

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

+ **CRL.A. 1261/2014**

% Reserved on: 25th July, 2016
Decided on: 28th July, 2016

ROHIT SAINI Appellant

Through: Mr. Rohit Gupta, Advocate.

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP with SI
Devendra Kumar, Sarai Rohilla.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The instant appeal has been filed by the appellant Rohit Saini challenging the impugned judgment dated 24th July, 2014 whereby the appellant has been convicted for the offences punishable under Sections 363/506 Part I IPC and Section 10 Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') in FIR No. 375/2013 registered at PS Sarai Rohilla and the order on sentence dated 30th July, 2014 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/- in default to undergo simple imprisonment for a period of fifteen days for the offence punishable under Section 10 of POCSO Act and rigorous imprisonment for a period of six months for the offence punishable under Section 506 Part I IPC.

2. The prosecution case is that on 27th August, 2013 around 3:35 PM, DD No. 24A was received informing that a girl aged 5-6 years has been

raped at Gali no. 7, Padam Nagar, SBI, Sarai Rohilla. On the receipt of DD No. 24A, SI Benktesh PW-5 along with Ct. Shokeen PW-6 reached the place of incident. The complainant (grandmother of the prosecutrix) along with the prosecutrix aged about 7 years and public persons were present at the spot. It was revealed that the PCR van had already taken the appellant to the hospital. PW-1, the complainant stated that the prosecutrix was aged 7 years and studied in class 2. The prosecutrix used to come back in school van at Padam Nagar road. She stated when she was going to pick up the prosecutrix around 3:15 P.M., her neighbour Rekha PW-3 informed her that one boy had taken her to the house of rationwala. Thereafter, PW-1 reached the said house and saw that the appellant Rohit had removed his half pants and had also removed the half pants of the prosecutrix. The prosecutrix was on his lap and he was caressing her vagina with one hand and had gagged her mouth with another hand. She raised alarm on which public persons gathered there, apprehended the appellant, gave him beatings and called on 100 number. PW-1 further stated that she had enquired from the prosecutrix and since she was not raped (galat kaam), PW-1 refused for her medical examination. She stated that the appellant was her neighbour and trying to sexually assault the prosecutrix. On the basis of the statement of PW-1 recorded by SI Alma Minz PW-7, FIR Ex. PW-4/A was registered under Sections 376/511 IPC and Section 8 of POCSO Act. Charges under Sections 376/511/506 IPC and Section 6 read with Section 18 and Section 10 of POCSO Act were framed against the appellant.

3. Learned counsel for the appellant contends that the prosecution case is based on the testimony of PW-1 and PW-2 but no reliance can be placed on their depositions as there are material contradictions in their depositions.

PW-1 deposed that the appellant was caressing the vagina of the prosecutrix but the prosecutrix PW-2 did not depose so. Furthermore, there was no medical examination of the prosecutrix. It is further contended that there was no evidence that the clothes recovered from the place of occurrence belonged to the appellant. Learned counsel for the appellant further contends that the offence punishable under Section 10 of POCSO cannot be invoked as there was no aggravated sexual assault as defined under Section 9 (m) of the POCSO Act.

4. Learned APP for the State on the other hand contends that PW-3 Rekha, being an independent witness, supports the prosecution case. It was further alleged that the presence of the appellant at the place of incident cannot be disputed because he was apprehended from the spot itself. The contradictions in the testimony of PW-1 and PW-2 are minor in nature. The appellant was apprehended by the PCR officials in a naked condition which corroborates the version of PW-1 and PW-2.

5. PW-1 the complainant, grandmother of the prosecutrix deposed in sync with his statement on which the FIR was registered. During her cross-examination, she denied the suggestion that when she reached the house of the appellant, the prosecutrix was standing separately.

6. After satisfying that the prosecutrix PW-2, who was aged 7 years at the time of incident, was capable to understand the questions and give rational answers and competent to depose correctly about the incident, the Trial Court recorded the statement of the prosecutrix. On being asked what did the appellant say to her, the prosecutrix stated that the appellant told that her friend Nicky was calling her. She further answered that the appellant took her in a house on the first floor. On being asked what did the appellant

do, she stated that the appellant removed her underwear while she was sitting on the stairs and gagged her mouth by his one hand. She further stated that the appellant didn't do anything else and in the meantime, her grandmother came. PW-2 further stated that the appellant had scared her by saying not to raise alarm otherwise he would kill her. PW-2, the prosecutrix also identified the appellant.

7. PW-3, Rekha, who was the neighbour of the complainant, stated that when the prosecutrix was coming from the school, she was present in the balcony of her house at second floor. She saw one boy taking the prosecutrix to the house of Puneet rationwala. In the meantime, PW-3 saw the complainant PW-1 and informed that one boy had taken the prosecutrix. Thereafter, the complainant went to the said house, raised alarm and public gathered there. During her cross examination, PW-3 stated that the appellant had taken the prosecutrix inside the house about 3-5 minutes prior to her informing the complainant about the prosecutrix,

8. PW-7 SI Alma Minz stated that one red and black colour lower and one under wear was recovered at the instance of the appellant. She further stated that the appellant told that those clothes belonged to him. During her cross examination, PW-7 stated that when she reached the hospital, the appellant was wearing half pant. She further stated that when she reached the spot, the prosecutrix was wearing frock and underwear. PW-2 was not wearing any lower over the underwear. She further stated that the PCR officials told her that when they took the appellant, he was naked. PW-7 further deposed that during the investigation, no witness told her that the recovered clothes belonged to the appellant.

9. PW-8, Dr. Anubha Aggarwal, CMO Hindu Rao Hospital prepared the

MLC Ex. PW-8/A of the appellant and stated that he had sustained some injuries. It was also mentioned in the MLC that the appellant was without clothes.

10. The contradictions in the testimony of PW-1, the complainant and PW-2, prosecutrix are not material to discredit the testimony of the complainant for the reason that the prosecutrix being a child of 7 years, she deposed what she could comprehend. The testimony of PW-3, Rekha who is an independent witness further corroborates the version of PW-1 and PW-2. Furthermore, the appellant was apprehended naked and the same is corroborated by the MLC of the appellant.

11. Upholding the impugned judgment of conviction and order on sentence, the appeal is dismissed.

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

13. TCR be returned.

(MUKTA GUPTA)
JUDGE

JULY 28, 2016
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