

\$~4

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th December, 2018

+ CRL.A. 723/2018

STATE (GOVT. OF NCT OF DELHI) Appellant

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Anil, PS
Kanjhawala.

versus

MANOJ KUMAR YADAV Respondent

Through: Mr. Tahir Ashraf Siddiqui,
Advocate/ DHCLSC

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent was put on trial in the special court constituted under Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) in criminal case (Sessions Case No.184/2015) on the charge for offences punishable under Sections 9(m), Section 10 read with Section 18 of POCSO Act and alternatively under Section 376 (2)(f) read with Section 511 of the Indian Penal Code, 1860 (IPC), besides charges under Sections 354 read with Section 354-B and Section 511 IPC and Section 11(m) & Section 12 of POCSO Act.

2. The trial culminated in judgment dated 03.04.2018, whereby the respondent was held guilty and convicted for the offence under Sections 10 read with Section 18 of POCSO Act, he having been acquitted on the other charges. By subsequent order dated 05.04.2018, the trial court while directing compensation to be paid to the victim, directed the respondent to undergo imprisonment for the period beginning from 13.09.2015 (the date of arrest) till the date of the said order, he having already undergone incarceration for the said duration. As per the nominal roll dated 08.10.2018, the said period calculates to incarceration for two years six months and twenty-two days.

3. The present appeal was filed by the State on the plea that the punishment meted out to the respondent is not adequate, it being not *in sync* with the minimum prescribed by Section 10 of POCSO Act.

4. The respondent through counsel submits that he has been held guilty and convicted not for the offence under Section 10 of POCSO Act but for the attempt to commit the said offence and this attracting Section 18 of the POCSO Act.

5. Undoubtedly, for conviction under Section 10 of POCSO Act, the law prescribes punishment which shall not be less than five years of imprisonment but which may extend to seven years of imprisonment with fine. But, in case of attempt to commit such an offence, Section 18 gets attracted, it reading thus:-

“18. Punishment for attempt to commit an offence.-

Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of

the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.”

6. The plea of the appellant/State is clearly on wrong assumption that the respondent has been held guilty and convicted for the offence under Section 10 of the POCSO Act. Since conviction is for the offence under Section 10 read with Section 18 of POCSO Act, the punishment may be in the form of imprisonment for a period equivalent to one-half of the longest term of imprisonment that is provided by the substantive provision.

7. In this view, there is no error in the view taken by the court of sessions.

8. The appeal is dismissed.

R.K.GAUBA, J.

DECEMBER 07, 2018

vk