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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1055/2018**

ARJUN @ SATENDER Appellant
Through: Mr. Aditya Vikram, Advocate.
(DHCLSC)

Versus

STATE Respondent
Through: Mr. G.M. Farooqui, APP for State.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **08.10.2018**

CRL.M.A. 33821/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed-off.

CRL.M.A. 33822/2018 (delay)

At the outset, the learned counsel for the applicant states that a delay of 60 days has been erroneously mentioned in the application instead of 70 days and prays that the same be treated as 70 days. It is so ordered.

For the reasons mentioned in the application, the delay of 70 days in filing the appeal is condoned.

The application is allowed and disposed-off.

CRL.A. 1055/2018

The appellant impugns the judgment dated 16.05.2018 convicting him under section 6 read with section 5(m) and section 18 of POCSO Act, 2012 and section 457 and under section 324 of IPC. It is the appellant's case that he has already undergone imprisonment of four years. Upon an appeal

against the said conviction, a Division Bench of this Court, by order dated 01.10.2018 in CRL. A. 819/2018, has enhanced his conviction to 5 years, subject to the outcome of this appeal. The case against the appellant is that he had assaulted the minor child of the complainant on 11.08.2014. The Trial Court found the charges proven and has accordingly convicted him. The appellant contends that it was indeed he, who was saving the minor from being physically assault by her father, who was inebriated. The incident reportedly happened between 9.00 and 10.00 pm. However, it was the prosecution's case that the father witnessed the appellant rubbing his body on the minor child. The "inebriated" father had an altercation with the appellant; two witnesses from the neighbourhood came and were informed about the incident. The police was called. It took away the appellant. He further contends that there was no medical examination of the minor child, therefore, he could not be convicted.

Accordingly, the Trial Court has reasoned as under:-

"8. Coming to the main incident, there is no delay in lodging the FIR. The incident of sexual assault took place around 9.00 pm-10.00 pm. on 11.08.2014 and the PCR call was made at around 11.46 pm after tracing the victim girl by her parents. There is no delay in lodging the case.

9. Further, the victim in her statement u/s 164 Cr. P.C. as well as the statement given in the court has specifically stated that she alongwith her sister were sleeping when accused came and removed his and her clothes and then lied upon her and was rubbing him against her body and in the meantime, her father came and accused ran away by hitting his father with knife. In the court also she described the incident exactly except of mentioning the fact that her hands and mouths were tied with chunni. This variation is very minor, considering the age of the victim being only 6 years and a time gap of one year between her examination in the

court and the date of incident. This minor variation by no reason can be said to be fatal to the prosecution case. Further, her testimony is supported to some extent by the independent witness PW-7 who stated that when he came out he saw accused and father of the victim were quarrelling and the father of the victim was saying that accused had raped his (sic) daughter. It cannot be imagined that father of the victim with a span of few minutes hatched a conspiracy to falsely implicate the accused by alleging rape of his victim daughter. The reaction of the father of the victim was very natural when he saw accused lying on his daughter without clothes. He tried to save his daughter by catching the accused for which the quarrel took place and his immediate reaction was by telling PW-7 about the act of the accused. It may be that the quarrel between them happened in the presence of the victim but that in itself is not sufficient to believe that it is false case where accused has been falsely implicated. The minor contradictions as to whether the father met the mother on his way to vegetable market or the mother met him when she returned home are not so material to disbelieve the testimony of the victim herself.

It is a well settled law that the conviction on the sole evidence of a child witness is permissible if such witness is found competent to testify and the court, after careful scrutiny of its evidence. In case of *Dattu Ramrao Sakhare Vs. State of Maharashtra* (1997) 5 SC 341, it was held that,

“A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her

demeanor must be like any other competent witness and there is no likelihood of being tutored.”

10. *Further, the arguments of Ld. LAC that MLC does not support the prosecution case is also without any force as the act as described by the victim will not result in any injury. Accused lied on the victim and tried to rub his body on her body and no injury is likely to be suffered in this act so that the refusal for internal medical examination of the victim is of no use to the accused. Further, this fact cannot be ignored that there is presumption in respect of commission of offence once the prosecution proves the guilt. It is for the accused to rebut that presumption which he has failed to do. His argument that he tried to save the victim from her father has not been proved as required under the act by leading cogent evidence which otherwise does not appear to be plausible. Accused was caught red handed on the spot and as such the prosecution has been able to prove that accused tried to sexually assault the victim child by entering her house and also attacked the father of the victim when he tried to caught hold the accused and suffered simple injuries in this process”.*

The Court is not persuaded by the appellant's contentions because the offence stands proven insofar as the victim's testimony is clear that the appellant violated her body. There is no explanation as to why and how was the appellant present in the victim's house at that late hour in the evening. How did he know or witness, as he puts, the father of the victim attempting to violate/rape his own minor daughter. Did she scream? If so, how it that only the appellant heard her scream. What is the appellant's affinity with the victim or her family that he should have access to her home. His defence is ex-facie untenable and remained unestablished. Furthermore, if the father was as inebriated as alleged, by the appellant, he would not have acted in the natural, logical and immediate manner that he did, upon witnessing the appellant's criminal act against his minor daughter. He tried to apprehend

the appellant, an altercation happened; he was injured by the appellant, he called his neighbours, later the police were called, etc.

In view of the above, the Court does not find any merit in the appeal. Accordingly, it is dismissed.

NAJMI WAZIRI, J.

OCTOBER 08, 2018/RW