

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

% *Judgment Reserved on: 10th May, 2018*
Judgment Delivered on: 13th September, 2018

+ **CRL.A. 697/2017**

RAVI

..... Appellant

Represented by: Mr.K.Singhal with Mr.Nishant,
Advocates

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Bijendra
Singh, PS Madhu Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Ravi challenges the impugned judgment dated 31st May, 2017 convicting him for the offences punishable under Sections 363/365/342/377 IPC and Section 4 of Protection of Children against Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 8th June, 2017 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month for the offence punishable under Section 365 IPC and rigorous imprisonment for a period of seven years and to pay a fine of ₹5,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month for the offence punishable under Section 4 of POCSO Act. No separate sentence was awarded for the offences punishable under Sections 363/342/377 IPC.

2. Learned counsel for the appellant submits that the defence raised by

the appellant in his statement recorded under Section 313 Cr.P.C. is highly probable and he has been falsely implicated in the present case.

3. Learned APP for the State on the other hand contends that the Learned Trial Court has rightly convicted the appellant on the basis of the testimony of the victim duly corroborated by medical evidence.

4. The factual matrix of the present case is that on 17th May, 2013 HC Surender Singh (PW-4) who was present at Chowki, ISBT, Anand Vihar, met the victim who stated that on 17th May, 2013 around 9:00 A.M. he went to ISBT, Anand Vihar as his mother was about to reach Anand Vihar after getting her medicines from Rajasthan. While he was waiting for his mother at platform No.72, suddenly a man came and snatched his bag as a result of which he got scared. Thereafter, he started following that man and asked the man to give his bag but that man gave his bag to some other man and told the second man to go. The first man forcefully held his hand, made him cross the road, took him to a room and closed the door from inside. Thereafter, he tied his mouth with a cloth, forcefully made him remove his clothes and did '*galat kaam*' with him. He also threatened him not to disclose to anyone otherwise he would kill him. After sometime, he again asked the man if he could leave but he told him to sit there only. Thereafter, that man slept, he opened the latch, ran away, came back to the bus stand and narrated the incident to the police. His statement was recorded vide Ex. PW-1/A. Thereafter Ct. Manoj (PW-5) took the victim to LBS Hospital for medical examination. On the basis of the aforesaid statement of the victim, FIR No. 266/2013 (Ex.PW-8/A) was lodged at PS Madhu Vihar for offences punishable under Section 363/356/379/377/342/34 IPC.

5. Further investigation of the case was assigned to SI Raj Kumar (PW-

12). He along with Ct. Manoj and HC Surender went to Bhouwapur, Koshambi where the victim pointed out towards the room on the first floor of house No. 607. Ravi was arrested vide arrest memo Ex.PW-1/D and his personal search was conducted vide memo Ex. PW-1/E. On the pointing out of the victim, the bed sheet was seized vide Ex. PW-1/C. Site plan (Ex.PW-12/A) was prepared at the instance of the victim. One black colour bag containing clothes of the victim which was found in the room was also seized. Thereafter, Ravi was taken to LBS Hospital for medical examination.

6. After completion of the investigation charge sheet was filed. Vide order dated 27th September, 2013 charge was framed for the offences punishable under Sections 356/365/342/379/377/34 IPC and Section 4 of POCSO Act.

7. Victim was examined as PW-1 in Court. He deposed in conformity with his statement recorded before the police and the statement under Section 164 Cr.P.C. He further stated that the appellant made him masturbate him and then removed his pant and committed carnal intercourse with him.

8. Vishram Singh (PW-2), Hindi Teacher, Vivekanand Bal Vidya Mandir, Badaun, U.P, stated that the victim was admitted in the aforesaid school in second standard and the date of birth as mentioned by the parents at the time of admission was 1st July, 1999. Photocopy of the original register was proved vide Ex.PW-2/A and the certificate regarding the date of birth issued by the school authority vide Ex. PW-2/C.

9. Dr.Virender (PW-10), Medical Officer, LBS Hospital, Delhi stated that he had examined the victim vide MLC Ex. PW-10/A. There was only tenderness on examination but no visible injury was found. The victim was

referred to department of Forensic Medicine as well as Surgery.

10. Dr. Ranvir Singh (PW-9), SR (Surgery), LBS Hospital, Delhi stated that he was deputed by M.S. of LBS Hospital to depose on behalf of Dr. Rohan who had left the services of the Hospital. He stated that he was well acquainted with the handwriting and signatures of Dr. Rohan. As per the surgery notes prepared by Dr. Rohan on the MLC Ex. PW-9/A, posterior perineal tear was present in the skin of the victim and small superficial tear was also present. No active bleeding was detected after doing proctoscopy.

11. Dr. Vinay Kumar Singh (PW-11), Specialist Forensic Medicine, LBS Hospital, Delhi stated that the victim was referred for further examination and for determination of unnatural sexual assault. After examining the victim, he opined that the possibility of sodomy/anal intercourse by an adult erect penis or any structure resembling cannot be ruled out. His endorsement on the MLC was proved vide Ex. PW-11/A.

12. As per the FSL report Ex. PW-12/E, on biological examination human semen was detected on exhibit '3' (bedsheet). On DNA examination, partial male DNA profile was generated from the source of '3' (bedsheet) and '4' (blood sample on gauze of accused).

13. Ravi, in his statement recorded under Section 313 Cr.P.C. stated that he had been falsely implicated in the present case. The victim was pickpocket and used to pick pocket the passengers and public persons at the bus stand. He was working in the PCO at bus stand and he had seen the victim roaming around in the ISBT. The victim had kept one empty bag at the shop and gave one mobile phone for charging. Thereafter, he left. After day's work, he went to his room which was opposite to ISBT, victim came and demanded ₹10,000/- otherwise threatened to implicate him in the

case. He refused and went away leaving his slippers in the room. Thereafter, victim came with the police and made false complaint.

14. Though the prosecution heavily relies upon presence of semen on the bed sheet, however, the said report is not relevant as the bed sheet belonged to the appellant thus presence of his semen on the bed sheet does not necessarily indicate appellant committing the offences. However, from the evidence on record, the prosecution has proved that the victim was a minor, aged less than 14 years when the offence was committed. From the evidence of the victim which is duly corroborated by the medical evidence which establishes injury on the anal region of the victim the prosecution has proved beyond reasonable doubt the offence committed by the appellant. Defence of the appellant is that the victim was a pickpocket and has falsely implicated the appellant however there is no material on record to show that the victim was a pickpocket.

15. Appeal is dismissed. Appellant, who is in custody, is directed to undergo the remaining sentence.

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

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2018
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