

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

**RESERVED ON : 18th JANUARY, 2018
DECIDED ON : 16th FEBRUARY, 2018**

+ CRL.A. 1044/2017

VINAY Appellant
Through : Mr.Saurabh Kansal with Ms.Pallavi
S.Kansal, Advocates.

versus

THE STATE (GOVT. OF NCT) OF DELHI Respondent
Through : Mr.Ravi Nayak, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

CRL.M.A.No.18697/2017 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the appeal, the delay is condoned.
2. The application for condonation of delay is disposed of.

CRL.A. 1044/2017 & CrI.M.B.2021/2017

1. Challenge in this appeal is a judgment dated 23.02.2017 of learned Addl. Sessions Judge in Sessions Case No.58854/2016 arising out of FIR No.806/2015 PS Adarsh Nagar by which the appellant - Vinay was held guilty for committing offences punishable under Sections 354/354A/451 IPC and Section 10 POCSO Act. By an

order dated 27.02.2017, the appellant was awarded various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet is that on 04.12.2015 at around 03.00 p.m. at House No.N-144/26, Lal Bagh, Azadpur, Delhi, the appellant with sexual intent in mind made physical contact with the prosecutrix 'A' (assumed name) aged around 9 years and outraged her modesty. Information about the incident came to be recorded on 04.12.2015 at around 05.49 p.m. at PS Adarsh Nagar vide Daily Diary (DD) No.25A (Ex.PW-4/A). The Investigating Officer after recording statement of the victim (Ex.PW-1/A) lodged First Information Report. In the complaint, the child gave vivid description of the incident and named the appellant to be the perpetrator of the crime. 'A' was medically examined; she recorded her 164 Cr.P.C. statement. The appellant was arrested and taken for medical examination. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the appellant. To prove its case, the prosecution examined eight witnesses. In 313 Cr.P.C. statement the appellant denied his involvement in the crime and pleaded false implication; no defence evidence was adduced. The trial resulted in conviction as mentioned previously. Aggrieved and dissatisfied by the said order, the instant appeal has been preferred by the appellant.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix and the

appellant were acquainted with each other; the appellant lived in the nearby locality.

4. The victim was aged around 9 years on the day of occurrence. PW-3 (Santosh Bala), Principal, MC Primary School, Co-aid, Model Town, Delhi, proved the documents (Ex.PW-3/A to Ex.PW-3/E) depicting date of birth of the child as 07.01.2006. Her statement remained unchallenged in the cross-examination. The appellant did not deny if the victim was aged more than 9 years. Since the date of birth of the prosecutrix came to be recorded prior to the incident, there was least possibility of victim's parents to have manipulated it.

5. The occurrence whereby the child was defiled occurred at around 03.00 p.m. when the prosecutrix's father was away at his place of work and mother was on duty. When her mother PW-2 returned at around 05.00 p.m., the prosecutrix narrated the incident to her. The appellant was confronted in the gali at around 07.00 p.m. but he succeeded to flee. The matter was reported to the police. Apparently, there was no delay in lodging the FIR.

6. In the complaint, the victim implicated the appellant by name and assigned specific role to him in the crime. She described the incident in detail and disclosed as to how and in what manner, the appellant had touched her inappropriately at various private organs. 'A' recorded her 164 Cr.P.C. statement on 05.12.2015. Before her examination, the learned Presiding Officer put several questions to ascertain if she was competent to make the statement. After recording satisfaction that the child was capable to make statement without any

fear or pressure, her statement (Ex.PW-1/B) came to be recorded. Again, the prosecutrix reiterated her version given to the police and implicated the accused for violating her privacy. In her Court statement, the learned Presiding Officer conducted preliminary examination to ascertain if the child was capable to understand the questions put to her and was in a position to give rational answers. Since the child was a competent witness, her statement was recorded on oath. In her deposition before the Court, she deposed that on the day of occurrence her mother had gone to her work and her siblings were playing outside. At about 04.00 p.m., when she was doing home work in the house, the accused entered inside the house. He forcibly kissed her and touched her body inappropriately; he also pressed her breasts. When she tried to free herself by giving teeth bite on his hand, the accused left extending threats to kill her in case she disclosed the incident to anybody. When her mother came, she apprised her about the incident and the matter was reported to the police. In the cross-examination, she disclosed that her siblings were playing nearby a temple at a distance of 6 – 7 houses away from her house. Her father had gone to the shop. The accused was not on visiting terms with them. Accused's house was situated at a distance of 5 minutes walk from her father's shop and he was familiar with them. She further disclosed that though she had raised alarm but none came for her rescue; the accused remained inside the house for about 5 minutes. She denied if a false complaint was lodged due to a previous quarrel between the accused and her parents.

7. On scrutinising the testimony of child witness in its entirety, it transpires that nothing material has been elicited in the cross-examination to discard her natural version. The prosecutrix is consistent throughout at different stages of investigation and trial. She has proved the version given before the police as well as before the learned Presiding Officer without any material variation. No ulterior motive was assigned to the child to falsely implicate the accused with whom they have acquaintance prior to the incident. No sound reasons exist to disbelieve the testimony of the prosecutrix.

8. A's statement has been corroborated in material particulars by her mother PW-2. She too disclosed that on return from her job at about 05.00 p.m. she was informed by the daughter about the occurrence. Victim's mother had no reasons to use her daughter of tender age over any alleged money transaction.

9. Certain discrepancies or inconsistencies highlighted by the appellant's counsel are insignificant as they do not affect the core of the prosecution case. The defence pleaded by the appellant to seek acquittal deserves outright rejection. In 313 Cr.P.C. statement, for the first time, the appellant came with the plea that he had borrowed ₹5,000/- from the victim's father. When he failed to pay the borrowed amount ₹5,000/-, victim's father demanded ₹10,000/- and on his failure to pay, he was falsely implicated in this case. No evidence surfaced to ascertain as to when and for what purpose, the appellant had borrowed ₹5,000/- from the victim's father. It is highly unbelievable that for a sum of ₹5,000/-, the victim's father would demand ₹10,000/- from the appellant. When the appellant was not

capable to return ₹5,000/-, how it was possible for him to pay ₹10,000/- in lieu of ₹5,000/-. Moreover, over a trivial issue, the victim's parents are not expected to level serious allegations of sexual harassment to their school going-child aged around 9 years to bring her in disrepute. The appellant did not disclose as to what job or business he used to carry on at the relevant time. He did not deny his presence at the spot; did not deny his visits to the victim's house.

10. It has come on record that the appellant remained absconding for sufficient duration after the occurrence and could not be apprehended. Only on 15.01.2016, he was apprehended and was medically examined vide MLCs (Ex.PW-6/A & Ex.PW-7/A). No fresh injuries were found on the body that time. Since the appellant was examined after about 41 days from the date of incident, there was every possibility of the bite injury given by the child to have disappeared. Simply because no injury on the victim's body was noticed in the MLC, it is not a factor to disbelieve A's statement.

11. The impugned judgment based upon proper and fair appreciation of the evidence deserves no intervention; conviction is affirmed.

12. Regarding Sentence Order, the appellant has been sentenced under POCSO Act as well as IPC for various offences described therein. Ingredients of the offences are almost identical; maximum sentence has been awarded under Section 10 of the POCSO Act. In my view, no separate sentence is called for, for commission of offences punishable under Sections 354/354A and 451 IPC. Sentence awarded under Section 10 POCSO Act needs no modification as the

appellant aged around 25 years had dared to outrage the modesty of the child aged around 9 years. Taking advantage of the loneliness of the child and the previous acquaintance, the appellant entered inside the house and inappropriately touched the body of the girl child at various private parts. The appellant deserves no leniency.

13. In the light of the above discussion, while upholding the conviction of the appellant, Sentence Order is modified to the extent that the appellant shall undergo rigorous imprisonment for five years with fine ₹5,000/-; default sentence being simple imprisonment for ten days under Section 10 POCSO Act. Sentences awarded under Section 354/354A/451 IPC are set aside.

14. The appeal stands disposed of in the above terms. Pending application also stands disposed of.

15. Trial Court record be sent back forthwith with the copy of the order.

16. Intimation be sent to the Superintendent Jail.

भारतमेव जयते

(S.P.GARG)
JUDGE

FEBRUARY 16, 2018 / tr