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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 02, 2017

DECIDED ON : MAY 19, 2017

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CRL.A. 443/2016 & CRL.M.A.No.7162/17

JUDGE KUMAR @ DEEPAK

..... Appellant

Through : Mr.P.R.Aggarwal, Advocate with
Mr.Y.R.Sharma & Mr.Arun
Srivastava, Advocates.

versus

THE STATE OF NCT OF DELHI

..... 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 18.04.2016 of learned Addl. Sessions Judge in Sessions Case No. 204/2013 arising out of FIR No. 256/2013 at Police Station K.N.K. Marg whereby the appellant Judge Kumar @ Deepak was held guilty for committing offence punishable under Section 10 of POCSO Act and Section 506 IPC. By an order dated 22.04.2016, he was awarded Rigorous Imprisonment for five years with fine ₹5,000/- for offence under Section 10 POCSO Act; Rigorous Imprisonment

for one year with fine ₹3,000/- for offence under Section 506 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 26.06.2013 in between 07.15 a.m.to 7.25 a.m. in school van from I-2/6,7, Sector-16, Rohini to Sachdeva Public School, Rohini, the appellant sexually assaulted the prosecutrix 'X' (changed name) aged around fifteen years. The information regarding the occurrence was conveyed to the police on 27.06.2013. The investigation was assigned to SI Suresh Chand who after recording victim's statement (Ex.PW-2/A) lodged First Information Report. 'X' was taken for medical examination; she recorded her 164 Cr.P.C. statement. The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, the appellant was charge- sheeted. In order to establish its case, the prosecution examined ten witnesses. In 313 Cr.P.C. statement, the accused denied his involvement in the crime and pleaded false implication due to previous quarrels with victim's grandmother. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. I have heard the learned counsel for the parties. During the course of arguments, learned counsel for the appellant emphasized for modification of the sentence order as the appellant has undergone substantial period of substantive sentence; he is not a previous convict. It was further urged that the appellant is to maintain his small children.

4. Admitted position is that the prosecutrix 'X' was below 18 years of age on the day of occurrence. PW-1 (Vinay Kumar), Assistant Administrative Officer, Sachdeva Public School, Sector 13, Rohini, proved

the relevant record i.e.Ex.PW1/A, Ex.PW1/B and Ex.PW1/C showing the date of birth recorded therein as 12.1.1998. The date of birth was recorded much prior to the happening of the unfortunate incident. There was least possibility of victim's parents to manipulate her age. No cogent document has been placed on record by the appellant to show the prosecutrix to be aged around 18 years on the day of occurrence. It is also undisputed that the appellant used to take 'X' to her school in his van driven by him.

5. The occurrence took place on 26.6.2013 in between 7.15 to 7.25 a.m. in the appellant's van when 'X' was being taken to her school. There was no inordinate delay in lodging the FIR on 27.6.2013. In her complaint (Ex.PW-2/A), the complainant gave graphic detail of the incident and named the appellant to be the perpetrator of the crime. She attributed specific and definite role to the appellant. Her statement under Section 164 Cr.P.C. came to be recorded on 27.6.2013. Various questions were put by the learned Presiding Officer before recording her statement to ascertain if 'X' was making her statement voluntarily without any fear or pressure and was able to give rational answers to the questions put to her. After recording her satisfaction, the learned Presiding Officer recorded her 164 Cr.P.C. statement. In 164 Cr.P.C.statement, (Ex.PW-2/B), she reiterated her version given to the police at first instance and gave detailed account as to how and in what manner, she was sexually assaulted by the appellant. In her court statement as PW-2, she proved the version given to the investigating agency/court without major variation. She deposed that on 26.6.2013, she was studying in class XI at Sachdeva Public School, Sector 13, Rohini. On that day, she had gone to attend special classes in the school in the van driven by the appellant. She boarded the van at about 7.15 a.m. and sat on

the front side of the van. There was no other child in the van. She further deposed that on the way, the appellant started misbehaving her; touched her hands, shoulder, back, lower back, chest and face. She asked him to stop. On that the appellant pulled her cheek and kissed her. By that time, they had reached to the school. When she was getting down from the van, the appellant held her hand and threatened not to disclose the incident or else he would kill her. In the cross-examination, she disclosed that the appellant was beaten by her father and other persons/individuals when he had come next day to pick her for school. She denied if no such incident had happened or that the appellant was falsely implicated in the case.

6. On scanning the entire testimony of the prosecutrix, it reveals that no material infirmities could be extracted in the cross-examination to disbelieve 'X's version. No ulterior motive, whatsoever, was assigned to the child witness to make serious allegations of sexual assault against the van driver who was acquainted with her before the occurrence. In the absence of prior animosity or ill-will, 'X', a student of XI class was not imagined to level false allegations of sexual assault to bring herself in disrepute. The prosecutrix is consistent throughout and no valid reasons exist to discard her natural statement.

7. Her post-event conduct is quite natural and reasonable. After her class was over, instead of accompanying the appellant back to her home in the van, she preferred to call her father to take her. Victim's father came at the school and brought back the prosecutrix to home. She apprised her father about the crime. Victim's father called the appellant to come next day to confront him. When the appellant came next day to pick up the girl for

school, as usual, he was confronted by the victim's father and was also thrashed by the people from the locality for his misadventure.

8. Faint attempt was made by the appellant to wriggle out claiming that 'X' was not taken in the van to the school that day as school was closed due to summer vacation. True, it were summer vacations in the school. However, the prosecutrix has given reasonable explanation to visit the school that day as special classes were to be held for students of XI class. In the cross-examination, she informed that Ms. Shalini Gupta had marked her attendance in the school that day. Out of forty children in her class, 50% of them were present that day. She named some of the students Manisha, Utsav and Yash Modak present in the school that day. PW-10 (Dr. Ravija Prakash), Principal of the school, in her testimony proved the letter dated 9.10.2013 (Ex.PW-10/A) given by her. She deposed that as far as she remembered, the school was open on 26.6.2013 and the victim was present there to attend extra classes. Extra precaution was taken by the Trial Court to ascertain if the school was open on 26.6.2013. By an order dated 19.9.2013, the IO/SHO was directed to file report in this regard. Order-sheet dated 9.10.2013 reflects that the letter of the school Principal was placed on record by the Investigating Officer informing that on 26.6.2013 'X' was present in the school to attend extra classes.

9. Another attempt was made by the appellant to escape alleging his false implication due to non-payment of his dues by the victim's father. The defence deserves outright rejection. In the cross-examination, no suggestion was put if any dues were payable on any account to him. Similarly, nothing was suggested to PW-3 (Kamal Singh), victim's father, if any dispute had ever arisen over non-payment of dues to the appellant. The

appellant did not elaborate as to what were the dues and from which period it were not paid. For the first time in 313 statement recorded on 16.10.2015, the appellant claimed that when he had gone to take dues from the victim's father, he was falsely implicated in this case. He did not produce any evidence in defence to establish if any amount was due to him or any quarrel had taken place over its non-payment. 'X' was studying in a public school. Victim's parents were not expected to withheld the transport charges (if any) payable to the appellant. For a petty amount, the victim or her parents were not expected to use their own minor child to settle score. Defence pleaded by the appellant is conflicting and inconsistent.

10. The impugned judgment based upon fair appreciation of evidence deserves no intervention. The conviction recorded by the Trial Court is affirmed.

11. Regarding modification of the sentence order, I find no mitigating circumstances. The victim's parents had bestowed trust upon the appellant to send their minor child to the school in his van. The appellant instead of providing security to the innocent child, sexually assaulted her on the way taking advantage of her being alone in the van. It is to be borne in mind that POCSO Act was enacted with the objective that the children of tender age are not abused and exploited. The appellant, aged around 38 years, was aware of his nefarious design. He exploited the innocence of the unsuspecting child. The court can well understand the victim's trauma for indecent sexual assault suffered by her.

12. Section 10 POCSO Act prescribes minimum sentence i.e. Rigorous Imprisonment for five years. The sentence, thus, cannot be

modified or reduced. The crime committed by the appellant is horrible as the child around 15 years was defiled by an individual aged around 38 years.

13. Recently Coordinate Bench of this Court in *State vs. Sunil* (Crl.A.1232/2015) and *Sunil vs. State* (Crl.A.288/2017) decided on 2.5.2017 held that benefit of probation cannot be extended to the offender who is held guilty for an offence where minimum sentence is prescribed.

14. In the light of the above discussion, I find no merit in the present appeal and it is dismissed.

15. Trial Court record be sent back forthwith with the copy of the order.

16. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

MAY 19, 2017/sa