

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

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Decided on: 20th November, 2018

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CRL.A. 1072/2016

DHARMENDER @ SONU

..... Appellant

Represented by: Mr. Dhan Mohan, Ms. Tanu B. Mishra, Mr. Harkamal Jeet Kaur and Mr. Ravi Mishra, Advocates
Appellant produced in custody

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Dharmender @ Sonu challenges the impugned judgment dated 20th August, 2016 convicting him for offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and Section 363 IPC and the order on sentence dated 24th August, 2016 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹5,000/-, in default whereof to undergo simple imprisonment for a period of thirty days, for offence punishable under Section 10 of POCSO Act and rigorous imprisonment for a period of three years for offence punishable under Section 354 IPC.

2. Assailing the conviction, Learned Counsel for the appellant prays that

as per the statement of the prosecutrix, offence only under Sections 7 punishable under Section 8 of POCSO Act is made out therefore, sentence should be reduced.

3. Learned APP for the State on the other hand submits that the impugned judgment and order on sentence suffers from no illegality.

4. Prosecution case sprung out when a PCR call was received on 3rd November, 2014 at 7:40 P.M., informing that one girl aged 5-6 years had been taken away by a man and he has done *galat kaam* with her. Aforesaid information was recorded vide DD No.55B. On receipt of DD No.55B, SI Roop Lal alongwith Ct. Sajid reached Village Akbarpur, Jheemron Wali Gali where he met the victim along with her parents in her house. SI Tejawati also reached the spot and recorded the statement of the prosecutrix wherein she stated that she was a student of second standard. On 1st November, 2014 at around 4:00 P.M., when she was playing in the lane outside her house, one boy namely Dharmender @ Sonu, who is her chacha came outside her house on his cycle and told her that he would take her to play on his cycle. She and her chacha's son namely Jatin aged 4 years sat on the bicycle. He took both of them behind the dairy to a dark area. When she was going to urinate then Dharmender @ Sonu opened the zip of her pant and tried to touch her with his hand from behind. The owner of the dairy came and caught Dharmender @ Sonu and her and asked them what they were doing over there in the dark. She told him that Dharmender @ Sonu had brought Jatin and her on his cycle and was touching the zip of her pant. Dharmender @ Sonu ran away from there and when she reached home she informed her mother about the incident whereafter her father called the police. Aforesaid statement was recorded vide Ex.PW-14/A. The girl was taken for medical

examination at SRHC Hospital.

5. Consequently, FIR No. 1049/2014 (Ex.PW-13/A) was registered at P.S. Alipur for the offence punishable under Section 354 IPC.

6. SI Tejawati prepared the site plan at the instance of the victim vide Ex.PW-1/B. Dharmender @ Sonu was arrested vide arrest memo Ex.PW-2/B. His personal search was conducted vide Ex.PW-9/A. Statement of the victim was recorded under Section 164 Cr.P.C. vide Ex.PW-1/C. Birth certificate of the victim was handed over by the parents of the victim. SI Tejawati collected the record of date of birth of the appellant vide Ex.PW-4/A to C from his school.

7. On 5th November, 2014 the victim was produced before CWC whereafter she was handed over to her parents. Birth certificate of the victim was also verified from the Sub-Registrar's office. On 16th November, 2014 the investigation of the case was handed over to SI Dhirendra Singh. On 21st November, 2014 he along with W/Ct. Ruby and Ct. Shankar went to Village Akbarpur Mirja for investigation. Bicycle of Dharmender @ Sonu was recovered at the instance of the victim and her mother. It was seized vide seizure memo Ex.PW-2/A. After completion of investigation charge sheet was filed. Charge was framed for offences punishable under Section 363 IPC and Section 10 POCSO Act vide order dated 8th January 2015.

8. Victim was examined as PW-1 in the 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 in sync with her statement before the police. She additionally stated that Dharmender @ Sonu inserted his finger in her urinary part from behind. When she cried out of pain, the owner of the dairy came and gave blows on the back of

Dharmender @ Sonu. The owner of the dairy dropped her and Jatin back home.

9. Father of the victim was examined as PW-2 in Court wherein he stated that on 2nd November, 2014 at around 7:00 P.M. his daughter was playing outside the house and Dharmender @ Sonu who was a resident of their locality was riding his bicycle over there. He took his daughter along with Jatin on the pretext of giving them a ride and took them to a vacant plot near a dairy. The victim told him that Dharmender @ Sonu pulled down her pant and touched her urinary part. The incident was witnessed by a dairy owner Rajesh Sharma who had brought his daughter back home. On that day they did not take any action as it was a matter of the locality. When his mother went to Dharmender @ Sonu's house to confront him he started misbehaving with her after which on 3rd November, 2014 they reported the matter to the police. In his cross-examination he stated that Dharmender @ Sonu was his distant relative.

10. Mother of the victim (PW-3) corroborated the testimony of her husband (PW-2).

11. Sukhbir Singh (PW-4), Principal, M.C. Primary School stated that as per the admission register (Ex.PW-4/A) the date of birth of Dharmender @ Sonu was 1st October, 1996. Copy of the affidavit submitted by the parents of Dharmender @ Sonu with regard to date of birth of child was proved vide Ex.PW-4/C.

12. Rajesh Sharma (PW-5), Dairy Owner stated that when he was returning from the dairy to his house he noticed a girl crying. She was accompanied by Dharmender @ Sonu. When he asked the victim why she was crying she informed him that she got scared of the dark. He stated that

nothing wrong had happened with the girl. He took the victim and Jatin to her house. Dharmender @ Sonu left the children and fled away.

13. Dr. Pallavi (PW-7), Senior Resident OBS & Gynae, SRHC Hospital identified the handwriting and signatures of Dr. Tanzim who had medically examined the victim. MLC of the victim was proved as Ex. PW-7/A.

14. Meetha Lal Meena (PW-8), Assistant Public Health Inspector, MCD Narela placed on record the certificate issued by the Sub-Registrar vide EX.PW-8/A as per which the date of birth of victim was 20th January, 2008.

15. The appellant in his statement recorded under Section 313 Cr.P.C. stated that the victim was like his niece and he had not done anything wrong with her.

16. Though the diary owner has not supported the case of the prosecution in its entirety as to the act of the appellant, however he has fortified that the appellant brought the victim to a secluded dark place, thus proving offence punishable under Section 363 IPC. Qua Section 10 POCSO, the evidence of the victim is unequivocal. Despite lengthy cross-examination nothing material has been elicited. Though appellant claims false implication, however no reason for false implication is discernible.

17. For the discussion aforesaid the conviction of the appellant for offences punishable under Section 363 IPC and Section 10 POCSO is upheld. Sentence of imprisonment for a period of five years is maintained and maintaining the fine imposed, in default sentence is reduced to ten days.

18. Appeal is disposed off.

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

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

NOVEMBER 20, 2018
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