

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

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Reserved on: 19<sup>th</sup> February, 2018  
Decided on: 12<sup>th</sup> September, 2018

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**CRL.A. 432/2017**

RAKESH

..... Appellant

Represented by: Mr. Ashok Kr. Singh,  
Advocate

versus

STATE (GNCTD OF DELHI)

..... Respondent

Represented by: Mr. Amit Gupta, APP for State

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Appellant Rakesh challenges the impugned judgment dated 20<sup>th</sup> March, 2017 convicting him for offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 27<sup>th</sup> March, 2017 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/-, in default whereof to undergo simple imprisonment for a period of three months, for offence punishable under Section 8 of POCSO Act.

2. Assailing the conviction, learned counsel for the appellant contends that the police was informed about the alleged incident through mobile phone, however, neither the person who made the call to the police was examined nor the CDRs were collected. The employer of the appellant who

provided details of the appellant has also not been examined. No proof was collected to establish that the sister of child victim had appeared in B.Ed. examination. As per the child victim, appellant was arrested on the day of the incident, however, sister of child victim stated that she got to know about the arrest on the next day even though she is a witness to the arrest memo. Lastly, as per the prosecution case, number of people had gathered at the place of occurrence but no public witness was examined.

3. Learned APP for the State on the other hand submits that Rakesh has been rightly convicted on the basis of the testimony of child victim (PW-1) corroborated by the testimony of sister of child victim (PW-4). Statement of the child victim was recorded on the very next day of the incident and there was no contradiction in the sequence of events as stated. The only contradiction in the testimonies of PW-1 and PW-4 was with respect to the fact that who dialed the 100 number, which is trivial in nature and would not discredit the credible witnesses.

4. Process of law was set into motion on 23<sup>rd</sup> June, 2013 at around 10:00 P.M., when information was received stating "*Raja Puri Road Gali No. 34 D. K. Puri yaha par ek ladki ke saath ched chad hui hai*". Aforesaid information was recorded vide DD No. 50A and was assigned to ASI Ombir Singh who along with Ct. Rajender went to the spot and met child victim and her sister. He made inquiries from the child victim and recorded her statement wherein she stated that she studied in class 11<sup>th</sup> in Sarvodaya Kanya Vidyalaya, New Delhi. On 23<sup>rd</sup> June 2013, she along with her sister was returning from Mata Devi College after taking an exam. At around 9:00 P.M. when they reached near the corner of Gali No.34, main Raja Puri

Road, one boy aged 25 years, suddenly, came close to her and started pressing her breasts. Thereafter, she raised an alarm, hearing which people from the locality gathered but the boy ran away. People who had gathered saw the boy running towards the gali and informed them that the boy's name was Rakesh. She further stated that she would be able to identify the person who had inappropriately touched her breast if brought before her. On the basis of the aforesaid statement (Ex. PW-1/A), FIR No. 334/2013 (Ex. PW-2/A) was lodged for the offences punishable under Section 354 IPC and Section 8 of POCSO Act at PS Dabri.

5. Thereafter, ASI Ombir Singh along with Ct. Rajender, child victim and her sister went in search of Rakesh who was found in Gali No. 36, Raja Puri. Rakesh was arrested vide arrest memo Ex. PW-4/A and his personal search was conducted vide memo Ex. PW-7/B. Site plan (Ex. PW-7/C) was prepared at the instance of child victim. Statement of the child victim was recorded under Section 164 Cr.P.C vide Ex. PW-1/B. During the course of trial, Ms. Shanta Parashar (PW-6), teacher from the school furnished the photocopy of the relevant entry of admission register Ex. PW-6/A and stated that the date of birth of child victim as per the school record is 13<sup>th</sup> December, 1997.

6. Child victim was examined as PW-1 in Court. She deposed in sync with her earlier statements. She further stated that one uncle who was passing by thought that the boy had snatched her mobile phone and that is why he was running away. The said uncle came near them and inquired as to what had happened. After he was apprised of the facts, the uncle gathered neighbours and chased the boy. During the chase, the said boy had entered

his house and thereafter climbed the terrace from where he jumped on to the street and ran away. Therefore, they could not catch him. She added that the employer of the appellant was standing on the street and told them the particulars of the appellant i.e. his name and parentage.

7. Sister of child victim was examined as PW-4. She stated that on the day of the incident she along with her younger sister (child victim) had gone to Mata Sundari College, New Delhi as she had to appear for B.Ed. examination. After leaving from Mata Sundari College at around 6:15 P.M., they reached Madhu Vihar bus stop at around 8:30 P.M. by bus and from there proceeded towards their house on foot. On their way, appellant coming from the opposite side inappropriately touched her younger sister's breast. Thereafter, her sister started weeping and she raised alarm. On hearing this, some public persons gathered there but the appellant succeeded in fleeing from the spot. She called the police by dialing 100 whereafter the police reached the spot and inquired about the incident. She then stated that on the next day of the incident she was informed about the appellant's arrest. She along with her sister child victim and her father went to the Police Station and identified Rakesh. During her cross examination, she stated that Rakesh was arrested from Gali No.36, Rajapuri vide arrest memo Ex.PW-4/A which bears her signature.

8. Rakesh, in his statement under Section 313 Cr.P.C. stated that he is innocent and has been falsely implicated in the case. He further stated that he knew the child victim and that their friendship was not liked by the family members of the child victim due to which they have made a false case against him.

9. Contention of learned counsel for the appellant that the person who made the call to the police was not examined nor the CDR collected thus the appellant is required to be acquitted deserves to be rejected for the reason the non-examination of the person who made the PCR call would not belie the otherwise credible evidence on record particularly the fact that DD No.50A was recorded at PS Dabri on 23<sup>rd</sup> June, 2013 on an information received at 10.00 PM through operator on telephone informing that at Rajapuri Road, with further details of the place, that misbehavior with one girl has taken place, the name of the appellant as informed to the PCR officials has also been recorded. The child victim having identified the appellant as the person who misbehaved with her merely because non-examination of the employer who was standing in the street would not affect the prosecution case, particularly because number of people chased the appellant and he himself had entered his house from where through the terrace he ran away. The date and time of incident was 23<sup>rd</sup> June, 2013, prior to 10.00 PM. The appellant was arrested on 23<sup>rd</sup>/24<sup>th</sup> June, 2013 at 11.50 PM, thus the victim's sister stating that he was arrested on the next day and also having signed the arrest memo would not show any contradiction.

10. Considering the testimony of child victim duly corroborated by the testimony of sister of child victim, the prosecution has proved beyond reasonable doubt that Rakesh pressed the breast of child victim with sexual intent. Furthermore, the defence taken by Rakesh in his statement recorded under Section 313 Cr.P.C. with respect to his friendship with the child victim has been specifically denied by the child victim in her cross

examination. Thus this Court finds no merit in the appeal. The judgment of conviction and the order on sentence are upheld. Appeal is dismissed. The appellant will undergo the remaining sentence.

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

12. TCR be returned.

**(MUKTA GUPTA)**  
**JUDGE**

**SEPTEMBER 12, 2018**  
**‘vn’**



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