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

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Decided on: April 7, 2021

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CRL.A. 646/2017

DALIP

..... Appellant

Represented by: Ms.Saahila Lamba, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr.Ravi Nayak, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present appeal, the appellant challenges the impugned judgment dated 20th January, 2017 whereby the appellant has been convicted for offences punishable under Section 363 IPC and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, the 'POCSO Act') and the order on sentence dated 31st January, 2017 whereby the appellant has been directed to undergo sentence of rigorous imprisonment for a period of 15 years and a fine of ₹5000/-, in default whereof, to undergo simple imprisonment for 30 days for offence punishable under Section 6 of the POCSO Act and sentence of rigorous imprisonment for a period of 3 years and fine of ₹5000/- under Section 363 IPC. Both the sentences have been directed to run concurrently.

2. FIR No. 542/2013 was registered at P.S. Shahbad Dairy for offences

punishable under Sections 363/323/376/506 IPC and Section 6 of the POCSO Act on the complaint of the mother of the victim on 22nd October, 2013. The complainant alleged that at about 5 pm, she sent her elder daughter, the victim 'R' to a nearby shop to buy a needle. However, the victim did not come for some time when she sent her husband to search her. In the meanwhile, victim came back crying and her *pajami* was smeared with blood. On enquiry, the victim disclosed that at the shop, she met her neighbour i.e. the appellant herein, who on the pretext of buying a needle took her across the road and committed sexual assault on her after threatening her and thereafter, left the victim near her house. The complainant along with her husband went to their neighbour Sakaldeep where it was informed that Dalip used to visit him. They went to the room of Dalip where the victim identified Dalip as the person, who took her across the road and committed sexual assault on her. In the meantime, neighbours gathered and started beating Dalip whereafter the police arrived.

3. Victim was examined by Dr. Yudhvair Singh (PW3) and Dr. Nidhi, who appeared as PW8 besides Dr. Geetanjali Singh, who appeared as PW18 before Court. The victim was examined as PW1, her father as PW4, her mother as PW5, her uncle as PW7, her cousin as PW9, the neighbour Sakaldeep as PW6, Hansraj, the neighbour as PW11 and landlord as PW10. To prove the age of the victim, the prosecution examined PW2 who brought the school record, as per which, the date of birth of victim was 15th March, 2007. Thus, on the date of alleged incident, the victim was 6½ years' old.

4. In her testimony before the Court, the victim reiterated her version stated under Section 161 CrPC that her mother had sent her for purchasing a needle at the nearby shop. When she was going to purchase the said needle,

Dalip caught her. She knew Dalip since he used to visit the locality often and on the day of incident, took her to jungle and made her lie on the ground. He touched her urinating part and inserted his fingers into it. His finger had long nails. He also urinated upon her. He opened his underwear and also took out her underwear and lied down on her. He pressed her mouth with force and also pressed her throat. She raised alarm. In the meantime, one Baba came and asked her to go home. She went home crying and narrated the incident to mother. Victim identified Dalip as the person who committed rape on her.

5. In cross examination, the victim clarified facts and on a Court question being asked as to whether, she had deposed on the basis of what her mother told her and what really happened with her, the victim stated that this all happened to her and that is why, she stated so. She stated that she has written the facts in the copy as well and that she knew Dalip because he used to come to the neighbouring house. This version of the victim as stated by her was deposed too by PW5 and her father PW4 besides PW7, her uncle and cousin PW9 who used to reside in the same house as the victim.

6. Undoubtedly, the versions of the uncle, cousin and neighbours of the victim are on the basis of what was told to them, however, they all stated that soon after the incident the victim pointed out towards Dalip as the person who committed rape on her. As per the MLC of the victim, it appeared that the hymen was torn and bleeding was present in Vagina. The specimen collected were sent to DNA analysis, however, as the case of the victim was that the appellant inserted fingers, there was no semen stain found. Further medical examination of the victim also showed post vaginal wall tear and she was admitted in the hospital on 22.10.2013 at 12.25 am

and discharged on 24.10.2013.

7. Considering that the victim/prosecutrix was a minor girl aged 6½ years and immediately after the incident, pointed out towards the appellant as the person, who committed the offence and her version was corroborated by the fact that her pants were blood stained; there were injuries in the vagina resulting in bleeding, this Court finds that the prosecution has proved beyond reasonable doubt the charge for offence punishable under Sections 363 IPC and 6 of the POCSO Act against the appellant. Hence, this Court finds no infirmity in the impugned judgment of conviction.

8. Learned counsel for the appellant contends that the sentence of the appellant be reduced from rigorous imprisonment of 15 years as the appellant is a young boy.

9. Considering the fact that the offence was committed on a minor girl aged 6½ years old, this Court finds no ground to reduce the sentence from the one already awarded by the learned Additional Sessions Judge.

10. Appeal is accordingly dismissed.

11. Copy of the judgment be uploaded on the website of this Court and be also transmitted to the Superintendent Jail for updation of record and for information to the appellant.

(MUKTA GUPTA)
JUDGE

APRIL 07, 2021

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