

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

% Decided on: 5th October, 2018

+ **CRL.A. 556/2016**

JEET

..... Appellant
Represented by: Mr. K. Singhal, Advocate

Versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent
Represented by: Mr. Ashok Kumar Garg, APP
for the State with SI L.
Kipgen, PS R.K. Puram.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Jeet challenges the impugned judgment dated 9th February 2016 convicting him for offence punishable under Section 354 IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 29th February, 2016 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹25,000/-, in default whereof to undergo simple imprisonment for a period of three months, for offence punishable under Section 354 IPC and rigorous imprisonment for a period of five years and to pay a fine of ₹25,000/-, in default whereof to undergo simple imprisonment for a period of three months, for offence punishable under Section 10 of POCSO Act.
2. Assailing the conviction, Learned Counsel for the appellant contends that the appellant has been falsely implicated. Appellant led defence

evidence to prove his case however, the same was not considered by the learned Trial Court. As per the witnesses the appellant was plying the mini bus for more than a year and there were no allegations against the appellant by any other child or staff.

3. Learned APP for the State on the other hand submits that the prosecution has proved its case beyond reasonable doubt by the testimony of the victim and the mother. Testimony of DW-2 is hearsay in nature, thus not admissible in evidence. Hence the appeal be dismissed.

4. Case of the prosecution starts from a PCR call received on 13th November, 2014 around 1:20 P.M. from Bhim Singh about a driver of the Holy Child School having done "Galat Kaam" with a school child. Aforesaid information was recorded vide DD No.15A (Ex.PW-1/A). On receipt of DD No.15A, SI Saroj Bala went to Holy Child School, Sector - 12, R.K. Puram where Ct. Naresh along with ASI Suresh were already present along with the appellant and Bhim Singh. The mother of the prosecutrix reached the spot along with the prosecutrix who handed over a written complaint (Ex.PW-2/A) to the SI Saroj Bala wherein she stated that her daughter was being harassed by the school bus driver in school bus while returning back from school. For the last 10-15 days the school bus driver touched her body parts and tried to abuse her in the school bus itself. On the basis of the aforesaid complaint, FIR No. 814/2014 (Ex.PW-1/C) was registered at PS R.K.Puram for the offence punishable under Section 354 IPC and Section 12 POCSO Act .

5. Jeet was arrested vide arrest memo Ex.PW-2/C and his personal search was conducted vide Ex.PW-7/A. The bus bearing no. DL 1 VA 7143 in which the incident had taken place was seized vide seizure memo Ex.PW-

9/B. The prosecutrix was taken to Safdarjung Hospital where she was medically examined vide MLC (Ex.PW-2/B).

6. On 14th November 2011, statement of the prosecutrix was recorded under Section 164 Cr.P.C. vide Ex.PW-9/C. The mother of the prosecutrix gave another written complaint to the police vide Ex.PW-2/D wherein she stated that her daughter aged about 8 years was studying in Holy Child Auxilium School, R.K. Puram. As there was no school transport available, she along with parents of other children had privately hired one mini bus. The driver of the bus was also provided privately by the owner of the bus. Her daughter had been going to school in that bus for the last six months and the name of the driver was Jeet.

7. On 16th December, 2014 SI Saroj Bala collected the age certificate (Ex.PW-8/E) of the prosecutrix from the Headmistress of Holy Child Auxilium School wherein her date of birth was mentioned as 11th June 2006. Mother of the prosecutrix handed over the ID card of the prosecutrix vide Ex.PX. The driving license of the appellant was taken on record from the owner of the bus vide Ex.PW-9/D. After completion of investigation charge sheet was filed. Charge was framed for offences punishable under Section 354 IPC and Section 10 POCSO Act vide order dated 9th January 2015.

8. Prosecutrix was examined as PW-3 in Court. After ascertaining that she was capable of understanding the questions put to her and was capable of giving rational answers thereof, the prosecutrix deposed that she went to school by school bus that was driven by the appellant. There was a girl in her school bus who used to de-board one stop prior to her stop and thereafter, the appellant used to call her near his seat and used to do '*galat kaam*' with her. He used to kiss her on the cheeks and put his hand on her

private part. He told her not to tell her parents about the incident. He did 'galat kaam' with her on 12th and 13th November. She informed her mother about the same. She identified the appellant in Court.

9. Mother of the prosecutrix was examined as PW-2 in Court wherein she deposed in sync with her two written complaints made to the police. She additionally stated that as their house was the last house on the route, her daughter used to be the last one to get out of the bus. On 13th November 2014, her daughter refused to go to school in the bus and started crying. On enquiry, her daughter told her that the appellant used to touch her on various parts of her body including private parts and that he had been doing the same for the last 15 days. After all the parents left with their children, he used to fondle her daughter and tried to kiss her on her lips. On hearing this, she did not send her daughter to school that day and informed her husband about the same but since he was out of Delhi on a business trip, he informed his brother Bhim Singh who went to the school and inquired about where the bus was parked. In the meanwhile, at about 1:30 PM, she too reached there with the prosecutrix. In her cross-examination, she stated that there were three teachers who used to travel in the same bus, and used to get off at Kalkaji, which was about 25 minutes from their house. Before their bus stop, there was one more bus stop of one child.

10. Amar Singh, (PW-5), owner of mini bus stated that he was the registered owner of the mini bus, bearing no. DL 1 VA 7143. The bus was hired by the parents of the children privately and there was no contract between him and the school. The appellant was the driver of the bus for the last 2-3 years. In his cross-examination, he stated that prior to the said incident, there were no other complaints against the appellant.

11. Bhim Singh, (PW-6) stated that the father of the prosecutrix was like his brother. On 13th November 2014, the mother of the prosecutrix called him and told him that her daughter had been sexually assaulted by the driver of the bus in which she used to go to school. He along with one of his friend went to the school of the prosecutrix and apprehended the appellant after which he called the police on 100 number.

12. Ms. Asha, Principal, Holy Child Auxilium School stated that as per the admission form, the admission and withdrawal register the date of birth of the prosecutrix was 11th June 2006. The attested copy of the admission form, the admission and withdrawal register were proved vide Ex.PW-8/A and Ex.PW-8/B. The birth certificate was proved vide Ex.PW-8/C and the attendance of the prosecutrix for the month of May 2014 vide Ex.PW-8/D.

13. The appellant in his statement recorded under Section 313 Cr.P.C. stated that the parents of the prosecutrix had shifted in the month of July 2014 and he was asked by the mother of the prosecutrix to pick and drop the prosecutrix from home. Prosecutrix used to board the bus from Tara Apartment. Mother of the prosecutrix used to come late to the stop and due to this habit of hers, other teachers and students got annoyed as the bus used to reach school late. One day, he did not pick up the prosecutrix for school and asked the mother of the prosecutrix to arrange for separate transport for her daughter. The mother of the victim had not paid the charges of the bus and threatened him, that she would teach him a lesson. On 13th November 2014, mother of the prosecutrix had beaten him outside the school along with 3-4 other persons.

14. Ms. Sonali, (DW-1), School Teacher deposed that the mini bus used to start from Tara Apartments and she used to board the bus from Govind

Puri Ext. She had been using the bus from 2011 and it had been following the same route since then. She was informed by the appellant that the bus used to get late in reaching school on the account of the prosecutrix and that he had told the parents of the prosecutrix to pick up and drop their daughter on time, otherwise they would have to change the bus.

15. As noted above the defence of the appellant that the bus used to get late due to the prosecutrix reaching late at the spot as stated by Ms.Sonali is hearsay evidence and thus not admissible. Further, Ms.Sonali has also not stated as a fact that after the prosecutrix joined the bus, the bus used to come late. Despite extensive cross-examination of the prosecutrix and her mother nothing contradictory has been elicited.

16. Hence, this Court finds no illegality in the impugned judgment of conviction or order on sentence.

17. Appeal is dismissed.

18. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

19. TCR be returned.

 (MUKTA GUPTA)
JUDGE

OCTOBER 05, 2018
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