

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

% Decided on: 3rd October, 2016

+ **CRL.A. 405/2014**

MANI KUMAR

..... Appellant

Represented by: Mr. Azhar Qayum, Advocate.

Versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Mani Kumar challenges the impugned judgment dated December 12, 2013 convicting him for offence under Section 9 (l) and (n) of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and punishable under Section 10 of POCSO Act and the order on sentence dated December 17, 2013 directing him to undergo rigorous imprisonment for a period of six years and to pay a fine of ₹5,000/-.

2. FIR No. 156/2013 was registered under Section 354A IPC and Section 10 POCSO Act at PS Maurya Enclave on the complaint of PW-2 after recording of DD No. 47A received on May 9, 2013 at 11:30 P.M. informing about a quarrel at H.No. 59, Type- I, Varun Niketan, Pitampura.

3. PW-2 stated that she had come to visit her mother at her house. She had four children- three girls and one boy. Victim child 'N' was her eldest daughter aged 12 years who was staying with her maternal grandmother CW-1 since her childhood. She further stated that the victim told her that

Mani Kumar for the past 8-9 months was troubling her. He used to touch the breasts of the victim, made her sit on his stomach, used to come near her and also made her sit on him. Mani Kumar also told the victim to sleep with him and he used to beat her a lot when he was annoyed. When the victim child used to sleep with her grandmother, Mani Kumar used to come again and again and sit with her. When she used to sleep, Mani Kumar used to touch her breasts and told her not to disclose about it to anyone. When the victim child 'N' used to be alone, Mani Kumar used to hold her.

4. After registration of the FIR, MLC of the victim was conducted. Statement of the victim was recorded by learned Metropolitan Magistrate under Section 164 Cr.P.C. vide Ex. PW-5/B.

5. PW-1 victim child 'N' deposed in conformity with her statement recorded under Section 164 Cr. P. C. She stated that after her father passed away, her mother Krishna PW-2 remarried. She was staying with her maternal grandmother CW-1 since her childhood and her mother stayed with her father along with her two sisters and one brother. She had two maternal uncles (mamas) who also stayed in the grandmother's house. Mani Kumar used to make her sit on his stomach and touched her breasts. She also stated that when she informed her grandmother and her mother about the incident, they both scolded him but Mani Kumar did not mend his ways. She also stated that Mani Kumar used to beat her when he used to be drunk.

6. PW-2 also deposed in sync with her statement recorded on the basis of which FIR was registered. She stated that the victim child 'N' stayed with her mother because of the love and affection which her mother had for the victim child 'N'. During her cross examination, she denied the suggestion that she lodged a complaint against Mani Kumar earlier also. However, she

voluntarily stated that her mother and other brother had lodged a complaint because Mani Kumar had killed their pet dog. She also denied the suggestion that she was having a property dispute with Mani Kumar due to which she has falsely implicated him in the present case.

7. CW-1 grandmother of the victim deposed that the victim had been brought up by her since she was about 7-8 months old. She further stated that Mani Kumar, who had the habit of taking drugs, misbehaved with the victim under the influence of drugs. Victim had told her that the appellant had touched her body parts and tried to commit rape upon her. She and her daughter PW-2 had apprehended the appellant red handed.

8. Considering the evidence on record particularly the testimony of the victim and her grandmother CW1 who was a natural witness and had apprehended the appellant red-handed, the prosecution has proved the charges against the appellant beyond reasonable doubt. Finding no error in the impugned judgment of conviction and order on sentence, the appeal is dismissed.

9. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

10. TCR be returned.

(MUKTA GUPTA)
JUDGE

OCTOBER 03, 2016
‘ga’