

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

% *Judgment reserved on: August 02, 2016*
Judgment delivered on: August 17, 2016

+ **CRL.A 1245/2015**

KAZEEM @ BUNTY Appellant
Represented by: Ms. Saahila Lamba, Adv.

versus

STATE Respondent
Represented by: Ms. Rajni Gupta, APP

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the instant appeal the appellant Kazeem @ Bunty challenges the impugned judgment dated 13th October, 2014 whereby he has been convicted for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') in FIR No. 401/2012 registered at PS Madhu Vihar and the order on sentence dated 21st October, 2014 directing him to undergo imprisonment for a period of ten years and to pay a fine of ₹3,000/- in default to undergo simple imprisonment for three months for the offence punishable under Section 6 of POCSO Act. The learned Trial Court disbelieved the prosecutrix qua the offence of kidnapping as there was no enticement but since she was a child and not legally entitled to consent for sexual intercourse, the appellant was held guilty of offences punishable under Section 376(2)(i) IPC and 6 POCSO Act. In view of Section 42 POCSO Act, the appellant was convicted and sentenced for offence punishable under Section 6 POCSO Act.

2. Briefly the prosecution case is that Kishan Kumar, PW-1 went to the police station and lodged the complaint with SI Raj Pal, PW-7 stating that on 26th November, 2012 around 7:00 A.M. his cousin aged 14 years left for Rajkiya Sarvodya Kanya Vidhyalaya but neither did she reach the school nor did she return home. PW-1 suspected that some unknown person has taken her away after enticing her. On the basis of this statement, rukka was prepared and FIR was lodged under Section 363 IPC. On 28th November, 2012, PW-7 SI Raj Pal received information from a secret informer that that the prosecutrix PW-2 was present at Jeevan Garh Colony under PS Kuwarsi Aligarh. PW-7 along with Ct. Satender and Amit, brother of the prosecutrix went to the PS Kuwarsi. On 29th November, 2012, they along with the local police went to Gali No. 1, Jeevan Garh Colony where they found the appellant and the prosecutrix in the kitchen and at that time they both were without clothes. The appellant was arrested. Both were brought to Delhi and were medically examined. After investigation, the charge sheet was filed. Charges were framed under Section 363/366/376(2)(i) IPC and Section 6 of POCSO Act. Thereafter, the statement of the prosecutrix and the witnesses were recorded.

3. Learned counsel for the appellant contends that there is no discussion as to how Section 6 of POCSO Act has been made out. It is also contended that when the testimony of the prosecutrix is disbelieved qua kidnapping, how it can be believed that repeated sexual acts took place. Furthermore, there was no documentary proof with respect to the age of the prosecutrix.

4. Learned APP for the State on the other hand contends that the age of the prosecutrix was proved by the admission and withdrawal register exhibited as Ex. PW-5/A and the school leaving certificate Ex. PW-5/B. The

evidence of the prosecutrix is corroborated by the MLC of the prosecutrix.

5. Kishan Kumar, the complainant, was examined as PW-1. He stated that the prosecutrix was staying with them to take care of his aged mother. He further stated that he reported the matter to the police when the prosecutrix went missing. He along with the police officials had gone to Aligarh, UP and the prosecutrix was recovered from the house of the appellant's sister and the appellant was also present there. During his cross examination, PW-1 stated that when they reached the place of incident, he along with his friend Rajesh and the driver was sitting in the car parked in front of the appellant's house and the investigating officer along with other police officials had entered the house. He denied the suggestion that he used to beat the prosecutrix, because of which she left the house one day and herself returned back.

6. The prosecutrix was examined as PW-2. She stated that the appellant, who was residing in the adjoining street, used to visit their house for taking water when the water motor in his house was not in order. She stated that on 26th November, 2012 around 7:00 A.M., when she left her house for school, the appellant met her on the way and forcibly made her drink a cold drink after which she got unconscious. She regained some consciousness while in the train but fully regained consciousness at Aligarh, U.P. in the house of appellant's sister. Brother-in-law of the appellant was also there. They remained there for two days and during those days, the appellant raped her 3-4 times. During her cross- examination, PW-2 stated that she met the appellant who wanted to talk to her but she ignored and went to school. She stated that she had told police in her statement that while she was returning from her school, she met the appellant on the way. She further stated that

she told the police that the appellant was after her for last two days and she had told her bhabhi (Vandana) about it. She also deposed that she used to go to school with her friend Mamta. However, on the day of the incident PW-2 had gone to school from her bua's house and not from her mother's house. She further stated that her bhabhi Vandana had told about it to her parents, bua and her brother. Her family did not complain against the appellant but he was scolded by her family.

7. PW-5 Devender Mohan, Head Clerk, Govt. Girls Senior Secondary School, Nathupura deposed that as per the record, the date of birth of the prosecutrix was 5th October, 1998. Thus, on the date of offence, the prosecutrix was a minor.

8. Dr. Aparna Chaturvedi, Specialist Gynae, LBS Hospital was examined as PW-8. She stated to have seen the MLC Ex. PW8/A prepared by Dr. Pragati who had left the service of the hospital. As per the MLC, the hymen of the prosecutrix was ruptured.

9. Considering the evidence on record, including the age of the prosecutrix and her MLC, the prosecution has proved beyond reasonable doubt commission of offences punishable under Section 376(2)(i) IPC and Section 6 POCSO Act by the appellant. Consequently, the appeal is dismissed.

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 17, 2016
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