

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

% *Reserved on: 1st March, 2018*
Decided on: 13th September, 2018

+ **CRL.A. 657/2017**

RAVI

..... Appellant

Represented by: Ms. Saahila Lamba, Advocate

versus

STATE

..... Respondent

Represented by: Mr. Amit Gupta, APP for the
State with Ashwani Kumar, PS
Jyoti Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Ravi challenges the impugned judgment dated 17th May, 2017 convicting him for offence punishable under Section 354A IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 23rd May, 2017 directing him to undergo rigorous imprisonment for a period of 12 months and to pay a fine of ₹3,000/-, in default whereof to undergo simple imprisonment for a period of one month for offence punishable under Section 354A IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/-, in default whereof to undergo simple imprisonment for a period of one month for offence punishable under Section 8 of POCSO Act.

2. Assailing the conviction, learned counsel for the appellant contends that there are improvements in the statements of the prosecutrix. Father of the prosecutrix (PW-3) does not depose about the previous incidents. Offence under Section 8 of POCSO Act is not made out since sexual intent is required to qualify the offence of sexual assault as defined under Section 7

of POCSO Act which is absent in the present case.

3. Learned APP for the State on the other hand submits that the statement of the prosecutrix under Section 164 Cr.P.C. was recorded on the very next day of the incident and the intention of the appellant is evident from the statement of the prosecutrix recorded under Section 164 Cr.P.C. wherein she elaborately narrates the entire incident. Furthermore, there was time gap in recording the testimony of prosecutrix in Court. Lastly, the appellant is involved in 8 other cases.

4. Prosecution case sprung out from a PCR call received on 23rd December, 2013 around 7:25 P.M. stating that "*Gali No. 8, A Block, Amar Colony caller ki ladki ke saath padosi ke ladke ne ched chad ki hai*". Aforesaid information was recorded vide DD No. 32A and was entrusted to SI Narender (PW-10). He along with Ct. Shamsheer (PW-5) went to the spot and met the prosecutrix. Statement of the prosecutrix was recorded wherein she stated that she studies in class XII and appellant who stays in his neighbourhood at H.No.234, Gali No.2 used to eve tease her since last one month. However, she did not make any complaint out of shame and fear. On 23rd December, 2013 around 6:30 P.M., she was returning to her home from 'Tarun Classes' after taking tuition. When she reached near Ravi Dass Temple, Amar Colony, the appellant along with two other boys was following her and while walking he held her hand and started misbehaving with her. When she raised alarm, he ran away. When she reached home, she narrated the incident to her father who in turn called on 100 number. Aforesaid statement was recorded vide Ex. PW-2/A. On the basis of the aforesaid statement FIR No.513/2013 (Ex.PW-4/A) was registered at PS Jyoti Nagar for the offence under Section 354A IPC. SI Narender prepared

the site plan (Ex.PW-10/B). Search for the appellant was made, however, he could not be traced.

5. On 24th December, 2013, statement of the prosecutrix was recorded under Section 164 Cr.P.C. On 25th December, 2013, appellant was apprehended on the basis of information received from secret informer. Appellant was arrested vide arrest memo Ex.PW-6/B, his personal search was conducted vide personal search memo Ex. PW-6/C and his disclosure statement was recorded vide Ex.PW-6/A. After completion of investigation, charge sheet was filed. Vide order dated 19th May, 2014, charge was framed against the appellant for offence punishable under Section 354A IPC and Section 8 POCSO Act.

6. Prosecutrix was examined as PW-2 in Court where she deposed in sync with her statement recorded before the police and under Section 164 Cr.P.C. In her deposition the victim clarified that on 23rd December, 2013 at 6.30 PM while she was near Ravidas Mandir the appellant caught hold of her hand and when she raised the noise, he left her hand and ran away. She came back to her house, narrated the facts to her father who called at 100 number. Police interrogated her and thereafter went to arrest the appellant from his house but he ran away. On 24th December, 2013 appellant came to her house and stated that he did nothing when his brother called the police at 100 number, Police went to the house of Ravi who tried to run away but was caught.

7. Father of the prosecutrix was examined as PW-3. He corroborated the version of the prosecutrix.

8. Vijaypal Singh, Sub-Registrar, Birth and Death, Shahdara- North Zone, EDMC, Delhi proved the date of birth certificate of the prosecutrix.

He stated that as per their record, date of birth of the prosecutrix was 13th January, 1996. Copy of the birth certificate was exhibited as Ex.PW-9/B.

9. Section 7 of POCSO Act defines 'sexual assault' which is punishable under Section 8 of the POCSO Act for a term which shall not be less than three years which may extend to five years imprisonment and to pay a fine. Section 7 of POCSO Act reads as under:

7. Sexual assault.-Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

10. Allegation against the appellant is of catching hold of the hand of the victim. On cross-examination by the learned APP for the State the victim stated that to the police she had also stated that the appellant had been doing *chedkhani* previously also for the last one month and on account of fear and shame she did not make any complaint and that this act was repeated by the appellant for the third time. In her cross-examination the prosecutrix reiterated that two associates of accused Ravi were surrounding her with a distance of about 1-1½ feet and Ravi was within a distance of one foot when she was coming back to her house on foot after attending the tuition classes. She denied the suggestion that there was any quarrel between her family and the family of Ravi or that no-one tried to catch hold of her at the spot.

11. From the deposition of the victim, it is clear that the appellant caught hold of the hand of the victim with sexual intent involving physical contact. The minimum sentence as noted above prescribed for the offence is three years imprisonment which has been awarded by the learned Trial Court.

Thus this Court finds no error in the impugned judgment of conviction or order on sentence.

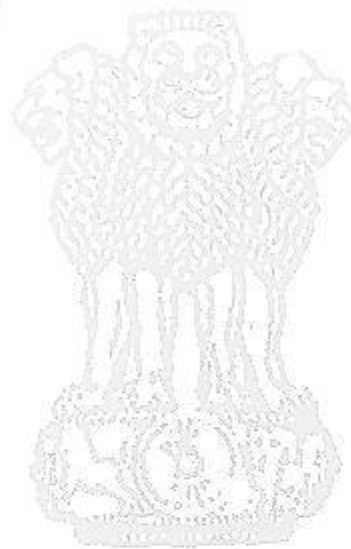
12. Appeal is dismissed. Appellant will undergo the remaining sentence.

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

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
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