

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

% Decided on: 12th January, 2018

+ **CRL.A. 247/2016**

DALIP @ BALLU

..... Appellant

Represented by: Mr. Arun Kumar Rathi, Adv.

versus

STATE (GOVT NCT OF DELHI)

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with SI Vidya rawat PS
Maurya Enclave.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal, Dalip @ Ballu challenges the impugned judgment dated 23rd January, 2016 whereby he was convicted for offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO') and order on sentence dated 28th January, 2016 whereby he was directed to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹5000/- for the offence punishable under Section 10 POCSO and in default of payment of fine to undergo further simple imprisonment for a period of six months.

2. Learned counsel for Dalip @ Ballu submits that child victim was tutored. No internal medical examination of the child victim was got conducted which falsifies the case of the prosecution. Though, it has come

in the testimony of the child victim and her mother that the child victim made a call to her mother, however, the same has not been proved. Though it was urged that the initial call was made by the mother of the child victim, however the same is not reflected in the DD No.39A. There is delay in lodging the FIR. There are contradictions in the statements of the child victim recorded under Section 161 and 164 Cr.P.C.

3. Per contra, learned APP for the State submits that the impugned judgment suffers from no illegality and conviction can solely be based on the testimony of child victim.

4. Process of law was set into motion on 17th October, 2014 around 7.50 P.M. on receipt of information regarding attempt to rape upon a 10 years old girl at C-32 Jhuggi, Gandhi Market, Pitampura. The aforesaid information was recorded vide DD No.39A [Ex.PW-9/A] and was assigned to ASI Ishwar Singh (PW-9). He along with Ct. Yogesh went to the spot and met the child victim and her mother. On enquiry, he came to know that the child victim was sexually assaulted by the appellant, who is her real paternal uncle (chacha). In the meantime, WSI Upkar Kaur (PW-11) reached the spot. She sent Dalip @ Ballu to the Police Station. Thereafter, she along with W/Ct. Archana (PW-7) took the child victim and her mother to BSA Hospital and also called Ms. Madhu Dass (PW-6) from a NGO to counsel the child victim. Child victim was medically examined, however mother of child victim refused for her internal gynaecological examination. Thereafter, she recorded the statement of child victim vide Ex.PW-4/A. On the basis of aforesaid statement, FIR No.801/2014 [Ex.PW-2/A] was lodged at PS Maurya Enclave for the offence punishable under Section 376 IPC. Dalip @ Ballu was arrested vide arrest memo Ex.PW-11/A. His personal search was

conducted vide memo Ex.PW-11/B. He was also medically examined at BSA Hospital. Statement of child victim was recorded under Section 164 Cr.P.C. [Ex.PW-3/B]. After the completion of investigation, charge sheet was filed for offences punishable under Section 376 IPC and Section 6 PCOSO Act. Charge was framed against the appellant for offence punishable under Section 6 POCSO Act.

5. Child Victim T was examined as PW-4 in Court. After ascertaining that she was capable of giving rational answers to the questions put to her, following questions were posed to her and she deposed as under:

Q: Beta, batao kya hua tha?

Ans: Mere mummy, papa aur daadi ka jhagda hota tha, isliye meri mummy meri mausi ke ghar rehti thi, kyunki mere nana ki death ho gai hai.

Q: Beta, unka jagdha kis baat par hota tha?

Ans: Kunki meri mummy ko beta nahi hua, aur hum do hi behne hai, iss baat par papa mummy ko maarte the aur daddi bhi jagdha kjarti thi.

Q: Beta, app kahan rehte the?

Ans: Main, ghatna se 10 din pehle apni daadi ke saath rehne aayi thi.

Q: Beta, batao aapke ke saath kya ghatna hui thi?

Ans: 15 taarik, pichle saal diwali ke mahine ke baat hai, mere chacha ne sham ko 8.00 baje towel se mere muh beech diya.

Q: Beta, phir kya hua?

Ans: Meine, kaha chacha mujhe chod do, par wo mujhe chod nahi rahe the, ussi time meri daadi ne sabun lene ke liye mujhe awaz lagai aur tab unhone mujhe chod diya.

Q: Beta, phir kya hua?

Ans: Raat ko 3-4 baje ke karib kisi ne mujhe sofa se uthakar palang par leta diya. Jab meri aankh khuli to meine

chacha ko apne saamne bina kapado (naked) he dkeha aur meri bhi leggings uteri hui thi.

Q: Beta, phir kya hua?

Ans: Phir chacha mere upar let gaye aur apna susu mere susu mein lagane lage. Mujhe dard hua tha aur chadar par aur mere upar kuch gila gila white white paani jaisa gira tha.

Q: Beta, phir kya hua?

Ans: Meine chacha ko Dhaka maara, jis se mere chacha ka paon meri daadi, jo jamin par so rahi thi ko lag gaya aur wo boli ke kya hua. Chacha ne kaha kuch nahi hua, so jaa, so jaa.

Q: Beta, phir kya hua?

Ans: Phir daadi ne mujhe do thapad mare aur mein chupchaap so gayi.

Q: Beta, aapko daadi ne kyun thapad mare?

Ans: Mujhe nahi pata, par din mein wok eh rahi thi ki mein raat mein kyun uthi hui thi, jiski wajah se unki neend kharab ho gayi thi.

Q: Beta phir kya hua?

Ans: Din mein meine daadi ko towel wali baat bhi batai thi, par daadi ne kaha ki aisa kuch nahi hai, ye to sabse majak karta hai.

Q: Beta, phir kya hua?

Ans: Meine apni mummy ko phone karke daadi ke ghar bulaya aur unhe saari baat bata di. Phir meri daadi ne mujhe meri mummy ke saamne do thapad mare the aur mere chacha mujhse keh rahe the ki mein jooth bol rahi hu.

Q: Beta, phir kya hua?

Ans: Meri daadi mere mummy ko gaali bakne lagi. Meri mausi bhi mummy ke saath aayi thi, unko bhi meri mummy ne gaali nikali. Mere daadi ne papa ko bhi phone kar ke bula liya the.”

6. Mother of child victim T was examined as PW-10. She corroborated the testimony of child victim T.
7. Shri Arun, Primary Teacher, MCD Primary School, Mangolpuri (PW-1) stated that as per the school records, date of birth of child victim T, on the basis of admission form [Ex.PW-1/A] and affidavit [Ex.PW-1/B] was 5th August, 2008.
8. Ms. Madhu Dass, CIC Counsellor, NGO Sampoorna (PW-6) stated that on 17th October, 2014, she had counseled the child victim T and exhibited her report vide Ex.PW-6/A.
9. Dr. Anita Sonvane, SR (Obs. & Gynae), BSA Hospital (PW-9) stated that on 18th October, 2014, she conducted the general medical examination of the child victim T, however the mother of child victim T had refused for the gynaecological examination. She exhibited the MLC of the child victim as Ex.PW-9/A.
10. The child victim has been proved to be a minor on the date of incident. In cross-examination the only question put to the victim is that she falsely implicated the appellant at the instance of her mother which she denied. Merely because internal gynaecological examination of the child victim was not got conducted would be no ground to discard the cogent and convincing testimony of the victim. DD No.39A received at PS Maurya Enclave mentions the phone number from which the call was sent to the PCR which number has not been confronted to the mother of the child victim. Though contended that there are contradictions in the statements of the child victim but she has not been confronted with the same.
11. Considering the evidence on record and the testimony of child victim T, this Court finds no merit in the appeal. Conviction of Dalip @ Ballu for

offence punishable under Section 10 POCSO and the order on sentence are upheld.

12. Appeal is dismissed.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

14. Trial Court Record be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 12, 2018
‘anu/ga’



न्यायमेव जयते