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

RESERVED ON : NOVEMBER 10,2016
DECIDED ON : **DECEMBER 07, 2016**

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CRL.A. 1265/2015

NANHE KHAN

..... Appellant

Through : Mr.Rama Shankar, Advocate with
Ms.Kamlesh, Advocate.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through : Ms.Meenakshi Dahiya, APP

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

S.P.GARG, J.

1. The appellant-Nanhe Khan impugns a judgment dated 29.09.2015 of learned Additional Sessions Judge in Sessions Case No.46/2012 arising out of FIR No.118/12 registered at Police Station Seelampur by which he was held guilty for committing offence under Section 376(2)(f) read with Section 511 IPC. By an order dated 30.09.2015, he was sentenced to undergo rigorous Imprisonment for seven years with fine Rs. 25000/-; default sentence being simple imprisonment for two months.

2. Briefly stated the prosecution case, as reflected in the charge-sheet, was that on 29.03.2012 at about 03:00 P.M at A-157, Buland Masjid,

Shastri Park, New Seelampur, the appellant attempted to commit rape upon the prosecutrix 'X' (assumed name), aged around 11 years. The information of the incident was conveyed and Daily Diary (DD) No. 36B (Ex.PW-13/A) came to be recorded at Police Station Seelampur at 03.12 p.m. The investigation was assigned to W/SI Sarita who with Constables Geeta Bansal and Shyam Prasad went to the spot. After recording victim's statement (Ex. PW-3/A) the Investigating Officer lodged First Information Report. The prosecutrix was taken for medical examination; she recorded her statement under Section 164 Cr.P.C. Statements of the witnesses conversant with the facts were recorded. The accused was arrested; exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of the aforesaid offence. The prosecution in all examined fifteen witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. DW-1 (Smt. Sabra) appeared in defence. On appreciation of the evidence and after considering the rival contentions of the parties, the Trial Court held the appellant guilty for the offence mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the victim, her mother, brother and two sisters used to live on the first floor of the premises in question. The appellant lived on the ground floor on rent. 'X' was minor on the date of occurrence.

4. The incident took place at around 03.00 P.M. Police machinery was set in motion at around 3.12 P.M. vide DD No. 36B (Ex.PW-13/A).

thereafter, the victim's statement (Ex. PW-3/A) was recorded and rukka (Ex. PW-13/B) was sent to lodge FIR at 7:15 P.M. Apparently, there was no delay in lodging the FIR. The appellant was named in the FIR to be the perpetrator the crime and specific role was assigned to him. Soon thereafter, the victim was taken for medical examination to Guru Teg Bahadur Hospital, Shahdara. Arrival time recorded therein is 6.40 p.m. The alleged history recorded in MLC (Ex. PW-5/A) reveals that the appellant was named to have attempted to commit rape upon the victim.

5. In her complaint (Ex.PW-3/A), 'X' gave detailed account as to how and under what circumstances, the appellant had attempted to commit rape upon her when she was sleeping. In her 164 Cr.P.C.statement (Ex.PW-3/B), the victim reiterated her version and implicated the appellant to have attempted to commit rape upon her. In her Court statement, she proved the version given to the police and before the learned Magistrate without any major variations. She appeared as PW-3 and deposed that on 29.03.2012, she had gone to her maternal grandmother's house situated near her house. From there, she returned to her house to fetch clothes. At that time, her elder sister Farheen present at home was watching TV. She fell asleep in her house. She felt some weight upon her and saw that the accused was lying over her. Somehow, she removed him from her body and tried to raise alarm but the accused closed her mouth and attempted to do 'wrong' act. The accused removed her pyjama and also his pant and attempted to commit sexual intercourse with her. Somehow, she was able to free herself by raising alarm. The appellant fled the spot after wearing his pant. In response to a court question she responded that the accused had touched her private parts with his finger. In the cross-examination, she disclosed that she was

studying in 6th class. She denied if the appellant had asked her mother to vacate the tenanted premises due to non-payment of rent or that for that reason he was falsely implicated at her behest.

6. On scrutinizing the entire statement of the prosecutrix, it transpires that no material infirmities or irregularities could be extracted in the cross-examination to suspect her version. Material facts stated by her have remained unchallenged and unrebutted. The appellant did not deny his presence at the spot at the relevant time. No ulterior motive was attributed to a child witness to make false allegations against the appellant. Nothing has emerged to show if prior to the occurrence, there was any animosity or ill-will between the parties prompting the prosecutrix to falsely rope in the accused for the heinous offence. The defence deserves outright rejection. For a trivial issue about non-payment of rent (if any), the victim's parents are not expected to make such allegations which have reflection on the chastity of their minor daughter. No compelling reasons exist to disbelieve 'X's testimony and to throw away the prosecution case overboard. Why a child of tender age would come forward in a court just to make a humiliating statement against honour? She would not tarnish or damage her own reputation and image by volunteering to falsely claim that she had been defiled. Nothing has come on record to show as to for what period the rent was due and it remained unpaid. No proceedings, whatsoever, were ever initiated by the appellant for recovery of the alleged unpaid arrears of rent.

7. The victim's statement has been corroborated on material particulars by PW-1 (Shaheen Praveen), her mother, to whom she had narrated the incident soon after the occurrence. There is no inconsistency between medical and ocular evidence.

8. The accused had disrobed the prosecutrix inside her house taking advantage of her innocence and loneliness. The accused had also put off his clothes and had put the male organ over 'X's female organ. Apparently, it was not a case of mere indecent assault. Every endeavour was made by the appellant to accomplish the object to commit rape, however, he could not succeed in his attempt due to raising of alarm by the victim at the proper time. Conduct of the accused was indicative of a determination to gratify his passion. In the cross-examination, PW-3 even disclosed that the accused had touched her private parts with his finger. In 164 Cr.P.C. statement (Ex.PW-3/B), she had revealed that the accused had attempted to unsuccessfully penetrate his male organ in her private parts.

9. PW-7, victim's sister, aged around 15 years, was not mentally sound to corroborate her version though she was present inside the house. In 164 Cr.P.C. statement, the victim also informed that she was hard of hearing. Learned Trial Court attempted to record her statement but could not do as she has a limited understanding and was unable to respond to the questions. Perhaps this was the reason that the accused did not bother her presence inside the house at the time of crime.

10. The impugned judgment based upon fair appreciation of evidence warrants no intervention. The conviction is upheld.

11. Since the appellant, aged around 65 years, had attempted to ravish the girl aged around 11 years akin to his daughter, he deserves no leniency. He betrayed the trust of his neighbour too. No leniency is called for.

12. The appeal lacks merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

DECEMBER 07, 2016/sa

