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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 10.02.2020

CRL.A. 799/2017

SURESH KUMAR

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Aishwarya Rao, Advocate along with appellant.

For the Respondent : Mr. Ashish Dutta, APP for State.
SI Vikas, P.S. Naraina.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT)

1. In pursuance to the directions issued by this Court, Mr. Suresh Kumar, the appellant has been produced in custody.

2. The appellant has been convicted for the commission of offence under Section 4 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') by the Trial Court by way of its judgement and order on sentence dated 28.11.2016 and 30.11.2016 respectively. He has been sentenced to undergo rigorous imprisonment for life with fine of Rs 10,000/-, in default of payment of fine further simple imprisonment for period of one month.

3. As per the case of the prosecution, on 08.03.2014 at about 8.00 pm, appellant herein, committed penetrative sexual assault upon the prosecutrix X aged 15 years at the time of commission of offence, who was alone at her home, at the material time. The appellant, who was living nearby, went to the house of prosecutrix, gagged her mouth and laid her on a bed lying in the room and forcefully ravished her; and after commission of offence left the prosecutrix and fled away.

4. Ms. Aishwarya Rao, learned counsel appearing on behalf of the appellant, on instructions from the latter, states that, he does not wish to assail the impugned judgment dated 28th November, 2016, whereby, the trial court was pleased to convict him for the commission of penetrative sexual assault on the person of the prosecutrix 'X'.

5. Ms. Aishwarya Rao, learned counsel for the appellant, however, vehemently assails the impugned order on sentence dated 30th November, 2016, whereby, the appellant has been directed to undergo Rigorous imprisonment for life for the commission of the offence under Section 4 of POCSO Act; on the ground that the same is harsh and unsustainable.

6. It is further submission on behalf of the appellant that, the sentence imposed upon him is excessively disproportionate and that the ends of justice would be met, if the same is reduced to the minimum sentence of 10 years' as provided under the provision of section 4 of the POCSO Act in force, at the time of the commission of the offence.

7. Our attention has been invited to the circumstance that, the appellant is the solitary breadwinner of a large family comprising besides the appellant- his wife and six children including three daughters and three minor sons. In this behalf, it is also urged that the family of the appellant has had to endure untold misery owing to financial deprivation as a consequence of incarceration of the appellant and his family is being deprived of his care and support.

8. In the present appeal, we observe from the nominal roll *qua* the appellant on record that, he has remained incarcerated for more than five years' and his overall jail conduct has been satisfactory throughout the period of incarceration and that, he has rendered productive service as a 'Tailor Punja Sahayak' to the jail authorities for sufficient length of time.

9. Having regard to the facts and circumstances in totality, and having heard learned counsel appearing on behalf of the parties; the judgment and order of conviction dated 28th November, 2016 rendered by the Trial Court is upheld. However, the order on sentence dated 30th November, 2016 is modified as mentioned hereinafter.

10. Insofar as, the quantum of sentence is concerned, we are of the view that the ends of justice would be served if the sentence imposed upon the appellant is reduced from Rigorous Imprisonment for life to 12 years Rigorous Imprisonment, along with the fine of Rs.10,000/- as imposed upon him by the trial court.

11. The appeal is disposed of in the above terms, and order on sentence is modified accordingly.

12. The Trial Court Record be returned with a certified copy of this judgment.

13. A copy of this judgment be communicated to the appellant, namely, Mr. Suresh Kumar through the Superintendent, Central Jail, Tihar and be also sent for updation of the records.

**SIDDHARTH MRIDUL
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

FEBRUARY 10, 2020
RS/d