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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 16, 2016

DECIDED ON : MAY 20, 2016

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Crl.A.1032/2015

RAJU KUMAR SINGH

..... Appellant

Through : Mr.S.B.Dandapani, Advocate.

VERSUS

STATE

..... Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant Raju Kumar Singh has challenged the legality and correctness of a judgment dated 19.08.2015 of learned Additional Sessions Judge in Sessions Case No.72/14 arising out of FIR No.166/14 registered at Police Station Shalimar Bagh by which he was held guilty for committing offence punishable under Section 342 IPC and Sections 10 and 12 of POCSO Act. By an order dated 25.08.2015, he was sentenced to undergo Rigorous Imprisonment for five years with fine ₹5,000/- under Section 10 of POCSO Act; Rigorous Imprisonment for two months with fine ₹500/- under Section 342 IPC; and, Rigorous Imprisonment for one year

with fine ₹1,000/- under Section 12 of POCSO AC. The sentences were to operate concurrently.

2. The incident whereby the child was sexually abused was reported to the police vide Daily Diary (DD) No.87B (Ex.PW-3/A) on 21.02.2014 at around 10.50 p.m. The Investigating Officer after recording the statement of victim's mother (Ex.PW-4/A) lodged First Information Report. The prosecutrix was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of various offences in the court. To substantiate its case, the prosecution examined 13 witnesses. The appellant denied his involvement in the crime and pleaded false implication; he did not produce any evidence in defence. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been filed.

3. I have heard the learned counsel for the parties and have examined the file. The occurrence took place during day time at around 3.30 p.m. when victim's mother Manju was away at her place of work. When she returned in the evening at around 8.30 p.m., the victim narrated the incident to her. She immediately went to appellant's house but he was not present there. On his arrival at around 10.00-10.30 p.m., she confronted and slapped him. The incident was reported immediately to the police and DD No.87-B came into existence. In her statement (Ex.Pw-4/A), Manju gave detailed account as to how and in what manner, her daughter 'X' (changed name) aged around five years was sexually assaulted by the appellant in her absence. The appellant was named in the FIR to be the perpetrator of the

crime. In 164 Cr.P.C. statement (Ex.PW-2/F) the victim disclosed that the accused had taken her inside his room and had touched her private parts. She further disclosed that the accused had put off her underwear and had touched her private parts with tongue. In her 164 Cr.P.C. statement (Ex.PW-2/B), the complainant Manju also reiterated her version given to the police at first instance and implicated the accused to be the author of the crime.

4. Before recording her Court statement, the victim was asked various questions to find out if she was able to give rational answers to the questions put to her. The Presiding Officer after recording satisfaction that 'X' was competent to give her statement voluntarily, recorded her statement. She categorically attributed specific role to the accused in outraging her modesty in his house. She deposed that the accused had put off his underwear; he had also put off her underwear and touched her private parts; he had shown her nude photos on his mobile and had touched her private parts with his tongue. In the cross-examination, she disclosed that on arrival of her mother, she apprised her about the occurrence. She further elaborated that the accused had done 'gandi baat' with her sister too and had shown her nude photos. She denied if the statement given by her in the court was tutored by her mother.

5. PW-4 (Manju), victim's mother corroborated her version in its entirety without any major variation. Statement of 'Y' (assumed name), victim's sister, was recorded as CW-1. In her statement 'Y' too deposed that the accused had taken her inside his house along with her sister 'X'; had shown her nude photos on his mobile; had disrobed her sister 'X'; and,

had put off his underwear. In the cross-examination, she denied if she had given statement at the behest of her parents.

6. On scanning the testimonies of all these witnesses, it stands established that they are consistent throughout and despite cross-examination, nothing material could be extracted to disbelieve them. The witnesses had no ulterior motive to falsely implicate the accused for the heinous offence. They have corroborated each other without any inconsistencies and infirmities. The incident was reported without delay and the appellant was named to be the perpetrator of the crime. Specific and define role was assigned to him. The accused taking advantage of the loneliness of the small children in the house had dared to outrage their modesty. It has come on record that victim's father Sunil was confined in Tihar Jail in a decoity case. Her mother used to go at her place of work during day time. It gave an opportunity to the appellant living in the neighbourhood to exploit the innocence of the children. In the absence of any prior animosity or enmity, the victims and their mother are not expected to falsely implicate the appellant in a case of sexual abuse to bring themselves in disrepute. The defence put up by the accused deserves outright rejection. Nothing has come on record to show if on any particular date ₹10,000/- were borrowed by victim's father from him or that to avoid the said payment, the accused was falsely implicated in this case. For a trivial issue over return of money, the victim's parents are not expected to use their kids.

7. The Trial Court has discussed all the relevant aspects and the impugned order based upon fair appraisal of the evidence deserves no intervention. Sentence order is based upon fair reasoning and warrants no

interference except that default sentence for non-payment of fine shall be Simple Imprisonment for two months instead of nine months and fifteen days in all. Other terms and condition of the sentence order are left undisturbed.

8. The appeal stands disposed of in the above terms. Trial Court record along with the copy of the order be sent back forthwith. Intimation be sent to Superintendent Jail.

(S.P.GARG)
JUDGE

MAY 20, 2016/sa

