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

+ CRL.A. 1253/2013 & CRL. M.A. 16983/2014

DECIDED ON :2nd February, 2015

HAJI MUL @ DANISH Appellant
Through : Mr. Imran Khan, Advocate.

versus

STATE NCT OF DELHI Respondent
Through : Mr. Navin K. Jha, APP for State.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. The instant appeal filed by the appellant Haji Mul @ Danish impugns the judgment dated 27.07.2013 of learned Additional Sessions Judge-01, (Central) Delhi in Sessions Case No. 63/13 arising out of FIR No. 16/2013, P.S. Jama Masjid by which he was held guilty for committing offences punishable under Sections 354/509/341 IPC read with Section 8 of the POCSO Act. By an order dated 29.07.2013, he was awarded various prison terms with fine.

2. Allegations against the appellant as reflected in the Charge-sheet were that on 20.02.2013, he was arrested while doing *badtamazi* with the victim 'X' aged about 12 years. Both of them were brought to the Police Station. The statement of Victim 'X' was recorded as Ex.PW2/A. She informed that on that day at about 12.50 P.M., she was going to main gate No. 3 of the Jama Masjid to search her younger brother. When she reached near fire

brigade vehicle, she was caught hold by one person who pressed her mouth and pulled her towards the wall and pressed her breast and also caught her by her private part. When she tried to get rid of herself, police officials came there and rescued her. During investigation, statement of witnesses conversant with the facts were recorded. Prosecution examined seven witnesses to establish the appellant's guilt. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and alleged false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appeal has been preferred by the appellant.

3. During the course of arguments, learned counsel for the appellant, on instructions, stated at Bar that the appellant has opted not to challenge the findings recorded by the trial court. He, however, prayed to take lenient view as the appellant has remained in custody for substantial period and he is not a previous convict. The learned Additional Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant has opted not to challenge the findings of the trial court, his conviction for the aforesaid offences is affirmed. The prosecutrix while appearing as PW2 has levelled serious allegations against the appellant for the crime committed by him.

5. Regarding sentence order, the maximum sentence awarded to the appellant was under Section 8 of the POCSO Act, whereby, he was directed to undergo rigorous imprisonment for 3 years with fine of Rs.1000/- . Sentences under the other offences were to run concurrently. Nominal Roll dated 31.12.2014 reveals that the appellant was aged about 21 years on the date of occurrence; he has already remained in custody for 1 year 10 months and 11 days besides earning remission for 5 months. He is not a previous

convict and is not involved in any other criminal activity. He was granted suspension of sentence till the disposal of the appeal on his furnishing a personal bond in the sum of Rs. 15,000/- with one surety in the like amount by an order dated 31.07.2014. He could not furnish the required surety bond. The surety amount was reduced to Rs. 5,000/- by an order dated 16.12.2014. Again, the appellant could not get the benefit of the order as he was unable to furnish the surety bond of Rs. 5,000/- and has remained in custody since then. Considering these mitigating circumstances, the sentence order is modified and the period already undergone by the appellant in this case is taken as substantive sentence.

6. The appeal and the application stands disposed of in above terms. The appellant be released forthwith, if not required to be detained in any other case.

7. Intimation be sent to the concerned Jail Superintendent for information and necessary action. Trial court record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 02, 2015

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