

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

RESERVED ON : 15th FEBRUARY, 2017
DECIDED ON : 23rd FEBRUARY, 2017

+ CRL.A.1116/2015

BADRUDDIN Appellant

Through : Mr.Aditya Vikram, Advocate.

VERSUS

STATE NCT OF DELHI Respondent

Through : Ms.Meenakshi Dahiya, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 29.05.2015 of learned Addl. Sessions Judge in Sessions Case No.40/14 arising out of FIR No.11/14 PS Naraina by which the appellant was held guilty for committing offences punishable under Section 6 POCSO Act and Sections 377/506 IPC. By an order dated 30.05.2015, he was sentenced to undergo RI for ten years with fine ₹10,000/- under Section 6 POCSO Act and RI for two years with fine ₹5,000/- under Section 506 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 12.01.2014 at about 09.00 p.m. at WZ-893, Naraina

Village, the appellant committed carnal intercourse against the order of nature with the victim 'X' (Assumed name) aged around 9 years and criminally intimidated him. He also committed aggravated penetrative sexual assault upon the child 'X'. The police machinery came into motion on getting information about the occurrence on 13.01.2014 vide DD No.33A (Ex.PW-5/D) recorded at 08.10 P.M. at PS Naraina. The investigation was assigned to SI Sandeep Kumar who along with Const.Sunil Kumar went to the spot. After recording victim's statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. 'X' was medically examined; he recorded his statement under Section 164 Cr.P.C. 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 the Court. To prove its case, the prosecution examined ten witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication due to a quarrel for non-return of ₹10,000/- taken by the victim's father. He examined DW-1 (Mohd.Fakruddin) in defence. The trial resulted in conviction as aforesaid.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the appellant lived in the neighbourhood of the victim and was acquainted with him prior to the incident. The occurrence took place on 12.01.2014 at about 09.00 P.M. at appellant's rented accommodation. The victim did not inform his family members soon after the crime. On 13.01.2014, when he declined to go to take tuitions due to pain in anus, victim's mother was apprised of the incident. The police was promptly informed. In the information conveyed

vide DD No.33A (Ex.PW-5/D), it was mentioned that a tenant residing in the neighbourhood had committed 'wrong act'. In the statement (Ex.PW-1/A), the victim aged around 9 years gave vivid account of the occurrence and disclosed as to how and in what manner, the appellant had committed carnal intercourse against the order of nature with him. He also disclosed that he was criminally intimidated and threatened to be killed if he informed the incident to anybody. Since he was feeling pain in his anus, due to fear, he did not inform anyone and went to sleep at his house. On 13.01.2014 when he was unable to bear the pain in the anus, he informed his parents. Apparently, the appellant was named in the FIR to be the author of the crime. Specific and definite role was attributed to him. The delay in lodging the FIR has been duly explained.

4. In 164 Cr.P.C. statement recorded on 17.01.2014 before the learned Metropolitan Magistrate, the victim reiterated the version given to the police and named the appellant to be the perpetrator of the crime.

5. In his Court statement as PW-1, the victim, proved the versions given both to the police as well as to the learned Presiding Officer in its entirety without major variations. He testified that on 12.01.2014 at about 09.00 or 09.30 P.M. he was called inside his house by the appellant and he bolted it from inside. Thereafter, the appellant took out his private organ and made him to hold it. Thereafter, he committed carnal intercourse forcibly and inserted his private organ in his anus. When he tried to cry, his mouth was gagged; he was threatened not to disclose the incident to anyone or else he would kill him. In the cross-examination, the victim denied that the appellant's false implication was due to non-return of ₹10,000/- taken by his father. He denied if injuries were sustained by him due to fall on some

hard surface while playing. He further informed in the cross-examination that blood had oozed out from his private part.

6. On appraisal of the victim's testimony in its entirety, it reveals that no material discrepancies or infirmities could be elicited to disbelieve his version. No ulterior motive was assigned to the child witness for levelling serious allegations of sexual assault upon him. In the absence of prior animosity, the child was not expected to falsely rope in the accused who lived in his neighbourhood since long. The accused did not deny his presence at the relevant time inside the house. No valid reasons exist to disbelieve X's testimony on material facts.

7. PW-2 (Leelawati) and PW-3 (Lal Babu) – victim's parents have corroborated his version on all material facts and no inconsistencies have emerged in their cross-examination. They specifically denied if ₹10,000/- was ever borrowed from the appellant.

8. Victim's statement has been corroborated further by medical evidence. Soon after the incident, the child was medically examined on 13.01.2014 by PW-6 (Dr.Naorem Babo Singh) vide MLC (Ex.PW-6/A). As per his testimony, upon medical examination, he found blood clot present near anal region; the patient was having pain. There was history of unnatural sexual assault as recorded in the MLC. Apparently, there is no conflict between the ocular and medical evidence. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. DNA report (Ex.PW-9/A) reveals that DNA profile generated from the Ex.B2 i.e. blood gauze of accused, was found to be similar to the DNA profile generated from the source of "Ex.A1a and A1b" (pant and nicker of

the victim). It lends credence to the victim's statement and corroborates his version.

9. Defence taken by the appellant for false implication deserves outright rejection. Nothing has emerged on record if the victim's father had borrowed ₹10,000/- from him any time. No specific date has been given as to when ₹10,000/- was given by the appellant to the victim's father and for what purpose and by what mode. It has also not been explained as to when the said amount was demanded by the appellant and it led to a quarrel over its non-return. No complaint whatsoever was filed by the appellant against the alleged non-return of money and its subsequent quarrel over it. Nothing has come on record to show if the appellant had financial capability to give loan of ₹10,000/- to the victim's father.

10. Contradictory defence regarding the injuries sustained by the victim have been pleaded. At one stage, suggestion was given to the victim that he had sustained injuries on his private parts due to fall on a hard surface. In the cross-examination of the victim's parents, it was suggested that the child was not present at the spot and had accompanied them to the hospital where he had sustained injuries due to fall while playing. No such suggestion was put to the examining doctor if the injuries sustained by the victim on his private part were possible due to fall.

11. Since the appellant was convicted under Section 6 POCSO Act victim's age was crucial to ascertain. Throughout, the victim claimed himself to be aged around 9 years on the day of occurrence. This age finds mention in the complaint (Ex.PW-1/A); MLC (Ex.PW-6/A) and statement under Section 164 Cr.P.C. Besides this, the prosecution examined PW-4 (Sudhir Prasad Singh), Second In-charge, M.C. Primay School, Naraina

Village-II, New Delhi, who brought and proved school record (Ex.PW-4/A and Ex.PW-4/B). As per it, X's date of birth recorded was 02.03.2004. He was not cross-examined. Genuineness and correctness of the documents proved on record has remained unchallenged. Since date of birth i.e. 02.03.2004 came to be recorded much prior to the occurrence, no manipulation in it can be inferred. Victim's parents had not anticipated any such unfortunate incident to happen in future to record an incorrect date of birth. No other date of birth has been suggested by the appellant.

12. The impugned judgment based upon fair appraisal of the evidence deserves no intervention. Sentence Order is modified to the extent that default sentence for non-payment of fine of ₹10,000/- under Section 6 POCSO Act would be SI for one month and for non-payment of fine ₹5,000/- under Section 506 IPC, it would be SI for fifteen days. Other terms and conditions of the Sentence Order are left undisturbed.

13. The appeal stands disposed of in the above terms.

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

15. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

FEBRUARY 23, 2017 / tr