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

RESERVED ON: MARCH 27, 2017

DECIDED ON : MARCH 30, 2017

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CRL.A. 166/2016

SOFYAN

..... Appellant

Through : Mr.Jitendra Bharti with Mr.Naushad
Alam, Advocates.

VERSUS

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 10.12.2015 of learned Addl. Sessions Judge in Sessions Case No. 176/2014 arising out of FIR No. 756/2014 PS Prashant Vihar whereby the appellant-Sofyan was convicted for committing offences punishable under Section 10 of POCSO Act and Section 354 IPC. By an order dated 15.12.2015, he was sentenced to undergo Rigorous Imprisonment for five years with fine ₹5,000/- under Section 10 POCSO Act and Rigorous Imprisonment for five years with fine ₹5,000/- under Section 354 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 02.07.2014 in the evening, at the changing and shower

room near swimming pool, Bal Bharti Public School, Sector-14 Rohini, Delhi, the appellant committed aggravated sexual assault upon the victim 'X' (changed name) aged around eight years by inserting his hand into her panty with sexual intent. On return to home, 'X' narrated the incident to her mother. On the next day, complaint was lodged with the Principal of the school. The Investigation Officer after recording victim's statement (Ex.PW-2/A), lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The appellant was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant. In order to establish its case, the prosecution examined eleven witnesses. In 313 Cr.P.C. statement, the accused denied his involvement in the crime and pleaded false implication. The trial resulted in conviction as mentioned previously.

3. Appellant's counsel urged that the impugned judgment is based on conjectures and surmises. Material infirmities and inconsistencies emerging in the statements of the prosecution witnesses have been overlooked. No independent/public witness was associated at any stage of the investigation. Learned Addl. Public Prosecutor urged that no sound reasons exist to disbelieve the minor victim of sexual assault.

4. The crime took place on 02.07.2014 in the evening. On return to home 'X', aged around eight years, reported the incident to her mother. Without any delay, the complaint was lodged with the Principal of the School next day. In her statement (Ex.PW-2/A) given to the police 'X' gave detailed account as to how and in what manner the appellant outraged her modesty when she was taking shower before going for swimming in the

swimming pool. The appellant was named in the FIR and specific and definite role was assigned to him. In her 164 Cr.P.C. statement (Ex.PW-2/B) recorded on 07.07.2014, 'X' reiterated the version given to the police and implicated the appellant to be the perpetrator of the crime.

5. In her court statement while appearing as PW-2, 'X' proved the version given to the police and one before the Presiding Officer under Section 164 Cr.P.C. without any variation. She identified the appellant to be the individual who had outraged her modesty. She deposed that during her presence in the changing room to put her swimming costume, the appellant arrived and told that 'main seedha kar deta hu'. He took her costume and asked her to take out her panty till then. Despite her resistance to take out her panty, the appellant insisted for it saying that it would get wet. The girl was intelligent enough not to take off her panty. She went to shower room to take shower. The appellant again followed her there. When she was wearing her cap, the appellant pushed her towards the shower. When she was taking shower, the appellant intervened and pushed down the stripes of her costume (on the shoulder side) on the lower side and put his hand inside her costume from the top. He put his hand inside her costume in such a manner that it touched her body and even reached to her panty, it further touched her private part. She was constantly trying to stop the appellant but in vain. Thereafter the appellant left the spot.

6. In the cross-examination, the child witness clarified that female maid was not present when she had gone to the changing room. She reasoned that it was because most of the students had already left to the swimming pool. She fairly admitted that no hue and cry was raised by her at

the time of occurrence. She volunteered to add that she was constantly asking the appellant to stop.

7. On perusal of the entire statement of the prosecutrix, it reveals that despite searching cross-examination, no material infirmity could emerge to disbelieve her version. No ulterior motive was assigned to the witness to make false allegations of serious nature. The victim did not nurture any 'grievance' or 'ill-will' against the appellant to rope him in this case. Her statement throughout is consistent. Soon after the occurrence, she intimated her mother. Her mother lost no time to make complaint to the Principal of the school next day. All employees of the school except the appellant were present for identification. The appellant did not furnish any plausible reason as to why he opted not to report for duty next day. The appellant did not deny his presence at the spot at the relevant time.

8. PW-3, victim's mother, has corroborated 'X's version in its entirety. She also deposed that her daughter 'X', aged around eight years, narrated the entire incident to her as to how she was sexually assaulted by a plant operator employed at the swimming pool area of the school. On the very next day, she went to her school and reported the matter to the Principal. Again, this witness had no ulterior motive to falsely implicate the accused with whom she had no familiarity.

9. No sound reasons exist to discard the statement of the prosecutrix. The appellant had no occasion go to the changing room, the place where 'X' was taking shower. It was not his duty to assist the children in any manner at the changing room or the shower place. It is highly unbelievable that the minor child would level serious allegations of outraging her modesty to bring herself in disrepute. When the photographs

of the suspects were shown to her next day in the school, she was fair enough to exonerate all of them. When she was shown appellant's photo, she recognized him to be the perpetrator of the crime. In court also, she had no hesitation to recognize the individual who violated her body. The child who was subjected to sexual assault is not expected to bring it to the notice of the strangers soon after the occurrence. Her conduct is quite natural as on return to home in the evening she immediately apprised her mother about the occurrence. The defence that on the previous day, 'X' was did not come out of the swimming pool after the time was over, inspires no confidence. No such complaint was lodged by the appellant to the concerned Principal or 'X's parents about 'X's conduct in not adhering to the rules to remain in the swimming pool beyond the time. Moreover, for that petty issue, 'X' and her parents were not imagined to implicate the appellant using their own tiny daughter 'X'. No valid reasons, whatsoever, exist to suspect the version of the child and to disbelieve her.

10. Prosecution was able to establish beyond reasonable doubt that 'X' was aged around eight years at the time of incident. As per the testimony of PW-1 (K.D.Sharma), Dealing clerk, MCD office, Civil Line Zone, date of birth recorded was 11.10.2005. He proved the relevant document (Ex.PW-1/A) and (Ex.PW1/B). The age recorded in the birth certificate cannot be suspected as the victim's parents had not anticipated such an unfortunate incident to happen in future to manipulate her age. Moreover, no other date of birth, whatsoever, has been suggested to the prosecution witnesses.

11. The crime committed by the appellant is horrible as a child aged around eight years was ravished by an individual aged around 27 years.

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.

12. The impugned judgment based upon fair appreciation of the evidence deserves no intervention.

13. The sentence order is based upon fair reasoning. Minimum sentence prescribed under Section 10 of POCSO Act cannot be altered or modified.

14. The appeal lacks in merits and is dismissed.

15. 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

March 30, 2017/sa