

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

RESERVED ON : MARCH 02, 2015

DECIDED ON : APRIL 24, 2015

+ CRL.A.1070/2014

BHAGWAN DASS @ RAM KHILADI Appellant

Through : Mr.Neeraj Bhardwaj, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Navin K.Jha, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 22.04.2014 of learned Additional Sessions Judge in Sessions Case No.70/2013 arising out of FIR No.32/2013, Police Station D.B.G. Road by which the appellant Bhagwan Dass @ Ram Khiladi was convicted under Section 292 (2) (a)/ 354 IPC and under Section 10 of the POCSO Act, he has filed the instant appeal. By an order dated 25.04.2014, he was awarded RI for five years with fine ₹500/- under Section 10 POCSO Act and RI for six months with fine ₹500/- under Section 292 (2) (a) IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant, as projected in the charge-sheet were that on 27.01.2013 at around 4:30 p.m. in the area of Punjabi Basti, Bhagat Singh Nagar Gali falling within the jurisdiction of PS DBG Road, he showed obscene film on his mobile to the victim 'X' (assumed name), aged around six years and committed aggravated sexual assault upon her. The appellant also outraged her modesty. Police machinery was set in motion when information about the occurrence was conveyed to the police at around 4:52 p.m. and Daily Dairy (DD) No.15 (Ex.PW-7/A) was recorded at 04:55 p.m. at Police Post Shiv Puri Police Station DBG Road. The investigation was assigned to HC Anil who with Ct. Hemant went to the spot. The Investigating Officer lodged First Information Report after recording statement of victim's mother Anju (Ex.PW-4/A). 'X' was taken for medical examination. The accused was arrested and medically examined. Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused for committing aforesaid offences. The prosecution examined 13 witnesses to substantiate its case. In 313 statement, the appellant pleaded false implication and denied his involvement in the crime. He did not produce any evidence in defence. The trial resulted in his conviction as aforesaid. It is significant to note that the appellant's

acquittal under Section 6 POCSO Act was not challenged by the State. Aggrieved by the impugned judgment, the appellant has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place at around 04:30 p.m. The information to Police Control Room was transmitted at 16:52:32 hours. It records that an individual who had shown the blue film to children was apprehended at the spot. At 17:11:45 hours, it records that the said person was beaten by the public. Daily Dairy No.15 (Ex.PW-7/A) recorded at 4:55 p.m. 'X' was taken for medical examination at 11:10 p.m. The alleged history recorded therein describes the details of the occurrence. FIR was lodged without any delay at 06:30 p.m. by sending rukka (Ex.PW-13/A). In the statement (Ex.PW-4/A) victim's mother specifically named the appellant to be the perpetrator of the crime. She gave detailed account as to how and under what circumstances, the appellant outraged the modesty of child 'X'. Since the FIR was lodged promptly without any delay, there was least possibility of the victim's mother to have concocted a false story in such a short period.

4. In her Court statement as PW-4 Anju proved the contents of the complaint without any variation. She deposed that her daughter 'X'

soon after the occurrence came to her weeping and told that the appellant had shown her obscene movies on his mobile and had touched her vagina. Crucial testimony is that of the victim PW-2 whose testimony is consistent throughout. In her statement recorded under Section 164 Cr.P.C., she implicated the appellant for the crime. She was put various questions by the Presiding Officer before recording her Court statement to ascertain if she was a competent witness and understood the questions put to her and give rational answers. The Trial Court after recording satisfaction that 'X' was a competent witness examined her on oath. She deposed that the accused was acquainted with her before the incident and he used to drive an auto. He had shown her dirty photos from his mobile phone. Elaborating further, she deposed that in the movie shown to her, a girl taking bath had initially removed the underwear of the boy. Thereafter, the boy removed the girl's underwear and then she started sucking his 'sho-sho' (penis). She further revealed that the accused, thereafter, rubbed her 'sho-sho' (vagina) by putting his hand in her underwear and asked not to disclose the incident to anyone. She identified the mobile (Ex.P-1). In the cross-examination, she denied if her sister 'Y' (assumed name) had taken the mobile phone from the appellant

to play on it. She denied that her sister had snatched the phone and at that time, she and her sister had seen the glimpse of the video clip.

5. On scrutinizing the testimony of the child witness, it reveals that no ulterior motive was assigned to her to make a false statement. Material facts about the occurrence have remained unchallenged in the cross-examination. In 313 statement, the appellant admitted that at the relevant time, he was sitting on the motorcycle and three sisters came to him; youngest one climbed over his shoulder whereas the eldest one snatched his mobile phone and ran away. He alleged that at that point of time, probably they saw the obscene video clipping on his mobile phone and thereafter raised alarm. He denied to have shown any video clip to the children. Analyzing the statement of the victim coupled with 313 statement, it stands established that the appellant was present at the spot at the relevant time while sitting on the motorcycle in the company of 'X' and her sisters. It further stands admitted that the appellant had a mobile phone (Ex.P-1) which contained obscene video-clips. Inconsistent suggestions have been put to the victim in the cross-examination as to under what circumstances 'X' had seen the video-clip when her sister had snatched the phone from him. Apparently, the obscene video-clips in the mobile phone in possession of the appellant was seen by the victim. It is

unbelievable that victim's eldest sister aged 10 years would snatch the mobile phone from the accused and would allow the victim to watch the porn video on the mobile in no time. PW-5 (Y, assumed name), in her Court statement denied if she had snatched mobile from the accused. Suggestion was put to her that when she and her sisters were playing in the Gali, the appellant was watching 'something' on his mobile phone while sitting on the motorcycle. She denied that at that time, she and her sisters arrived there and asked the appellant to give the mobile phone to play games on the phone. She further denied that while playing, they started watching mobile phone of the accused. She further denied that she and her sisters had taken the mobile phone from the hands of the accused and when they saw the porn video going on the said mobile, they raised alarm and consequently the public gathered and gave beatings to the accused. These suggestions lend credence to the prosecution case that at the relevant time, the appellant was watching obscene clippings on his mobile and had shown the said mobile clippings to the victim. No sound reasons exist to disbelieve the statement of the prosecutrix, a child witness aged around six years.

6. In the 313 statement, the appellant came up with the defence that about four days before the incident, a quarrel had taken place between

him and the victim's father and he had threatened him to falsely implicate him in a case. The defence deserves outright rejection as no particulars of any such alleged quarrel has been detailed. No complaint was lodged by the appellant about the said quarrel. Moreover, for a petty quarrel (if any) between the appellant and victim's father, the victim's father is not imagined to lodge a false complaint to put honour of her own daughter at stake. Unless such an offence has really been committed, an unmarried little girl and her parents would be extremely reluctant to level serious allegations which are likely to reflect on the chastity of the girl.

7. Minor lapses in the investigation pointed out by the learned counsel for the appellant are not material to discredit the otherwise cogent and reliable testimony of the victim, her sister and mother. Non-joining of independent witnesses from the locality is not fatal. Certain discrepancies, exaggerations and contradictions referred to by the appellant's counsel do not affect the core of the prosecution case to throw it away over-board. The Trial Court has already given benefit of doubt to the appellant under Section 6 POCSO Act. All the relevant contentions of the appellant have been dealt with appropriately in the impugned judgment which is based upon due appreciation of the evidence and needs

no interference. Since the victim was a child around six years, no leniency is called for to modify the sentence order.

8. The appeal lacks merits and is dismissed. 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

APRIL 24, 2015

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