

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

Judgment reserved on :15.11.2019

Date of decision: 26.11.2019

+ CRL.A.1046/2019 & CRL.M.(BAIL)1621/2019

RAVINDER @ SHATI

..... Appellant

Through: Mr. Deepak Kansal &
Mr. Yadunandan Bansal,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State with ASI Tulli Ram,
PS Badarpur.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Ravinder @ Shati s/o Sh. Dhanpal vide the present appeal assails the impugned judgment dated 11.07.2019 of the learned ASJ-01 (POCSO) South East, Saket Court Complex, New Delhi whereby the appellant was convicted for the commission of the offence punishable under Section 325 of the Indian Penal Code, 1860 and Section 12 of the POCSO Act, 2012. The appellant has also assailed the impugned order on sentence dated 17.07.2019 of the learned Trial Court whereby on conviction vide the impugned judgment date 11.07.2019, the appellant was sentenced to undergo

Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.10,000/- qua the offence punishable under Section 12 of the POCSO Act, 2012 and was sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.10,000/- qua the offence punishable under Section 325 of the Indian Penal Code, 1860 with it having been directed that both the sentences would run concurrently and in the event of the failure of the appellant to pay the fine, he would further undergo Simple Imprisonment for a period of one month qua each of the offences with the benefit of Section 428 of the Cr.P.C., 1973 having been accorded to the appellant.

2. Further, the Secretary, District Legal Services Authority, South East was directed to provide restorative and compensatory justice to the victim by payment of Rs.50,000/- as a compensation to be paid to the victim.

3. On behalf of the appellant, it has been submitted that he has already undergone two (2) years one (1) month and seven (7) days of incarceration, which is also so indicated vide the impugned judgment wherein it has been expressly observed to the effect that the convict had remained in custody from 16.04.2014 to 12.08.2016 and vide the impugned order on sentence dated 17.07.2019, had been admitted to bail.

4. On behalf of the appellant, it was contended that the provisions of the POCSO Act, 2012 do not apply in the instant case, in as much as the age of the prosecutrix being below the age of 18 years at the

time of the commission of the offence had not been established, that the birth certificate of the child had not been proved through appropriate testimony and that the birth certificate even showed a different parentage from the actual parentage of the prosecutrix. It was also submitted on behalf of the appellant that in view of the minority of the child having not been established during the trial under the POCSO Act, 2012, the appellant was entitled to be acquitted in relation thereto and that the contents of the police report under Section 173 of the Cr.P.C., 1973, the averments made in the FIR as well as the testimony of the complainant examined as PW-4, do not substantiate the prosecution version in relation thereto.

5. It was also sought to be contended on behalf of the appellant that whereas, it was the contention of the appellant that there had been repeated attempts of stalking of the prosecutrix by the appellant, there were no previous complaints that had been proved and that the falsity of the prosecution version was brought out from the said aspect itself.

6. Submissions were made on behalf of either side i.e. on behalf of the appellant by the learned counsel for the appellant and on behalf of the respondent/ State by the learned APP for the State.

7. The Trial Court Record was requisitioned, which has been received and perused.

8. At the outset, it is essential to observe that on a perusal of the FIR lodged on the statement of the prosecutrix on 11.04.2014 and the statement of the prosecutrix recorded under Section 164 of the Cr.P.C., 1973 on 22.04.2014 as well as her testimony on oath recorded

on 04.11.2015, the prosecutrix is consistent that her age was 15 years at the time of the occurrence on 11.04.2014 and as rightly observed by the learned Trial Court the age of the prosecutrix as being that of 15 years at the time of the occurrence, was not challenged in any manner by the appellant herein.

9. The mother of the prosecutrix (N) i.e. Smt. U examined as PW-2, in her testimony recorded on 24.02.2016 stated that she had four children, her eldest daughter being around 22 years of age, though she did not remember her date of birth and that her second child i.e. the prosecutrix (N) was three years younger than her eldest child.

10. The school certificate Ex.PW10/D produced from the SDMC Primary School, Railway Colony-1, Tughlakabad, New Delhi-44 gives the date of birth of the prosecutrix Ms. 'N' as being 24.08.2000 who was admitted in school in the 1st Standard vide admission no.7053 and passed out of 5th Standard vide Ex.PW10/D. There is not a whisper of a suggestion put to the Investigation Officer i.e. PW-10 ASI Yogender Singh on behalf of the appellant during cross-examination that the school certificate produced was false. It is undoubtedly true that Ex.PW10/D, the school certificate of the prosecutrix gives the father's name of the prosecutrix as being Rakesh Chawla whereas, as per the FIR and the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix dated 22.04.2014 and the testimony of PW-2, the name of the father of the prosecutrix is Sh. Surender Chawla and not Rakesh Chawla, however, Smt. U in her

cross-examination on 24.02.2016 has stated that one Rakesh Chawla who was resident of their village who used to love her daughter and her daughter used to call him chacha (uncle) but that he has expired six years ago and that his name was mentioned in the school records of the prosecutrix as her father. In the circumstances, there appears no reason to disbelieve Ex.PW10/D as being the date of birth of the prosecutrix which thus, brings forth that the prosecutrix was below the age of 18 years on the date of the commission of the offence on 11.04.2014.

11. As rightly observed by the learned Trial Court, nothing prevented the accused/convict i.e. the appellant herein from producing the proof in defence from the school records of the prosecutrix to contend that the prosecutrix was not a minor on the date of the alleged commission of the offence.

12. As regards the contentions raised on behalf of the appellant that the identity of the appellant had not been established, it is essential to observe that the appellant is named in the FIR as being the perpetrator of the crime and is named as being the assaulter through the statement under Section 164 of the Cr.P.C., 1973 by the prosecutrix and is also identified by the prosecutrix through her testimony,- the identity of the appellant as being the perpetrator of the crime in the instant case thus, stands established.

13. As regards the contention raised on behalf of the appellant that the testimony of the prosecutrix is infirm and variant and that there are inconsistencies and contradictions in the testimonies of the

prosecution witnesses and the contention raised on behalf of the prosecutrix that no member of the public has joined the investigation, it cannot be overlooked that members of the public often do not join the investigation process and thus, where the testimonies of the witnesses, or witnesses of the alleged crime are cogent and convincing and are corroborated through all material evidence, the absence of public witnesses joining the investigation of the case cannot be the sole ground to render credible testimony infirm.

14. It is essential to observe that the testimony of the prosecutrix at all stages of the investigation including the trial is consistent in relation to all material particulars and brings forth that the prosecutrix was being followed and stalked by the appellant from some time prior to the date 11.04.2014 regularly and on 11.04.2014 when she was going to the medical store around 12.30 PM to buy medicines, the appellant Ravinder @ Shati started chasing her and on seeing him, the prosecutrix increased her pace and that the appellant met her on the Gurudwara Wali Road and he too increased his pace and caught hold of her hair from the back side and asked her to listen to him and when she stated that she would not listen to anything, the appellant herein took out a sharp edged weapon and hit the prosecutrix on her hand, on both her cheeks and on the right ear and thus she went forward to the police chowki where she made a complaint against that boy and stated that that boy used to chase her on her way to school in the past also stating that he wanted to talk to her but she always refused. The prosecutrix has further testified that that boy used to eve tease her

since about 2/3 months prior to the registration of the case and that she knew the accused prior to 2/3 months because he was visiting their colony and she was studying in Standard IX at the time of the incident and the policeman used to accompany her and used to keep a watch on her way to school and had told her that whenever the said boy came and molested her, she should inform the police.

15. During the cross-examination of the prosecutrix, the appellant has been unable to demolish the version put forth by her in relation to the commission of the offence by the appellant.

16. The statement of PW-5 Constable Sandeep who was on emergency duty with ASI Yogender Singh on 11.04.2014 brings forth that on receipt of DD No.18A of a knife stabbing, he along with ASI Yogender Singh reached at M.B. Road opposite the water tank and met the prosecutrix 'N' who had injury on her cheeks and she was taken to the police station and thereafter along with W/Constable Mamta, he took 'N' to the hospital.

17. The statement of Constable Mamta who was examined as PW-6 corroborates the prosecution version that whilst she was posted as a Constable at PS Pul Prahladpur on 11.04.2014, she along with Ct. Sandeep reached at the spot at M.B. Road where the prosecutrix 'N' met them in an injured condition along with the Investigation Officer and the injured was brought to the police station and she with Ct. Sandeep took the injured to the Trauma Center, AIIMS, where they handed over the MLC of the injured to the Investigation Officer and

the injured was also taken to the spot where the Investigation Officer prepared the site place at her instance.

18. The MLC PW9/D as issued by the Jai Prakash Narayan Apex Trauma Center of the prosecutrix, which also gives her age as 15 years and shows that she had a laceration of 3x1 cm over the right ear with cartilage laceration, laceration of 2x1 cm over her right cheek, an abrasion of 6x1 cm over her chin and laceration of 2x1 cm over her left cheek. The injuries were opined to be grievous, however, Dr. Rajesh Kumar Mishra who had medically examined the prosecutrix, could not be produced by the prosecution, in as much as, it was testified by PW-9 Sh. Rajender Singh, Record Clerk, AIIMS Trauma Center, New Delhi that his whereabouts were not available and that he had left the AIIMS. Sh. Rajender Singh, Record Clerk, AIIMS Trauma Center, New Delhi however, identified the signatures of the doctor on the MLC as per the record. Though, the doctor of the AIIMS could not be examined, Dr. Anand Kumar, IMO Grade-II, ESI Hospital Okhla Phase-I, New Delhi was examined as PW-1 by the prosecution who stated that on 11.04.2014, he had examined the patient 'N' aged about 15 years and on examination he found that there was an abrasion below the left eye and right cheek.

19. On behalf of the accused/convict i.e. appellant herein, it was contended that the nature of the injuries inflicted on the prosecutrix being grievous, had not been established beyond a reasonable doubt, in as much as, the doctor who examined the prosecutrix, had not been examined and that to bring the appellant within the ambit of

culpability under Section 325 of the Indian Penal Code, 1860, the parameters of Section 320 of the Indian Penal Code, 1860 have to be established. That for an offence to be punishable under Section 325 of the Indian Penal Code, 1860, the parameters of grievous hurt designated under Section 320 of the Indian Penal Code, 1860 have to be met, is undoubtedly true.

20. Section 320 of the Indian Penal Code, 1860 provides as follows:-

“320. Grievous hurt.—*The following kinds of hurt only are designated as “grievous”:*—

(First) — Emasculation.

(Secondly) — Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) — Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) — Fracture or dislocation of a bone or tooth.

(Eighthly) — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

21. It was contended on behalf of the appellant was that none of the hurts as detailed therein, had been inflicted on the prosecutrix and thus, the offence attributed to the appellant did not fall within the ambit of Section 325 of the Indian Penal Code, 1860.

22. Another contention raised on behalf of the appellant that the Investigation Agency has not collected the blood stained clothes of the

prosecutrix and did not conduct the investigation appropriately, qua which it has rightly been held by the learned Trial Court that the failure to investigate appropriately, does not detract from the veracity of the testimony of the prosecutrix.

23. On behalf of the State, reliance was placed on the MLC to contend that there had been a permanent disfiguration of the face of the prosecutrix. However, though the photograph as visible in the MLC Ex.PW9/D shows the scar on the face of the prosecutrix, it has not been so testified by the prosecutrix in her deposition on oath nor by her mother PW-2, that there had been any permanent disfiguration of the face of the prosecutrix by the act of the appellant herein.

24. In the circumstances, the conviction of the appellant under Section 325 of the Indian Penal Code, 1860 is set aside and thus, in as much as the infliction of the injury on the prosecutrix by the appellant as put forth through the prosecution version is established through a sharp edged weapon, the injury inflicted on the prosecutrix by the appellant is culpable in terms of Section 324 of the Indian Penal Code, 1860 under which the appellant is thus, now convicted.

25. In as much as the testimony of the prosecutrix and all attendant witnesses corroborates the prosecution version as put forth by the prosecutrix of the appellant having been consistently been following her and stalking her for a period of 2/3 months prior to the registration of the case and of his having made attempts to talk, though she resisted from the same and of his having caught hold of her from the

back side on 11.04.2014 and asked her to listen to him and when she did not listen to him, the appellant took out a sharp edged weapon and hit her on her hand, her cheeks and her right ear, the commission of the offence punishable under Section 11(i) of the POCSO Act, 2012, which prescribes to the effect:-

“11. Sexual harassment.- *A person is said to commit sexual harassment upon a child when such person with sexual intent,-*

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

....

....

....”,

is thus established beyond a reasonable doubt, which offence is punishable as rightly held by the learned Trial Court under Section 12 of the POCSO Act, 2012 which is punishable with imprisonment of either description of a term which may extend to three years as well as to a fine.

26. In the instant case, the conviction of the appellant under Section 11 r/w Section 12 of the POCSO Act, 2012 is thus, upheld.

27. The appellant vide the impugned order on sentence dated 17.07.2019 was sentenced to undergo Simple Imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- qua the offence punishable under Section 325 of the Indian Penal Code, 1860 which conviction has been modified to be one under Section 324 of the

Indian Penal Code, 1860 and thus, the sentence as imposed, **modified to a period of Simple Imprisonment for a period of 2 years and 6 months along with a fine of Rs.5,000/- in place of Rs.10,000/-**. As regards the offence punishable under Section 12 of the POCSO Act, 2012, the learned Trial Court has rightly sentenced the convict i.e. the appellant herein to undergo a sentence of Simple Imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- and both the sentences have been directed to run concurrently.

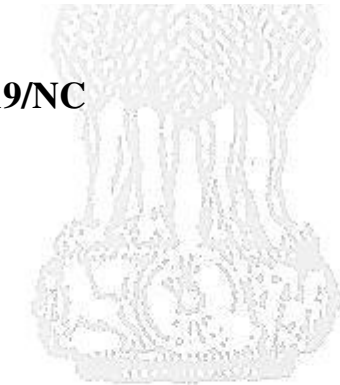
28. In the circumstances, as the appellant has already undergone 2 years 3 months and 27 days of incarceration, **he is directed to be taken into custody forthwith to undergo the sentence imposed vide the impugned order on sentence dated 17.07.2019 in relation to FIR No.135/2014 PS Pul Prahlad Pur as modified hereinabove i.e. Simple Imprisonment for a period of two (2) years and six (6) months qua the offence punishable under Section 324 of the Indian Penal Code, 1860 and to pay a fine of Rs.5,000/- and in default of the payment of the said fine, to further undergo Simple Imprisonment for a period of one month and sentenced to undergo Simple Imprisonment for a period of three (3) years and to pay a fine of Rs.10,000/- qua the offence punishable under Section 12 of the POCSO Act, 2012 and in default of the payment of the said fine, to further undergo Simple Imprisonment for a period of one month.**

29. The sentence qua the offence punishable under Section 12 of the POCSO Act, 2012 has not been reduced despite the contention raised on behalf of the appellant that he has an ailing mother and he is the only earning member in the family to look after her, in as much as the mental depravity of the appellant in the commission of the offence has been established and is a serious offence of commission of sexual harassment of the minor child by persistently making advances to her though she rejected the same and thereafter inflicting the injuries on her.

30. The appeal is disposed of accordingly.

ANU MALHOTRA, J

NOVEMBER 26th, 2019/NC



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