

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

% Judgment delivered on: 19th March, 2020

+ CRL.A. 564/2019 & CRL.M.A. 8945/2019

JITENDER Appellant

versus

STATE Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Gautam Khazanchi, Advocate.

For the Respondents: Ms. Meenakshi Dahiya, APP for the State

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Appellant impugns order on conviction dated 08.01.2019 and order on sentence dated 23.02.2019, whereby the appellant has been convicted for an offence under Section 8 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act) and sentenced to undergo simple imprisonment for a period of three years and to pay fine of Rs. 15,000 and in default to further undergo a simple imprisonment for a period of six months.

2. Case of the prosecution is that FIR No. 505/2015 under section 354 Indian Penal Code and Section 8 POCSO Act, Police Station :

Mundka, was registered pursuant to a complaint lodged by the prosecutrix.

3. It is alleged that on 03.10.2015 when the prosecutrix aged 13 years was watching television in her *veranda*, appellant who was a tenant at her house, after fetching water from her kitchen, came and sat next to her and started to watch a cricket match. After about ten minutes he pressed her breasts and she thereafter shouted and her mother, who was in the adjoining room and caught hold of the Appellant and police was called.

4. Prosecution in support of their case examined as many as 5 witnesses.

5. The trial court after considering the submissions made by the parties and on perusal of material on record held that:

“27. The prosecution is successful to establish the facts beyond reasonable doubts through the testimony of PW1, the prosecutrix corroborated through her previous versions given to the police in her statement Ex.PW1/A and to the Ld. MM In her statement Ex. PW1/B recorded u/s 164 Cr.P.C and also corroborated through the testimony of her mother Ms. S, examined as PW2, that the accused has committed sexual assault upon her, that leads to one and only one hypothesis that the accused has committed the offence of sexual assault upon the prosecutrix of the age of 13 years, as described u/s 7 & punishable u/s 8 of POCSO Act.”

6. It is submitted by learned counsel for the Appellant that Appellant has been falsely implicated and the trial court has erred in convicting him for offence under section 8 POCSO Act.

7. It is submitted that the family of the prosecutrix has roped the Appellant into a false case. It is alleged that the Appellant had a quarrel with the mother of the prosecutrix regarding increase of rent. Further, it is submitted that it is highly improbable for the Appellant, who was a tenant, to sexually harass the daughter of the landlord, while the parents of the prosecutrix were present in the room right next to the *veranda* where the incident is alleged to have taken place.

8. It is contended by the learned counsel for the Appellant, that the brother and the father of the prosecutrix were not examined and no public witness was produced. Further, it is submitted that there is discrepancy in the statements made by the prosecutrix. It is alleged that the prosecutrix at first deposed that appellant *touched her chest* and later it was changed to *pressed her chest*.

9. Trial Court has noted that the entire prosecution case was based on the testimony of the prosecutrix (PW1). It has been held by the Trial Court that the versions of the prosecutrix; in her testimony before the court, her statement under section 164 Cr.P.C and in her complaint, are consistent regarding the allegations of sexual assault.

10. Further, it is held that the version of PW1 was corroborated by the testimony of the mother of the prosecutrix who was examined as PW2, thereby proving the allegations of sexual assault.

11. Trial Court, in the impugned judgment, has noted the provisions of Section 29 of POCSO Act, which stipulate that in case a person is prosecuted for committing, abetting, attempting to commit offence under section 3,5,7 & 9 of POCSO Act, court shall presume that such person has done so, unless contrary is proved.

12. Trial Court has taken into account the testimony of DW1 who deposed regarding an alleged quarrel between the Appellant and the mother of the prosecutrix regarding increase of rent. Trial Court has held that Appellant could not prove anything contrary to the case of the prosecution and further there was no reason to disbelieve the version of the prosecutrix.

13. Trial court has relied on the decision of the Supreme Court in *Narender Kumar vs. State (NCT of Delhi)* (2012) 7 SCC 171, wherein the Supreme Court has held that :

“ 20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of

testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.”

14. Trial Court on appreciation of the evidence of the child victim observed that the prosecutrix in her testimony as PW1 is consistent with her versions given in her complaint Ex. PW1/A and her statement Ex. PW1/B recorded under section 164 Cr.P.C.

15. In her testimony before the Trial Court, the prosecutrix deposed as under:

“On 03.10.2015, I had my birth day on that day and at about 10.30 pm, I was watching TV and lying down in gallery (Veranda), at that time, our tenant Jitender came there for taking water and after taking the water he sat there for watching TV as the Cricket match was going on in the TV. He sat near me and started pressing my breast. I shouted then my mother came and caught hold of Jitender and called the other members of the family.

My mother called the police at 100 number. Police came and inquired from me. I gave my complaint to the Police.”

16. In her complaint given to the police exhibited as Ex. PW 1 / A , she had reported as under:

“On 03.10.2015 at about 10:30 PM, I was watching TV in the Bramda while lying on a cot. Our tenant Jitender came there on the pretext of fetching water and started watching TV. Jitender did eve teaching with me and touched my chest. On my shouting my mother came from the room and we caught hold Jitender and my mother called at 100 number.”

17. Later in her statement recorded under section 164 Cr.P.C. exhibited as Ex. PW1/B, she had stated as under:

“On 03.10.2015 at about 10:30 PM - 11:00 PM, I was watching TV in the Bramda while lying. Our tenant Jitender came there on the pretext of fetching water and after taking water he sit down there and on seeing there is no one, he started pressing my chest. On my saying that uncle what you are doing, he did not stop and on my shouting my mother came from the room and then we made a complaint.

18. All the three versions of the prosecutrix are consistent with each other. It must also be kept in mind that the prosecutrix at the time of the commission of the offence was aged only 13 years.

19. The contention of learned counsel for the Appellant that the evidence of the prosecutrix is not reliable because the version of the prosecutrix has changed from *touching her chest* to *pressing her chest* is not sustainable.

20. Firstly because the statement of the prosecutrix was recorded in Hindi language and a word used in a different language during

translation can convey different meaning. Secondly, even if the contention of learned counsel for the Appellant was to be accepted, even then it would make no difference because the appellant has been convicted of the offence under section 8 POCSO Act which prescribes for the punishment for committing sexual assault. Sexual Assault has been defined in Section 7 of the POCSO Act which *inter alia* uses the expression “*with sexual intent touches....*”. Whether the appellant had touched or pressed her breast, the offence would be complete.

21. Further, the Trial Court has also taken note of Section 30 of POCSO Act which stipulates that the Special Court shall presume culpable mental state and it shall be a defense for the accused to prove that he had no such mental state.

22. The defense of the appellant is that he has been falsely implicated because he had a quarrel with the mother of the prosecutrix regarding increase of rent and that it was highly improbable for the Appellant to sexually harass the daughter of the landlord while the parents of the prosecutrix were present in the room right next to the *veranda* where the alleged to have incident taken place, is also not sustainable.

23. In view of the presumptions arising under section 29 and 30 of POCSO Act, it was for the appellant to prove his defense, however the Appellant has not been able to rebut the presumption or discharge the

onus. No cogent evidence has been produced by the appellant in his defense to establish false implication.

24. Trial Court has held that the prosecutrix satisfies the test of a sterling witness and as such the conviction can be based solely on the testimony of the prosecutrix who has been consistent in her version throughout.

25. I find no error in the view taken by the Trial Court or any infirmity in the judgment.

26. I find no merit in the appeal. The Appeal is accordingly dismissed.

27. Order *Dasti* under signatures of the court master

SANJEEV SACHDEVA, J

MARCH 19, 2019

HJ