

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

**RESERVED ON : 22nd NOVEMBER, 2016
DECIDED ON : 7th DECEMBER, 2016**

+ CRL.A.818/2015

BRIJ LAL Appellant

Through : Mr.Jivesh Tiwari, Advocate.

versus

THE STATE (NCT OF DELHI) Respondent

Through : Mr.Amit Gupta, APP.

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

S.P.GARG, J.

1. Present appeal is directed against a judgment dated 24.11.2014 of learned Addl. Sessions Judge in Sessions Case No. 119/2013 emanating from FIR No. 266/2013 PS Vasant Kunj (South) by which the appellant - Brij Lal was held guilty for committing offence under Section 6 POCSO Act. By an order dated 05.12.2014, he was awarded RI for ten years with fine ₹10,000/-.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 26.06.2013 at around 11.00 a.m. the appellant sexually assaulted the victim 'X' (assumed name) aged around four and a half years at his house. The incident was conveyed to the police and Daily Diary (DD) No. 60A (Ex.PW-1/A) came to be recorded on 29.06.2013 at 11.40 p.m. The

investigation was assigned to W/SI Brahmo Devi who went to the spot. After recording the statement of victim's mother (Ex. PW-5/A), she lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Statements of the witnesses conversant with the facts were recorded. The accused was arrested and medically examined. Upon completion of investigation, a charge-sheet was filed against the appellant. To bring home the appellant's guilt, the prosecution examined twelve witnesses in all and relied upon various documents. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

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. The Trial Court committed grave error to base conviction on the testimonies of interested witnesses without independent corroboration. It overlooked vital infirmities and inconsistencies in the version narrated by PW-4 (the victim) and PW-5 (Indu) - her 'mother'. Learned Addl. Public Prosecutor urged that the victim is consistent throughout and no valid reasons exist to disbelieve her.

4. The victim, in the instant case, is a child aged around four and a half years. This age finds reflection in the school record (Ex.PW-3/A) where her date of birth has been described to be 24.10.2008. As per admission register (Ex.PW-3/C), 'X' got admission in Sarvodaya Kanya Vidhyalaya, Rajokari, New Delhi, on 28.03.2013. PW-3 (Satya Pal), Lab

Assistant, Sarvodaya Kanya Vidhyalaya, Rajokari, New Delhi, has proved the entry in admission form (Ex.PW-3/A). Date of birth recorded in school records at the time of X's admission is not under challenge. No sound reasons prevail to disbelieve the date of birth as it was also recorded in the certificate issued by MCD (Ex.PW-3/B). The appellant did not suggest any other date of birth. X's parents never anticipated such an unfortunate incident to happen in future to manipulate her age at the time of getting admission in the school. Needless to say, the victim was aged around 5 years at the time of occurrence.

5. The unfortunate incident took place on 26.06.2013 at around 11.00 a.m. when 'X' had gone to appellant's house to play. In 313 Cr.P.C. statement, the appellant admitted that he used to live in the adjoining rented accommodation and the victim used to come and play in the room. In the complaint (Ex.PW-5/A), Indu – victim's mother gave graphic account of the incident and disclosed as to how and under what circumstances 'X' was defiled and ravished. The appellant was named in the complaint to be the perpetrator of the crime to whom the child witness used to call 'Buddha'. In her 164 Cr.P.C. statement (Mark A) the victim implicated the appellant for the crime and assigned a specific and definite role to him. In her Court statement as PW-4, she proved the version given by her to the police and before the learned Metropolitan Magistrate without any variation. Before her examination, learned Presiding Officer had put various questions in a preliminary enquiry to ascertain if the victim was able to give rational answers to the questions put to her. After recording her satisfaction, learned Presiding Officer recorded X's statement without oath. 'X' deposed that the accused who lived in the rear portion of the house sexually assaulted her

“Isne apni ungli mere susu me daali”. She further deposed that she was given ₹5 when she started weeping. She was cross-examined but nothing emerged therein to suspect her statement. Material facts deposed by her in examination-in-chief remained unchallenged and uncontroverted. Nothing contradictory came out in the cross-examination and the substance of the statement remained totally un-impeached.

6. On perusal of various statements made by the child witness at different stages of the investigation/trial, it reveals that her version is consistent throughout. In all her statements, she has implicated the accused with certainty and has attributed specific role to him. No ulterior motive was assigned to the child witness to level serious allegations of sexual assault. In the absence of any prior animosity or enmity, the child victim is not expected to level all such allegations suddenly against an individual aged around 47 years residing in her neighbourhood since long. Unless such an incident really happens, the victim or her parents would be highly reluctant to rope in an innocent person for the ghastly crime to put the honour of their child at stake. There are no cogent reasons to disbelieve the statement of the child witness. It is true that the Court must be extremely cautious and careful in placing reliance on the testimony of a child witness as there are chances of coaching or tutoring. A child witness is prone to tutoring and hence the court should look for corroboration. In the instant case, nothing has emerged to infer if 'X' was a tutored witness.

7. PW-5 (Indu) - 'X's mother has corroborated her version in its entirety. Similarly is the statement of PW-6 (Prakash Chand) – her father. There is no inconsistency between the ocular and medical evidence. 'X' was medically examined vide MLC (Ex.PW-5/B) on 30.06.2013 at Safdarjung

Hospital, New Delhi. In the alleged history recorded in the MLC, name of the accused Brij Lal finds mention alleging that he sexually molested the victim on 26.06.2013. As per MLC (Ex.PW-5/B), there was inflammation of introitus which indicated that prosecutrix was sexually assaulted. Since the MLC was prepared after three days, non-detection of injuries on the victim's body, did not discredit prosecutrix' version.

8. The defence of false implication does not inspire confidence. In 313 Cr.P.C. statement, the appellant did not give plausible explanation to the incriminating circumstances proved against him. He did not claim if his false implication was due to any specific ulterior motive. He did not assign any ill-will to the victim or her family members to falsely implicate him. The accused did not examine any witness from the neighbourhood in his defence to falsify the victim's statement that no such incident had occurred at the relevant time. He did not deny his presence at the spot at the time of crime.

9. True, there is a delay of three days in lodging the FIR with the police. The delay, however, has been duly explained. The information about the occurrence was conveyed to the police on 29.06.2013 at about 11:40 p.m. when DD No. 60A (Ex.PW-1/A) came to be recorded at the Police Station. PW-11 (W/SI Brahmo Devi) went to the spot and met PW-5 (Indu), PW-6 (Arjun) – her husband and their daughter 'X' and involvement of the appellant - Brij Lal emerged. He was not found present. When her husband was apprised about the incidents he enquired from the accused who after closing the room fled the spot. When after about three days, the accused returned to the house, immediately the police was informed. The

delay thus cannot be considered as fatal as parents for obvious reasons do not intend to highlight the issue at the first instance.

10. In ‘*Satpal Singh Vs. State of Haryana*’, 2011 (2) ACR 1387 (SC), Hon’ble Supreme Court held as under :

“So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.”

11. Minor inconsistencies/contradictions highlighted by counsel are not fatal. The statement of the child witness needs no corroboration and can be acted upon. The judgment based upon fair appreciation of the evidence needs no intervention. The conviction is upheld.

12. The appellant was awarded RI for ten years with fine ₹10,000/-. Nominal Roll dated 01.10.2015 reveals that he has already undergone two years, three months and two days incarceration besides remission for two months and fourteen-days. His overall jail conduct is satisfactory. Sentence Order records that the appellant was 47 years of age. He exploited the innocence of a child aged around 5 years. It is a case of child sexual abuse. 'X' was like appellant's daughter. Sexual assault on a tender aged girl is bound to create a permanent impact and impression on the mind of such a

girl, which may permanently affect her adversely. Considering the gravity of the offence and the nature of crime committed by the appellant aged 47 years, no leniency is called for. No sufficient and adequate reasons exit to modify the sentence order. The appeal lacks merit and it is dismissed.

13. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

DECEMBER 07, 2016 / *tr*

