

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

% Decided on: 20th August, 2018

+ **CRL.A. 1112/2017**

SANJAY @ SANJEET Appellant

Represented by: Mr.Nitin Joshi, Advocate.

versus

STATE Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for State with SI Pankaj
Kumar, PS Vasant Kunj, South.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CRL.A. 1112/2017

1. By the present appeal the appellant challenges the conviction under Section 354D IPC and Section 12 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and the order on sentence directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹7,000/-; in default whereof to undergo simple imprisonment for a period of one month.

2. The above noted FIR was registered on the complaint of the father of the victim girl aged ten years. Father of the victim girl who appeared in the witness box as PW-1 in the FIR stated that his daughter was studying in 6th standard and on 30th August, 2014 when his daughter came back from the school she told his wife that one person namely Sanjay who stays in a Jhuggi at Izrail Camp near their house keeps on following her while she is going or coming back from the school. The daughter also stated that he tried to talk to her and keeps insisting even on her refusal. On the mother of the

victim narrating this incident to the father, the victim was taken to the Jhuggi of the appellant by her father where she pointed towards the appellant identifying him as the boy who followed her and tried to talk to her despite her refusal. Thus a call at 100 number was made. Police arrived at the spot and arrested Sanjay.

3. During the course of trial as noted above, father of the girl was examined as PW-1, mother as PW-2 and the victim as PW-3. In her testimony before the Court the victim deposed that she along with her friend used to go to the school on foot and that her friend had not been accompanying her for the last three-four days. Thus the appellant used to follow her and tried to talk to her despite her refusal. In her cross-examination the victim clarified that the appellant had been following her for the past three-four days when her friend was not accompanying her. Though in her statement mother of the victim deposed that the appellant not only stalked her daughter but also touched her however, in view of the statement of the victim, the same is obviously an improvement and required to be discarded.

4. During the course of trial the age of the prosecutrix was not disputed due to her school record however, the appellant took the plea that he was a juvenile and thus he was produced before the medical board. Dr. Rohini (PW-5) who appeared in the witness box stated that the estimated bone age of the appellant was 20-22 years and exhibited the report of the medical board as Ex.PW-5/A and radiology report as Ex.PW-5/B. In his statement under Section 313 Cr.P.C. the appellant took the plea that the families were living in the neighbourhood and there used to be constant quarrel, thus he has been implicated in this case. Appellant produced his cousin as DW-1,

who stated that on 31st August, 2014 at about 8.30 PM her neighbour along with police came to her house and arrested the appellant. She further stated that father of the victim used to illegally supply electricity and take a sum of ₹1,000/- per month from innocent persons. Since DW-1 refused to pay the money to the father of the victim on the said day, he falsely implicated her cousin.

5. However, the defence plea that PW-1 used to illegally supply electricity and extort money was not put to him in cross-examination and the suggestion given was that being neighbours there used to be disputes between the parents of the appellant and PW-1 on water and electricity, thus the appellant has been falsely implicated.

6. Considering the testimony of the victim which is consistent in nature this Court finds no error in the impugned judgment convicting the appellant for offence punishable under Section 12 of the POCSO Act read with Section 354D IPC however, considering the fact that no overt act except that the appellant wanted to talk to her which she refused and the same happened only for the three/four days when the victim's friend was not accompanying her this Court deems it fit to modify the sentence awarded to him. Appellant has been awarded sentence of rigorous imprisonment for a period of two years. As per the nominal roll the appellant has undergone nearly one year seven months of imprisonment including remissions. Hence sentence of the appellant is modified to the period already undergone.

7. Appeal is disposed of.

8. Copy of the order be communicated to the Superintendent, Tihar Jail, who will release the appellant forthwith, if not required in any other case.

9. Trial court record be sent back.

Crl. M.B. No. 2152/2017 (suspension of sentence)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**AUGUST 21, 2018
'vn'**

