

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

**RESERVED ON : 10th JANUARY, 2017
DECIDED ON : 27th JANUARY, 2017**

+ CRL.A.1015/2015

ARJUN

..... Appellant

**Through : Mr.Harsh Prabhakar, Advocate with
Mr.Harjeet Singh Sachdeva &
Mr.Anirudh Tanwar, Advocates.**

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by the appellant – Arjun to challenge the legality and correctness of a judgment dated 05.06.2015 of learned Addl. Sessions Judge in Sessions Case No.08/14 arising out of FIR No.526/13 PS Shalimar Bagh whereby he was convicted for committing offences punishable under Section 10 of POCSO Act (In short ‘Act’). By an order 06.06.2015, he was sentenced to undergo RI for five years with fine ₹5,000/-; default sentence being SI for six months.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 05.12.2013, at about 05.00 p.m., at House No. 537, Gali No. 5, Ambedkar Nagar, Haiderpur, Delhi, the appellant sexually assaulted

the prosecutrix 'X' (assumed name) aged around 11 years. The information was conveyed to the PCR at 09.55 p.m. which was reduced into writing (Ex.PW-10/B). DD No. 3A (Ex.PW-4/B) came into existence at PS Shalimar Bagh at 01.40 a.m on 06.12.2013. The Investigating Officer after recording victim's statement (Ex.PW-4/A) lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. In order to establish its case, the prosecution examined ten witnesses and relied upon various documents. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication due to previous quarrels. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the appellant lived in a rented accommodation on the top floor (4th floor) of the premises in question owned by PW-1 (Chattar Singh). In his Court statement, PW-1 (Chattar Singh) informed that he had let out the room to the appellant in the year 2013. The victim's family lived in the said premises in a room situated at 1st floor. He further informed that after the occurrence, the victim's family has vacated the premises.

4. During arguments, appellant's counsel suspected X's age and urged that different dates of birth have come on record. In her complaint (Ex.PW-4/A), the victim had given her age as 10 years. In the MLC (Ex.PW-8/A) again the said age finds reflection. In her Court statement also

the prosecutrix claimed herself to be 11 years old and this assertion remained unchallenged and uncontroverted. No other date of birth was suggested to the victim. The prosecution had produced on record the school certificate where the date of birth of the victim has been described as 20.10.2002. It was recorded long before when X's parents had not anticipated such an unfortunate incident to happen in future to manipulate her age. Merely because, in DD No. 4A (Ex.PW-10/B) age of the victim has been disclosed 5 years is of no consequence as credible evidence has emerged on record that on the day of occurrence the prosecutrix was aged around 10 years. Even in her 164 Cr.P.C. statement, the victim had disclosed her age as 10 years and 10 months. Apparently, she was below 12 years of age on the day of occurrence.

5. The occurrence had taken place on 05.12.2013 at about 05.00 p.m. when 'X' had gone to the top floor to fetch clothes spread there to dry. Soon after the incident, the victim narrated the occurrence to her mother. PW-8 (Seema) had initially attempted to confront the appellant but when he did not listen to her and denied his involvement in the crime, she was forced to set the police machinery into motion. DD No.4A (Ex.PW10/B) came into existence at 09.55 p.m. on receipt of the information about the sexual assault.

6. In her statement (Ex.PW-4/A), the victim gave graphic detail as to how and under what circumstances, the appellant who lived on the top floor of the house caught hold of her from back; attempted to drag her to his room and fondled with her cheeks and breasts. MLC (Ex.PW-8/A) came to be prepared at Babu Jagjivan Ram Memorial Hospital at 02.10 a.m. It records the alleged history whereby a child aged around 10 years was

sexually assaulted by the accused. Since the FIR was lodged promptly after the crime, there was least possibility of the victim to concoct a false story implicating the accused in a short interval.

7. In her 164 Cr.P.C. statement (Ex.PW-9/B) recorded on 06.12.2013 'X' reiterated her version and identified the appellant to be the perpetrator of the crime. She revealed that on 03.12.2013 and 04.12.2013 too the appellant had caught hold of her hand but at the time she had succeeded to escape from there. On 5.12.2013, the appellant committed the crime.

8. Before recording her Court statement, the learned Presiding Officer had put various questions to ascertain if she was a competent witness. After recording satisfaction that 'X' was able to give rationale answers to the questions put to her and was competent to depose, the learned Presiding Officer recorded her statement without oath. She was examined in question-answer form. She named the appellant to be the author of the crime and assigned a specific and definite role to him in the crime. In response to a question "Phir Kya hua?", she responded "woh mujhe apne kamre ki taraf ghassit kar le jane laga aur mere gaal (cheeks) pakade. Gardan ke niche bhi hath lagaya. Maine uske hath me kaat liya aur mein niche bhag aayi". The accusations are very specific, certain and clear. What else can be expected from a child aged around eleven years? Her statement on material and vital facts remained unchallenged. The accused denied his presence at the spot at the time of occurrence but did not disclose as to where else he was present at the relevant time. No ulterior motive was assigned to the child witness to make a false statement. In the cross-examination, she categorically denied if the statement against the appellant was at her mother's behest.

9. The child was very intelligent. She was examined in a congenial atmosphere and was made comfortable to narrate her ordeal. The child had nothing to do with any animosity over any issue with her parents. No valid reasons whatsoever exist to suspect her version and to discredit her testimony. After arrest, the appellant was medically examined vide MLC (PW-10/F). It corroborates victim's statement that she had attempted to resist the assault and had given a bite. Abrasions were found on the appellant's hand in the MLC.

10. PW-8 (Seema), victim's mother has corroborated her version in its entirety and without any major variations. She also disclosed that she was apprised of the incident promptly and she confronted the appellant for that. When the appellant did not yield, she informed the police at 100.

11. The accused did not produce any evidence in defence to show his presence at a specific place. The plea of alibi set up by him was not proved. The accused did not give any particulars as to when any quarrel had taken place with victim's parents prompting them to implicate him in a false case. For petty quarrels (if any), victim's mother is not expected to use her tiny daughter aged around eleven years to settle score. Sexual assault on a tender aged girl is bound to create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely. The parents are highly reluctant to involve their children over such issues. It is true that the victim's mother did not consent for victim's internal medical examination. However, it is inconsequential. Medical evidence was not required in the absence of allegations of penetrative sexual assault.

12. The impugned judgment based upon fair appreciation of the evidence deserves no intervention and no fault can be found in the reasoning of the Trial Court.

13. The sentence is also based upon fair reasoning. Minimum sentence prescribed under Section 10 of the Act cannot be altered or modified. The crime committed by the appellant is horrible as a child aged around eleven years was ravished by an individual aged around 24 years. The appellant exploited her innocence and betrayed the trust of her family members as neighbour. The default sentence for non-payment of ₹5,000/- imposed as fine is reduced to SI for one month. Other terms and conditions of the Sentence Order are left undisturbed.

14. The appeal stands disposed of in the above terms. 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

JANUARY 27, 2017 / tr