Talat

<u>Under Section</u>	<u>Earlier Sentence</u>	<u>Modified Sentence</u>
U/S 323 IPC	to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for thirty days.
U/S 23 of J.J. Act	to undergo RI for two months with fine of ₹1000/- and in default of payment of fine, to undergo SI for thirty days.	to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.

Appellant Farhin Talat

<u>Under Section</u>	<u>Earlier Sentence</u>	<u>Modified Sentence</u>
U/S 324 IPC	to undergo RI for two months with fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.	Sentenced to pay fine of ₹5000/- and in default of payment of fine, to undergo SI for thirty days.
U/S 23 of J.J. Act	to undergo RI for two months with fine of ₹1000/- and in default of	Sentenced to pay fine of ₹ 5000/- and in default of payment of fine, to

	payment of fine, to undergo SI for thirty days.	undergo SI for thirty days.
--	---	--------------------------------

17. Appeals stand disposed of in above terms.
18. TCR be sent back alongwith copy of this order.
19. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

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

PRATIBHA RANI, J.

MAY 25, 2016

‘st’