

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

% *Judgment Reserved on: May 26, 2016*
Judgment Delivered on: May 27, 2016

+ **CRL.A. 832/2015**

LAL KUMAR Appellant

Represented by: Mr.Rajender Chhabra,
Advocate. (DHCLSC)

versus

STATE Respondent

Represented by: Ms.Rajni Gupta, APP with SI
Vikash, PS Naraina.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The instant appeal has been filed by the appellant Lal Kumar challenging the impugned judgment dated 27th June, 2014 whereby the appellant has been convicted for the offence punishable under Section 354B IPC and Section 10 Prevention of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') in FIR No.258/2013 registered at PS Naraina, Delhi and the order on sentence dated 2nd July, 2014 directing him to undergo Rigorous Imprisonment for a period of five years and to pay a fine of ₹1,000/- for the offence under Section 10 of POCSO Act.

2. The prosecution case is that on 20th November, 2013 around 11.30 AM the prosecutrix aged about six years along with her sister and one more girl went outside her house at Jhuggi Railway Station, Brar Square, Delhi Cantt to ease themselves in the open field nearby. Appellant Lal Kumar who was present nearby was staring at the girls when they were easing out.

Suddenly he picked up the eldest of the three girls, that is, the prosecutrix and after gagging her mouth started running away. The two other girls started screaming which attracted the attention of Chot Mal PW-2, who was running a tea stall nearby. He along with five six other public persons ran towards the accused, caught hold of the appellant and rescued the prosecutrix from his clutches. In the meantime Smt.Nirmala PW-3, the mother of the prosecutrix also came. PW-3 called the police at 100 number which was recorded vide DD No.14A whereafter W/SI Dhara Mishra, PW-4 reached the spot and recorded the statement of Smt.Nirmala, PW-3. On the statement of PW-4, rukka was sent for registration of FIR.

3. Charged for offences punishable under Section 354B IPC and Section 10 POCSO Act, the appellant faced trial wherein the prosecution examined four witnesses i.e. the prosecutrix PW-1, Chot Mal PW-2, Nirmala PW-3 and WSI Dharma Mishra PW-4.

4. In view of the statement of learned counsel for the appellant, on instruction from the appellant, that he does not challenge the veracity of medical examinations of the prosecutrix and the appellant, statement of prosecutrix under Section 164 Cr.P.C and the proceedings thereof and also does not dispute the date of birth of the prosecutrix, formal proof of these documents was dispensed with by the Trial Court vide order dated April 03, 2014.

5. The explanation of the appellant in his statement under Section 313 Cr.P.C was that one small child got scared upon seeing him and in that confusion he was falsely arrested.

6. Learned counsel for the appellant contends that the appellant is a mentally unsound person and is suffering from psychosis. He further

contends that there is a strong possibility that even at the time of incident, the appellant would have been mentally unstable due to which the prosecutrix got terrified and apprehended that she was going to be sexually assaulted. Pointing out the contradictions in the statements of PW-2, the tea vendor and PW-3, the mother of the prosecutrix, learned counsel contends that the mother of the prosecutrix alleged that when she reached the spot, the appellant was holding the hands of her daughter however PW-2 stated that he had held the prosecutrix and the appellant was apprehended by five to six person. There is material improvement in the statement of the mother of the prosecutrix made before the Court while deposing. She deposed that when she reached the spot and asked the appellant as to why he was holding his daughter, the appellant replied 'dil kar raha tha'. Learned counsel also contends that despite the presence of public persons at the spot, who gave beatings to the appellant, the prosecution did not examine any one of them as a witness to corroborate the version of PW-2 and PW-3. It is finally contended that even accepting the prosecution case, the ingredients of offence of aggravated sexual assault punishable under Section 10 POCSO Act are not made out and at best an offence of kidnapping is made out

7. Learned APP for the State on the other hand contends that the prosecution has proved its case beyond reasonable doubt on the basis of the testimony of the prosecutrix and the eye-witness Chot Mal. There are no material improvements in the statements of the witnesses. The appellant was apprehended at the spot and in view of the offence committed by him, he was beaten by the public. No leniency can be shown for the offence committed by the appellant on a minor girl aged six years.

8. PW-3, the mother of the prosecutrix on whose statement FIR was

registered deposed that on 20th November, 2013 both her daughters along with one girl from the neighbourhood had gone to answer the nature's call at some distance from their residence. Thereafter she heard some noise of 'pakdo pakdo' and the screams of her younger daughter. She rushed to the place from where the noise was coming when she saw the appellant holding her daughter (prosecutrix). When she asked the appellant as to why he was holding her daughter, the appellant replied 'dil kar raha tha'. One tea vendor Chot Mal was also present there. She further stated that the undergarment of her daughter was upto her knees and when she reached there, she pulled it up to her private parts. She made a call to the police and her statement was recorded at the spot vide Ex.PW-3/A. The appellant was arrested vide memo Ex.PW-3/B and his personal search was carried out vide memo Ex.PW-3/C. Thereafter the prosecutrix was medically examined at DDU hospital, after which she was produced before the learned Magistrate and her statement was recorded.

9. After satisfying that the prosecutrix PW-1, who was aged about 6 years at the time of incident, was capable and competent to depose correctly about the incident the learned Magistrate recorded the statement of the prosecutrix. She deposed that she was residing with her parents in a Jhuggi in Naraina and on the day of incident at around 12.00 noon she had gone to respond to the nature's call along with her sister and one more girl. Suddenly one person came and lifted her after pressing her mouth and ran holding her. The said person thereafter took off her 'pajami' upon which she shouted loudly on which one uncle who was a shopkeeper nearby saw her and saved her from that person. She started crying and the said person was given beatings and thereafter the police came.

10. PW-2, Chot Mal the independent eye witness also deposed that he was running a tea stall at Brar Square. When he saw the appellant lifting the girl and running he raised alarm by exhorting '*pakdo pakdo ek admi Ramesh ki ladki ko utha kar bhaag raha hai*'. On hearing the screams, mother of the prosecutrix came to the spot and some other persons also gathered at the spot.

11. The primary contention of learned counsel for the appellant is that there is contradiction in the testimony of Chot Mal and Nirmala because as per Nirmala, the appellant was holding the prosecutrix however as per Chot Mal he was holding the prosecutrix and four other boys had apprehended Lal Kumar at the spot. In cross-examination of Chot Mal, the appellant does not dispute that Chot Mal is running a tea stall near the place of occurrence thus he was a natural witness who on hearing the alarm by other two girls, raised a further alarm '*Pakdo Pakdo ek admi Ramesh ki ladki ko utha kar bhaag raha hai*'. On hearing the screams, the mother of the prosecutrix and other persons gathered at the spot. Chot Mal's testimony is natural and there is no improvement therein. This is supported by the version of the prosecutrix who stated that when alarm was raised one uncle who was a shop keeper nearby saw her and he saved her from that person. The said person was given beatings. It is thus apparent that Nirmala arrived on hearing the screams and alarms whereas Chot Mal who was in the vicinity acted immediately and not only saved the prosecutrix but with the help of other people got apprehended the appellant at the spot. Even ignoring the testimony of Nirmala, the prosecution has proved the offence committed by the appellant based on the testimony of the prosecutrix and Chot Mal.

12. The fact that the appellant was apprehended from the spot is not

disputed by him in his statement under Section 313 Cr.P.C though he says that he was apprehended under confusion. Moreover, the MLC of Lal Kumar which has been admitted by him notes abrasion over left elbow, redness in eye and bruise over left shoulder which fortifies the version of the witnesses that on apprehension he was beaten by the public.

13. The plea of the appellant that he is mentally unsound person and suffers from psychosis is without any basis. No defence evidence has been led nor any plea raised before the Trial Court in this regard.

14. The date of birth of the prosecutrix being January 01, 2007 has not been disputed. Thus, on the date of incident, the prosecutrix was less than 12 years of age. As per the evidence of the prosecutrix, the appellant gagged her mouth, embraced her, ran picking her up and had pulled down her leggings. The ingredients of offences punishable under Section 354B IPC and Section 10 POCSO, that is, assault with intent to disrobe and aggravated sexual assault respectively having been proved by the prosecution beyond reasonable doubt, I find no infirmity in the impugned judgment of conviction and order on sentence.

15. The appeal is dismissed.

16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 27, 2016
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