

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

% Judgment reserved on: August 02, 2016
Judgment delivered on: August 22, 2016

+ **CRL.A. 1269/2015**

ABDUL MAZID

..... Appellant

Represented by: Mr. M.S. Ahluwalia, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Yad Ram Yadav PS
Tuglak Road.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the instant appeal, the appellant Abdul Majid challenges the impugned judgment dated 14th September, 2015 whereby he has been convicted for the offences punishable under Sections 323/506 Part I IPC and Section 10, Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') in FIR No. 59/2014 registered at PS Tuglak Road and the order on sentence dated 24th September, 2015 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹10,000/- in default to undergo simple imprisonment for a period of five months for the offence punishable under Section 10 of POCSO Act, rigorous imprisonment for a period of six months and to pay a fine of ₹1,000/- in default to undergo simple imprisonment for a period of two months for offence punishable under Section 323 IPC and rigorous imprisonment for a period of one year and to pay a fine of ₹3,000/- in default to undergo simple

imprisonment for a period of four months for the offence punishable under Section 506 IPC.

2. Process of law was set into motion on 26th May, 2014 around 11:00 PM when DD No. 35A was received informing that “meri beti age 6 years ke saath batameezi ki hai”. On receipt of the said DD, ASI Surender Sharma, PW-12 along with lady Ct. Suman reached the place of incident and met the prosecutrix PW-2 and her parents. The prosecutrix stated that on 26th May, 2014 around 10:30 P.M. when she was going back home from her father’s shop, one person caught her hand and took her inside his home. The person made the prosecutrix lay down on the floor, removed her pajami and sat on her. The person put paper on her and did something to his penis with his hand because of which some liquid fell on paper and he threw away the paper. On this, the prosecutrix started crying and that person consoled her, gave her ₹20/- and asked her to remain quite. When the prosecutrix did not stop crying, he slapped her. After which she ran away from there and came to her house and narrated the entire incident to her mother PW-8. Thereafter, PW-8 told PW-1, father of the prosecutrix, about the incident and the prosecutrix took them to the place of incident and pointed out towards the person who assaulted her. On the basis of the statement of the prosecutrix, FIR Ex. PW-4/B was registered under Section 354A/323 IPC and Section 12 of POCSO Act. The appellant was arrested. Charge sheet was filed. Charges under Sections 363/366/354A/ 354B/323/506 Part I IPC and Section 10 and Section 12 of POCSO Act were framed.

3. Learned counsel for the appellant contends that there are contradictions in the statement of the PW-2 recorded under Section 164 Cr. P.C. and the statement given before the Court. PW-2 in her statement under

Section 164 Cr. P. C. stated that at the time of alleged incident she was with one Taiba who is the granddaughter of the appellant and in her deposition before the Court she stated that Taiba is her friend whereas in her cross examination, she stated that she does not know any girl by the name of Taiba. Furthermore, there are contradictions in the testimony of the prosecutrix, her mother PW-8 and her father PW-1 with respect to whom the incident was narrated first. It was further contended that the prosecutrix used the word 'a person' or 'one uncle' in the FIR whereas during her cross examination, she stated that the appellant is her fufa. There was no semen detected from the samples of the prosecutrix as per the FSL report exhibited as Ex. PW-9/A.

4. Learned APP for the State on the other hand contends that the contradictions in the testimony of the prosecutrix under Section 164 Cr. P.C. and before the Court are minor in nature and are not fatal to the prosecution case. The contention with respect to the non-presence of semen has been dealt by the learned Trial Court appropriately. There being no merit in the appeal, the same be dismissed.

5. The prosecutrix who was examined as PW-2 deposed in sync with her statement made before the police and before the Magistrate under Section 164 Cr.P.C. She also stated that the appellant was her 'fufa'. She stated that the appellant took her inside the shop. She also deposed that when she went to her house after the incident, she met her sister Muskan outside the house to whom she told the whole incident. During her cross examination, she stated that she did not know any girl by the name of Taiba. She also denied the suggestion that Taiba was playing with her on the day of incident. Later, she stated that she knows the father of Taiba. The contradictions pointed out

by the learned counsel for the appellant during the course of hearing have not been confronted to the witness. Further the facts that instead of stating that she was roaming around with her friends, the prosecutrix stated that she was coming back from her father's shop and Taiba was not her friend or she did not know any Taiba are not fatal to the prosecution case. The prosecutrix has stuck to her version with regard to the aggravated sexual assault as defined under Section 9 and punishable under Section 10 of the POCSO Act. Further in the cross-examination she stated that she did not know any girl with the name Taiba but it was corrected by her in cross-examination when she says that she knew Taiba and her house was at a little distance from her own house.

6. Father of the prosecutrix corroborated her version. During his cross examination, he stated that the prosecutrix did not convey him regarding misbehaviour/molestation as it was conveyed to PW-8, mother of the prosecutrix who subsequently narrated the same to him. He also stated that he did not know whether the granddaughter of the appellant namely, Taiba was the friend of the prosecutrix.

7. Mother of the prosecutrix and Ms. Sharmeela, Counselor, DCW, who was examined as PW-7 also corroborated the version of the prosecutrix PW-2. PW-8 in her cross examination stated that Taiba was the granddaughter of the appellant. PW-8 denied the suggestion that the appellant who was her Nandoi was also running a shop of grocery in the jhuggi in the same locality where her husband has the grocery shop and due to this rivalry, the appellant has been falsely implicated.

8. The FIR was registered in the present case very promptly. The appellant was apprehended immediately after the incident. Nothing material

could be elicited from the cross-examination of the various witnesses. Further as per Section 29 of POCSO Act presumption is required to be drawn by the Court against a person prosecuted for committing or abetting or attempting to commit any offence defined under Section 9 and punishable under Section 10 of POCSO Act. The appellant was required to rebut the said presumption which onus the appellant has failed to discharge.

9. Considering the evidence on record, I find no reason to interfere in the impugned judgment of conviction and order on sentence. The appeal is dismissed. The appellant will undergone the remaining sentence. The bail bond and the surety bond are cancelled.

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

11. TCR be returned.

(MUKTA GUPTA)
JUDGE

AUGUST 22, 2016
‘vn’