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

RESERVED ON : SEPTEMBER 19, 2016
DECIDED ON : **SEPTEMBER 29, 2016**

+ **CRL.A. 228/2016 & CRL.M.B. 507/2016**

RAMAN KUMAR Appellant
Through : Mr.Biswajit K.Patra,, Advocate.

VERSUS

STATE Respondent
Through : Ms.Meenakshi Dahiya, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 17.07.2015 of learned Sessions Judge in Sessions Case No.26/2/2013 arising out of FIR No.142/2013 registered at Police Station Dabri by which the appellant Raman Kumar was held guilty for committing offence punishable under Section 10 POCSO Act. By an order dated 20.07.2015, the appellant was sentenced to undergo Rigorous Imprisonment for five years with fine ₹10,000/-.

2. Briefly stated the prosecution case as set up in the charge-sheet was that on 12.03.2013 at around 4.00 p.m. near Goyal Store, D-30, Dwarkapuri, Vijay Enclave, New Delhi, the appellant committed aggravated

sexual assault upon the child victim aged 8 years by touching her waist and vagina. The incident was reported to the police and DD No.36A came into existence at 4.45 p.m. The investigation was assigned to SI Beena. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. 'X' was taken for medical examination; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. The accused was arrested. Upon completion of investigation, a charge-sheet was filed against the appellant in the court. In order to establish its case, the prosecution examined nine witnesses. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication. The trial resulted in conviction. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. 'X' has given conflicting and inconsistent statement at the behest of her mother. She is uncertain if the occurrence had taken place on 11.3.2013 or 12.03.2013. It is unbelievable that the appellant would dare to exhibit such an abnormal behavior in an open place during day-time. Defence version has been overlooked by the Trial Court for no cogent reasons. No independent public witness was associated at any stage of the investigation. Refuting the contentions of the appellant's counsel, learned Additional Public Prosecutor urged that there are no valid reasons to disbelieve the child witness aged around eight years. She has fully supported the prosecution and nothing material could be extracted in her cross-examination to suspect her.

4. The victim was aged around eight years. Her birth certificate (Ex.PW-7/A) records her date of birth as 2.3.2005. In her examination, 'X' claimed herself to be of eight years. Nothing was suggested to her in the cross-examination if she was more than eight years on the day of occurrence. Authenticity and correctness of the date of birth recorded in the MCD certificate (Ex.PW-7/A) was not suspected. Date of birth came to be recorded long before when 'X' parents had not anticipated such an unfortunate incident to happen in future to manipulate her age.

5. The occurrence took place at around 4.00 p.m. when the unsuspecting girl had gone to purchase 'chips' from a nearby confectionary shop. The incident was promptly reported to the police and DD No.36A came to be recorded at Police Station Dabri at 4.45 pm. The investigation was assigned to SI Beena. After recording victim's statement (Ex.PW1/A), the Investigation Officer sent rukka (Ex.PW-9/A) to lodge an FIR at 6.05 p.m. Apparently, there is no delay in lodging the complaint with the police. In her complaint, 'X' gave graphic detail as to how and in what manner, she was sexually assaulted by the accused on her way to the shop. In her 164 Cr.P.C.Statement (Ex.PW-1/B), she reiterated her version and assigned a definite and specific role to the appellant in the crime. Before recording her 164 Cr.P.C. statement in a congenial atmosphere, the learned Presiding Officer has put number of preliminary questions to ascertain if she was completely free to make statement without any fear or pressure and was able to give rational answers. After recording her satisfaction that the victim was able to understand the questions put to her, her statement under Section 164 Cr.P.C. (Ex.PW-1/B) was recorded. In her court statement as PW-1 again the learned Presiding Officer ensured that 'X' had given her statement

voluntarily without any fear or pressure. The victim proved the version given to the police and before the Magistrate without any variation. She deposed that on 12.03.2013 around 4.00 p.m. when she was going alone to buy chips from the confectionary shop, the accused met her calling 'Gudia, Gudia'. When she went to him, the accused held her by embracing with his hand on her waist and started talking to her in a filthy manner. The accused told her that she had seen her mother taking bath and she was having very long pubic hair and asked her to tell her mother to shave them all. The accused further told her that he was also having photograph of her mother while taking bath and would show to her next day. The accused told her to move forward as one cartpuller was standing nearby. Thereafter, the accused touched her place of urination. Thereafter she ran away and came to the confectionary shop. The accused followed her to the said shop and thereafter he left. She came to her house taking alternative route and apprised her mother about the occurrence. Her father present in the house that time was informed. Thereafter her father took her in search of the accused. The accused found sitting at the bus stand was apprehended. She further informed that her statement (Ex.PW-1/A) was recorded by the police. She recorded her 164 Cr.P.C. statement (Ex.PW-1/B). She was categorical to identify the accused as the perpetrator of the crime.

6. In the cross-examination, she disclosed that she was a student of 4th class. The accused had met her before her reaching the confectionary store. She fairly admitted that some persons were sitting in the street but she was not acquainted with them. She was firm to say that the statement given by her was not tutored. She denied that her identification of the accused was at the instance of the other victim present in the police station.

7. On scanning the entire statement of the child victim, it reveals that nothing material could be elicited in the cross-examination to suspect the version given by her. Material facts deposed by her in her examination-in-chief remained unchallenged in the cross-examination. No suggestion was put in the cross-examination that the accused did not have any interaction with the victim at the relevant time. No ulterior motive was attributed to the child witness for implicating him in the grievous offence. In the absence of any prior animosity or ill-will, the child witness is not expected to level such serious allegations of sexual assault upon her to put her in disrepute. The accused was unacquainted with the victim and had met her on the way. She had described him as an 'old' man.

8. On perusal of various statements made by the witness at different stages of the investigation/trial, it transpires that her version is consistent throughout. In all her statements, she has implicated the accused with certainty and has attributed a specific role to him. No valid reasons exist to disbelieve the statement of the prosecutrix.

9. PW-3 and PW-4, 'X's parents, have corroborated her version in its entirety. They have deposed that soon after the occurrence on return to the home, the victim apprised them about the occurrence and her father went for search of the accused. It was spontaneous reaction of X's parents on hearing her plight. On the identification by the prosecutrix, the culprit was apprehended soon after the occurrence at the bus stop.

10. Minor discrepancies regarding the exact date of occurrence is of no consequence. The occurrence had taken place on 12.03.2013 and the statement of the child witness was recorded on 23.10.2013, after a gap of about seven months. Possibility of the child witness to have forgotten the

exact date after such a long gap cannot be ruled out. The discrepancies pointed out by the learned defence counsel are insignificant and do not affect the core of the prosecution case. The impugned order is based upon fair appraisal of the evidence and warrants no intervention.

11. Minimum sentence prescribed under Section 10 POCSO Act is Rigours Imprisonment for five years which cannot be modified or altered. The appellant was aged around 60 years and victim was a child aged around eight years akin to his daughter. The appellant who was involved in various other criminal cases dared to outrage the modesty of an unsuspecting innocent tiny girl aged around eight years taking advantage of her loneliness. The accused deserves no leniency.

12. The appeal lacks merits and is dismissed. All pending application(s) also stand disposed of.

13. Trial Court record along with the copy of the order be sent back forthwith. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

SEPTEMBER 29, 2016/sa