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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : AUGUST 12, 2015

DECIDED ON : AUGUST 24, 2015

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CRL.A. 1498/2013

VINOD KUMAR @ SHESHNATH Appellant
Through : Mr.Azhar Qayum, Advocate.

versus

STATE NCT OF DELHI Respondent
Through : Mr.Sanjeev Sabharwal, APP.

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

S.P.GARG, J.

1. This appeal is directed against a judgment dated 16.08.2013 of learned Additional Sessions Judge in Sessions Case No.76/13 arising out of FIR No.53/2013 by which the appellant Vinod Kumar @ Sheshnath was convicted under Section 10 & 12 of the POCSO Act read with Section 506 IPC. By an order dated 17.08.2013, he was sentenced to undergo RI for five years with fine ₹1,000/- under Section 10 POCSO Act; RI for one year with fine ₹500 under Section 12 POCSO Act; and, RI for one year under Section 506 IPC. All the sentences were to run concurrently.

2. Briefly stated, prosecution case as reflected in the charge-sheet was that on and before 2nd February, 2013 at H.No.8-21, Gali No.5, Tomar Colony, Burari, the appellant outraged modesty of his daughter 'X' (assumed name), aged around 15 years. She was sexually abused and criminally intimidated for about three years. The Investigating Officer lodged First Information Report after recording 'X's statement (Ex.PW-2/A) on 15.02.2013. She was medically examined; she recorded her 164 Cr.P.C. statement. 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 appellant in the court. The prosecution examined six witnesses to substantiate its case. In 313 statement, denying his complicity in the crime, the appellant pleaded false implication by the prosecutrix under her mother's pressure with whom there was dispute over sale of plot at Burari. No evidence in defence, however, 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 conviction is primarily based upon the sole testimony of the prosecutrix. Admitted position is that she is the

appellant's daughter and lived along with him in the house in question. She was studying in Xth class and her date of birth recorded in the school at the time of admission proved by PW-3 (Firoz Ahmed) was 01.07.1997. The relevant copies are exhibited Ex.PW3/A and Ex.PW-3/B. The appellant has not challenged 'X's date of birth. Apparently, she was minor at the time of lodging the FIR.

4. In her statement (Ex.PW-2/A) to the police 'X' gave detailed account as to how and in what manner, her modesty was outraged by her father on different occasions. She had apprised her mother about his nefarious activities. When she (her mother) objected to it, the appellant gave beatings to her. Finally, she (X) was sent to her maternal uncle's house. On 2.2.2013, the appellant, however, insisted her to come back and criminally intimidated her and her maternal uncle. In her 164 statement (Ex.PW-2/B) recorded on 16.02.2013, again 'X' reiterated her version and implicated her father for sexual abuse. She further disclosed that in 2010, a quarrel had taken place over it and due to intervention of police that time, the matter was pacified. Thereafter appellant's behaviour and conduct was normal for about a year. Thereafter, he again started picking up quarrel with her mother. Attributing specific role, she deposed that her father used to stare at her at the time of her changing clothes and

taking bath. When the accused did not desist from his activities, her mother sent her to her maternal uncle's house. In her Court statement as PW-2 she proved the version given to the police and before the Court without major variations. She levelled specific allegations against the accused for outraging her modesty in various ways i.e. to touch her body by putting his hand in her clothes; to touch her thigh, breast and cheeks in night and to make an attempt to remove her clothes. In the cross-examination, she elaborated that the accused used to misbehave with her after taking liquor. He used to peep through the gap between the floor and the door of the bath-room. Material facts deposed by the prosecutrix in her examination-in-chief remain unchallenged. Despite lengthy cross-examination, no infirmities could be elicited. No extraneous motive was assigned to the child witness to falsely implicate her own father; the bread earner of the family. No sound reasons exist to disbelieve the prosecutrix. She is consistent throughout. True, certain additional facts have been spoken by the prosecutrix in her Court statement which do not find mention in her earlier statements before the police/court. However, these are inconsequential as the crux remains that 'X' was molested by the accused for the last about three years. In fact, in her Court statement, 'X'

has elaborated as to how and in what various ways, she was being abused by her father.

5. PW-1 (Reena Devi), 'X's mother has corroborated her version in its entirety. Their statements are not at variance. Nothing was suggested to her in the cross-examination if she nurtured any ill-will against her husband on any issue.

6. For the first time in 313 statement, the accused claimed his false implication by the prosecutrix at behest of her mother as there was a property dispute about sale of a plot at Burari. However, nothing has surfaced if the accused had a plot at Burari or it was sold by the victim's mother without his consent and permission. No such suggestion was given to 'X' or her mother in the cross-examination. Moreover, for money dispute 'X' and her mother are not imagined to level such serious allegations of molestation against the appellant to have reflection on 'X's chastity. In 313 statement, the appellant made feeble attempt to blame 'X' alleging she had objectionable relations with a boy and when he objected to it, he was implicated in the case. Again, the accused did not elaborate as to who was the 'boy' with whom 'X' had objectionable relations and if he had ever seen both of them together at any place. Nothing was

suggested to 'X' in her cross examination about it. The defence deserves outright rejection.

7. The impugned order based upon fair and proper appreciation of the evidence, needs no intervention. The conviction is upheld. The appellant does not deserve leniency as being father he even did not spare his minor daughter.

8. The appeal lacks merits and is dismissed. Trial Court record (if any) be sent back along with the copy of this order. Copy of this order be sent to the concerned Jail Superintendent for information

(S.P.GARG)
JUDGE

AUGUST 24, 2015

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