

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

Date of decision: June 16, 2017

+ CRL.A. 406/2015

RAM KHILAWAN

..... Appellant

Through: Mr. Amar Nath, Amicus Curiae
Counsel with Ms. Rakhi Dubey,
DHCLSC panel counsel

Versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, Additional
Public Prosecutor for respondent-
State with WSI Sunita Kumai,
Police Station Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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ORAL

1. In this appeal, challenge is to appellant's conviction under Section 9 of *The Protection of Children from Sexual Offences Act, 2012* and order of 28th November, 2014 vide which appellant has been awarded minimum sentence of rigorous imprisonment for five years with fine of ₹5,000/- and in default of payment of fine, appellant has been directed to undergo sentence of simple imprisonment for four months.

2. The facts as noted in the impugned judgment are as under:-

“The facts in brief, as stated in the complaint, are that on 19.02.2013, an information was received about the prosecutrix having been molested by the accused, while she was sitting at the bus stop at about 10:30 AM to return to her house, after finishing her school. The accused was present at the bus stop, was apprehended by the public and handed over to the police. On the complaint of the prosecutrix, a case under Section 354 IPC and 10 POCSO Act was registered against the accused. The investigations were carried out by W/SI Krishna who got registered the FIR. During the investigation, she got the medical examination of the prosecutrix conducted and also got recorded her statement under Section 164 Cr.P.C. She also got the accused medically examined in the hospital, after his arrest. She recorded the statements of the witnesses and after completion of the investigations, chargesheet was filed in the court on 19.10.2003 u/s 354A IPC and Section 10 POCSO Act.”

3. Out of deposition of ten witnesses recorded by the trial court, the material evidence is of prosecutrix (PW-8) and that of her father (PW-3) and also of public witness (PW-9). Apart from this, the remaining evidence pertains to school record of prosecutrix and regarding the steps taken during the investigation of this case. W/ASI Krishna (PW-10) is the Investigating Officer of this case. The stand of appellant-accused before the trial court was of denial, which has been discarded by trial court while convicting and sentencing him as noted hereinabove.

4. Learned Amicus Curiae Counsel submits that in pursuance to production warrants issued against appellant, he had appeared in court in

custody on the last date of hearing and with the assistance of learned Amicus Curiae Counsel and Ms. Rakhi Dubey, learned DHCLSC panel counsel, an interaction with appellant had taken place.

5. On behalf of appellant, it is contended that even if prosecution case is taken as it is, still the offence, if any, committed by appellant-accused would come within the domain of Section 8 of *The Protection of Children from Sexual Offences Act, 2012* and not under Section 9 of the aforesaid Act. It is pointed out by appellant's counsel that minimum sentence prescribed under Section 8 of the aforesaid Act is of three years, which appellant has already undergone. To submit so, attention of this Court is drawn to appellant's Nominal Roll of 31st March, 2017. It is further submitted on behalf of appellant that the conviction of appellant needs to be altered to one under Section 8 of *The Protection of Children from Sexual Offences Act, 2012*, and as appellant is a poor person, so, the sentence in default of payment of fine be also reduced.

6. On the other hand, learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that the sentence awarded to appellant-accused is just and fair in the facts of this case and needs no interference.

7. Upon hearing and on perusal of impugned judgment, order on sentence, evidence on record and appellant's Nominal Roll of 31st March, 2017, I find that it stands proved from the evidence on record that appellant had committed sexual assault on the prosecutrix. However, it is

to be seen as to whether the manner of sexual assault brings this case within the ambit of Section 8 or Section 9 of *The Protection of Children from Sexual Offences Act, 2012*. On scrutiny of prosecutix's evidence, I find that the manner in which sexual assault was committed upon prosecutrix does not bring this case within the sweep of Section 9 of aforesaid Act. Trial court has erred in convicting appellant for offence under Section 9 of *The Protection of Children from Sexual Offences Act, 2012*. However, appellant deserves to be convicted for offence under Section 8 of aforesaid Act, which carries minimum sentence of three years with fine. As per appellant's Nominal Roll 31st March, 2017 on record, appellant has already undergone sentence of three years, four months and a few days with remission and his conduct in jail has been satisfactory and that he is not involved in any other case. Considering that appellant belongs to poor strata of society and is not a previous convict, I find that the sentence already undergone by appellant would meet the ends of justice.

8. Consequentially, conviction of appellant is accordingly altered and the order on sentence of 28th November, 2014 stands modified. It is made clear that appellant is convicted under Section 8 of *The Protection of Children from Sexual Offences Act, 2012* and the sentence awarded to appellant is reduced to three years, which he has already undergone and in default of payment of fine, appellant shall undergo simple imprisonment for four months and that too, appellant has already undergone. Appellant be released forthwith, if not wanted in any other

case.

9. With aforesaid modification, this appeal is disposed of.

10. A copy of this order be sent to the concerned Jail Superintendent to apprise appellant about the fate of his appeal and for compliance.

June 16, 2017
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(SUNIL GAUR)
JUDGE

