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

DECIDED ON : JUNE 02, 2016

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CRL.1357/2014 & CrI.M.B.3474/2015

BADKU

..... Petitioner

Through : Ms.Arundhati Katju with
Mr.Himanshu Suman, Advocate.

versus

STATE

..... Respondent

Through : Mr.Raghuvinder Varma, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Aggrieved by a judgment dated 06.01.2014 of learned Additional Sessions Judge in Sessions Case No.173/13 arising out of FIR No.276/13 registered at Police Station Begumpur by which the appellant-Badku was held guilty for committing offence under Sections 9(1) and (m) punishable Section 10 POCSO Act and under Section 354/506 IPC, he has preferred the instant appeal. By an order dated 08.01.2014, he was sentenced to undergo Rigorous Imprisonment for five years with fine ₹2,000/- under Section 10 POCSO Act and Rigorous Imprisonment for two years under Section 506 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 24.08.2013 in a society in Pocket 6, Sector-24, Rohini, the appellant working as Chowkidar outraged the modesty of a child 'X' (assumed name) aged around eight years and criminally intimidated her. The incident was reported to the police of Police Station Begumpur vide Daily Diary (DD) No.79-B (Ex.PW-5/A) on 22.08.2013 at 8.57 p.m. The investigation was assigned to SI Sapan Kumar who with Ct. Rajesh went to the spot. After recording statement of victim's mother-Rajni Jain (Ex.PW-3/A), the Investigating Officer lodged First Information Report. Statement of witnesses conversant with the facts were recorded. 'X' recorded her 164 Cr.P.C.statement. The accused was arrested and medically examined. Upon completion of investigation, a charge-sheet was filed against the appellant in the court. The prosecution examined six witnesses to establish its case. In 313 Cr.P.C. statements, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. 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. In the statement (Ex.PW3/A), the victim's mother-Rajni gave detailed account as to how and in what manner the accused, Chowkidar in the society, used to outrage the modesty of her daughter (aged around eight years) for the last about three months. The accused used to kiss her; touch her breast. The victim did not disclose the incident due to threats extended by the accused. On 22.08.2013 when her daughter apprised her about the occurrence, she confronted the appellant who was thrashed by the public. The complainant made a call at 100. In 164 Cr.P.C.statement

(Ex.CW-1/A) recorded on 24.08.2013, the victim implicated the appellant to be the individual who used to outrage her modesty in various manners by touching her on private parts inappropriately. The prosecutrix did not disclose the obnoxious conduct of the accused to her parents due to threats extended by him. The prosecutrix appeared before the court as CW-2. Before recording her statement, the learned Presiding Officer put various questions to ascertain if she was competent to give rational answers. After recording her satisfaction that the witness was capable of understanding the questions and answer them reasonably, her statement was recorded without administering oath. The Trial Court made the victim comfortable during her deposition. Drawings collectively exhibited as Annexure P-1 were drawn by her. These drawings show that the victim was quite intelligent to understand the questions.

4. In her court statement, the victim implicated the accused to be the perpetrator of the crime. She elaborated that the accused used to tease her; and touch her breast. She pointed out towards her private parts with a finger to demonstrate as to where the accused used to touch her. She further explained that whenever she used to go upstairs in the lift, the accused used to stop it in between and indulge in bad acts. It was being done for the last about three months. Due to threats extended by him to kill her parents, she had kept silence. She gave a specific incident when on a day she had gone to give food to the accused, he had outraged her modesty and attempted to drag her in the bathroom. In the cross-examination, the material facts deposed by the innocent child remained unchallenged and unrebutted. She denied to have given a tutored statement at the instance of her parents. No ulterior motive was assigned to the child witness to make a false statement. In the

absence of any prior animosity, the victim or her parents are not expected to implicate the appellant, who used to work as a Chowkidar in the said society and to whom considering a poor person they used to provide food occasionally.

5. PW-2 (Parveen Jain) and PW-3 (Rajni Jain), victim's parents have corroborated her version in entirety and no inconsistency or infirmity could be extracted in their cross-examination. PW-4 is Pankaj Jain, who had made a telephone call at 100 to the police.

6. The appellant did not furnish any plausible explanation to the incriminating circumstances. In 313 statement, for the first time, he pleaded that his false implication was due to the fact that he had seen the complainant in a compromise position with a doctor who used to visit her house after the departure of her husband. This unfounded allegation has no substance. The name of the said doctor has not been given. No such suggestion was put in the cross-examination of PW-3. It is highly unbelievable that the accused saw the victim's mother in a compromise position with any individual. It is further alleged that before the incident, the complainant's husband used to give beatings to his wife and children. There is no substance in the allegation without any cogent evidence on record.

7. The Trial Court has discussed all the relevant facts minutely. The judgment based upon fair appreciation of evidence, needs no intervention. The conviction is affirmed. The sentence order is based on fair reasoning and deserves no modification, considering the gravity of the offence whereby a child aged around eight years was sexually assaulted. The court can well understand the trauma of the child and her parents.

8. The appeal lacks merits and is dismissed. Trial Court record along with the copy of the order be sent back forthwith. Copy of the order be sent to Superintendent Jail for information.

(S.P.GARG)
JUDGE

JUNE 02, 2016/sa

