

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

RESERVED ON : FEBRUARY 10, 2015

DECIDED ON : MARCH 09, 2015

+ CRL.A.543/2014

CHANDRIKA PRASAD

..... Appellant

**Through: Ms.Arundhati Katju with Mr.Akshay
Sharma, Advocates.**

versus

STATE

..... Respondent

Through: Mr.Navin K.Jha, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Chandrika Prasad is aggrieved by a judgment dated 23.01.2014 of learned Additional Sessions Judge-01, Central/THC, Delhi in Sessions Case No.67/2013 arising out of FIR No.30/13 registered at Police Station Prasad Nagar by which he was held guilty for committing offences under Sections 354 IPC and Section 10 of POCSO Act. By an order dated 27.01.2014, he was awarded RI for five years with fine ₹2,000/- under Section 10 of POCSO Act.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 09.02.2013 and before that, in premises No.16/1069 E Block, Khalsa Nagar, Tank Road, Karol Bagh, Delhi, 'X' (assumed name), aged 10 years, was sexually assaulted by the appellant and he outraged her modesty. The incident was reported to the police and daily dairy (DD) No. 27-A (Ex.PW-4/C) was recorded at 9.28 p.m. at Police Station Prasad Nagar. The investigation was assigned to SI Amit Sharma who with Const.Mahavir Prasad went to the spot. After recording statement of the victim's father (Ex.PW-2/A), he lodged First Information Report. Statement of the prosecutrix was recorded under Section 164 Cr.P.C; she was medically examined. The accused was arrested. Statement of witnesses conversant with the facts was recorded. After completion of investigation, a charge-sheet was filed against him in the court. The prosecution examined five witnesses to substantiate its case. In 313 statement, denying his complicity in the crime he pleaded false implication on account of non-payment of the price of Neelam stone given by him to the victim's mother. No evidence in defence was produced. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's counsel urged that the trial court did not appreciate the evidence in its true and proper perspective and for no valid reasons ignored the defence of false implication for non-payment of the price of Neelam stone particularly when 'X' in cross-examination admitted about its supply to her father. The prosecution utterly fails to establish if 'X' was ten years of age and no explanation was offered as to why the Principal of the school who had issued school certificate (Ex.PW-3/C) was not examined. Counsel referred to various discrepancies and contradictions in the statement of 'X' and her father and urged that it is not safe to base conviction on the uncorroborated testimony of the prosecutrix. Learned Additional Public Prosecutor urged that there are no sound reasons to suspect the testimony of the prosecutrix who had no ulterior motive to falsely implicate the accused.

4. Appellant's conviction is primarily based upon the solitary statement of 'X', aged around 10 years. Her version throughout is consistent. In her 164 Cr.P.C. statement, she categorically implicated the appellant for outraging her modesty. In her Court statement as PW-1, 'X' proved the version given to the police and before the learned Metropolitan Magistrate without any variation. She identified the appellant to be the

perpetrator of the crime and attributed a specific role to her in the crime. She gave detailed account as to how and under what circumstances, the appellant, a security guard' in a godown nearby used to touch her body parts from outside and inside her clothes in the absence of her father who used to leave the shop to take lunch at home. In the cross-examination, she answered the queries put to her and stood to her version narrated in her examination-in-chief. She denied if any Neelam was demanded and given to her mother by the appellant. She volunteered to add that the appellant had given it to her father but was returned next day. There are no sound reasons to suspect the testimony of 'X' who had no ulterior motive to falsely implicate the accused. There was no previous animosity with the accused. Despite lengthy cross-examination, no material inconsistency could be elicited in her cross-examination. It emerged from her statement that in the absence of her uncle who had gone to his native village, 'X' used to visit the shop after return from school to enable his father to go to house to take lunch. The accused who worked as security guard in a godown situated in front of the shop took advantage of the absence of 'X's father and touched her various body parts in the shop. He abused the child for about 15 to 20 days before the incident. On a day

when 'X' declined to go to the shop and on inquiry for her reluctance to go, she revealed the incident.

5. PW-2 (Satinder Parsad Yadav), 'X's father has corroborated her testimony on material aspects and has proved the version given to the police at first instance without any improvement. He disclosed that her daughter 'X' aged about ten years, a student of 3rd standard used to sit at his shop in his absence when he went to his factory situated nearby. He used to ask the accused to take care of her daughter and the shop in his absence. On 09.02.2013 at about 8.30 p.m. he saw his daughter 'X' weeping in the house and on enquiry, she told that guard uncle had behaved indecently with her. In the cross-examination, he denied that his wife had asked the accused to bring Neelam and when the accused demanded its payment, he was falsely implicated in the incident.

6. The accused did not produce any cogent evidence to show if Neelam was given for a specific price to the victim or her parents or it was retained by them. For a paltry sum, 'X's parents are not expected to falsely implicate the accused for the heinous offence to bring their minor child 'X' in disrepute. Unless an offence has really been committed, an unmarried little girl would be extremely reluctant to make such allegations which are likely to reflect on her chastity.

7. I find no substance in the appellant's plea about the age of the prosecutrix to be above 12 years. Age of the prosecutrix was not an issue before the trial court as the accused never challenged her to be above 10 years of age. PW-3 (SI Amit Sharma), Investigating Officer, collected her school certificate (Ex.PW-3/C) where her date of birth has been recorded as 20.07.2003. Genuineness and authenticity of this document was not challenged in the cross-examination. 'X' and her father (PW-2) described her age to be 10 years studying in 3rd standard. There are no reasons to disbelieve the categorical assertion of 'X' and her father about her age coupled with school certificate. Non-examination of the Principal of the school to prove school certificate is inconsequential as its exhibition was not objected to that time.

8. Minor contradictions and improvements highlighted by the appellant's counsel are inconsequential as they do not affect the core of the prosecution case. The prosecution has established beyond doubt that in the absence of 'X's father, the appellant used to visit the shop. During his visit to shop, he took advantage of the situation and the innocence of the child. He touched her various body parts and sexually abused her for about 15 days. Due to fear 'X' did not divulge the incident to her parents.

Before recording her statement under Section 164 Cr.P.C. and Court

statement, the Presiding Officers had put various questions to her to ascertain if 'X' was a competent witness to understand the questions and give rational answers. 'X' was so innocent that not only she described the indecent acts of the accused verbally but also touched her body parts to show where the appellant used to fiddle. In the absence of any ill-will and previous animosity, no valid reasons exist to suspect the statement of the prosecutrix.

9. The impugned order based upon fair and proper appreciation of the evidence deserves no interference. Since the appellant, a security guard, had outraged the modesty of a child below 12 years and had betrayed the trust of her father, sentence order needs no modification except that default sentence for non-payment of fine ₹5,000/- would be ten days.

10. The appeal stands disposed of in the above terms. Trial Court record (if any) along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

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