

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Decided on: 16th November, 2018**
+ **CRL.A. 1073/2017**
DALIP DAS Appellant
Represented by: Mr. Biswajit Kumar Patra, Advocate.
versus
STATE Respondent
Represented by: Ms. Rajni Gupta, APP for the State with
SI Sunder Singh, PS Baba Haridas
Nagar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)
Crl.M.B. No. 1211/2018 (suspension of sentence)

Since arguments have been heard in the appeal itself, application seeking suspension of sentence is dismissed as infructuous.

CRL.A. 1073/2017

1. Dalip Das challenges the impugned judgment dated 26th December, 2016 convicting him for offence punishable under Section 6 read with Section 5(l) of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 15th May, 2017 directing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹50,000/-, in default whereof to undergo simple imprisonment for a period of six months, for offence punishable under Section 6 of the POCSO Act.
2. Assailing the conviction, learned counsel for the appellant contends that there are material contradictions in the testimony of the mother and the child victim.
3. Learned APP for the State on the other hand submits that the offence punishable under Section 6 of POCSO Act has been proved beyond reasonable doubt from of the testimony of child victim (PW-1) itself.

4. Prosecution case sprung out from a complaint given on 11th March, 2013 by the mother of the child victim stating that her daughter who was aged around 13 years was missing since 3:00 P.M. on 28th February, 2013. She tried to search for her daughter but she could not be traced. She stated that she doubted that one boy whose name is Dalip and who is a resident of Bihar had enticed away her daughter. She stated that Dalip worked as a labourer and was residing in Shiv Enclave on rent. Aforesaid complaint was recorded vide Ex. PW-3/A.

5. On the basis of the aforesaid complaint, FIR No. 60/2013 (Ex. PW-16/A) was registered at PS Baba Haridas Nagar for the offence punishable under Section 363 IPC. Investigation of the case was assigned to Inspector Rajender Singh who tried to trace the child victim but she could not be traced.

6. On 26th March 2013, mother of the child victim came to PS Baba Haridas Nagar and informed Inspector Rajender Singh that on 25th March, 2013, the child victim gave her a telephonic call from mobile No. 9654489308 and told her that she was with Dalip Das but the child victim did not disclose the location where she was.

7. On 8th April, 2014, Inspector Rajender Singh got the CDR of the aforesaid number and after analyzing the CDR, he made several calls on the numbers in contact with the aforesaid mobile number to know the whereabouts of the child victim and Dalip Das. On 10th April, 2013 after various calls were made to trace the child victim, one person namely Kamlesh informed Inspector Rajender Singh that Dalip Das was working with him and had been living with one girl at Kartarpur in Punjab.

8. On 11th April, 2013, Inspector Rajender Singh along with HC Rakesh and W/Ct. Harvinder left for Kartarpur. After reaching Kartarpur, they called up Kamlesh. Thereafter, the aforesaid police team along with Kamlesh and one constable from PS Kartarpur went to house No. 457, Mohalla Shiv Puri, Kartarpur and reached the first floor of the house where Dalip Das and the child victim were found present. Enquiries were made from the child victim and recovery memo was prepared vide Ex. PW-2/D. Dalip Das was arrested vide arrest memo Ex. PW-2/A and his personal search was conducted vide Ex. PW-2/B. From the room, one blanket was seized which was used by Dalip Das and the child victim and the same was taken into possession vide seizure memo Ex. PW-2/C. Mobile phone which was used by the child victim for making a call to her mother was also recovered from the possession of Dalip Das and the same was taken into possession vide memo Ex. PW-6/A. Thereafter, the child victim and Dalip Das were brought to Delhi along with the case property and taken to RTRM Hospital for medical examination. Statement of the child victim was recorded under Section 164 Cr.P.C. On 17th April, 2013 exhibits were sent to FSL. During the course of investigation, age proof of the child victim and Dalip Das were collected. After the completion of investigation, charge sheet was filed for the offences punishable under Sections 363/376 IPC and Section 6 of the POCSO Act. Charge was framed for offence punishable under Section 6 of POCSO Act vide order dated 1st July, 2013.

9. Child victim was examined as PW-1. She stated that she had two brothers and one sister. Dalip Das was the son-in-law of her aunt (chachi). Dalip Das came to her house 7-8 months prior to the incident and used to reside in her house. Since she was not attending any school, she used to stay

at home. Her brother and sister used to go to their schools, her mother and Dalip Das used to go for their jobs. Generally, Dalip Das would often come to the house in absence of her mother, brother and sister and had sexual intercourse with her. She further stated that Dalip Das committed rape upon her on several occasions due to which she became pregnant. When she told Dalip Das about the same, he gave her some medicine for abortion. After 10-15 days of the abortion, she along with Dalip Das went to Jallalabad, Distt. Jalandhar, Punjab where she along with Dalip Das stayed for about one and a half months. Dalip Das committed rape on her on several occasions in Jalandhar.

10. Landlord of Dalip Das who was examined as PW-2 stated that Dalip Das stayed in his house as a tenant for about 20-22 days along with child victim.

11. Mother of the victim (PW-3) stated that Dalip came to her house and stayed with them for about four days. Dalip told her that he wanted to work in Punjab and also asked her to give ₹1,500/- and assured her that he would return the money after getting the same from the contractor. After about 10-15 days, he again returned to Delhi from Punjab and stayed in their house for about one and a half month. On 28th February, 2013 Dalip told her that he was going to his native place in Bihar and he requested to send the child victim with him to the market for purchasing clothes for his family members. So, she sent the child victim with him but the child victim did not return back.

12. Kamlesh Kumar (PW-6) deposed that in the month of March, 2013, Dalip Das along with child victim came to his house in Jalandhar and stayed for about 2-3 days. Thereafter, he started residing in a separate house as a

tenant which was situated 4-5 houses away from his house.

13. Dr. Shruti Joshi Dabral (PW-8), Gynae Specialist, RTRM Hospital stated that she was deputed to depose on behalf of Dr. Ritika who had left the services of the hospital and her whereabouts were not available. She identified the hand writing and signature of Dr. Ritika. Dr. Ritika had examined the child victim and prepared the MLC proved vide Ex. PW-1/A. As per the MLC, on local examination there was no mark of external injury and the hymen was torn (old).

14. Dharambir (PW-9) stated that the mother of the child victim along with her family was residing as a tenant in his house for the last 5-6 months prior to the date of incident. He had seen Dalip Das in the house on one or two occasions when he used to go to the house to collect rent.

15. Juhi Devi (PW-11) Principal, Government Middle School, Bhawani Pur, Singhwaraha, Distt. Darbanga, Bihar stated that as per the school records, the date of birth of the child victim was 14th August, 1998. The photocopy of the relevant entry of admission register was proved vide Ex. PW-11/A.

16. Statement of Dalip Das was recorded under Section 313 Cr.P.C. wherein he stated that the child victim had voluntarily accompanied him. On his refusal, she threatened to commit suicide. When he was going to Punjab, child victim accompanied him and the same was within the knowledge of the mother of the child victim and other relatives. He stated that he did not make any physical relation with the child victim.

17. Defense of the appellant is of consent in accompanying and no sexual intercourse being carried out. Child victim being a minor, her consent if any was immaterial. There are no contradictions in the testimonies of the child

victim and her mother. Version of the child victim qua sexual intercourse is corroborated by the medical evidence.

18. Considering the evidence led by the prosecution and there being no merit in the defense rather there being an admission that the child victim was in the company of Dalip Das, instant case clearly falls within Section 5(1)(1) and (n) of POCSO Act. Thus, the impugned judgment of conviction and the order on sentence are upheld.

19. Appeal is dismissed.

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

21. TCR be returned.

(MUKTA GUPTA)
JUDGE

NOVEMBER 16, 2018
‘vn’

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