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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 8th December, 2021

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CRL.A. 1169/2017

RAVINDER alias KALLU

..... Appellant

Represented by: Ms.Aishwarya Rao, Advocate.

Versus

STATE

.... Respondent

Represented by: Mr.Amit Gupta, APP for the State
with SI Kiran Pal, P.S.G.T.B.
Enclave.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****JUDGMENT: (ORAL)**

1. By this appeal the appellant challenges the judgment dated 11th August, 2017 whereby the appellant was convicted for offences punishable under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offence Act (in short POCSO Act) and the order on sentence dated 26th August, 2017 whereby the appellant was directed to undergo rigorous imprisonment for a period of 10 years and a fine of ₹15,000/- for offence punishable under Section 376(2)(i) IPC. No separate sentence for Section 6 POCSO Act was awarded. The victim was also held entitled to compensation of ₹7,50,000/- and the DLSA shahdara, Karkardooma Court was directed to pay a sum of ₹5 lakhs as compensation under Section 357(A) Cr.P.C. to the victim under Delhi Victim Compensation Scheme 2015.

2. FIR No. 73/2014 under Section 376(2)(i) IPC and Section 6 of the



POCSO Act was lodged at GTB Enclave on the statement of father of the victim who stated that on 9th February, 2014 at about 3.00 PM when he was sleeping at his house, his wife woke him up and told him that their daughter had gone for playing at the roof and when she returned she saw a packet of biscuit in her hands and that money was given to her by Ravinder uncle. Ravinder lived on the upper floor of the house. Whereafter the victim again went to play on the roof. After some time she returned crying and was also frightened. On enquiry the victim stated that while she was playing on the roof, Ravinder uncle took her inside the room, removed her underwear made her lie down, also removed his underwear and laid on her. Thereafter he started touching his private parts with her private parts. When his wife inquired from Ravinder he ran away.

3. Search was made for the accused, however he could not be traced and thus call was made to the Police. MLC of the prosecutrix was conducted and her statement was recorded under Section 164 Cr.P.C. In her statement she stated that Ravinder gave her ₹5 to purchase the biscuit packet and shut her mouth. Thereafter he took off his underwear and her underwear. He put his organ into her private part. Her underwear got wet and he poured water on it. Thereafter, she went downstairs and told her mother.

4. As regards the age of the victim is concerned, PW-8 the Principal of the school appeared along with the record. As per the School record, victim was admitted in the 1st standard and her date of birth was noted as 28th March, 2008 and thus at the time of the alleged incident she was aged 5 years and 10 months.

5. Learned counsel for the appellant challenging the conviction states that there are contradictions in the testimony of the victim and there is no



evidence to corroborate the same. It is contended that the victim in response to the Court question stated that her underwear and pajami was seized by the Doctor. However, in her statement she stated that she did not know who gave the clothes to the Police. She further stated that she did not know whether the Police had seized the clothes which she was wearing at the time of the incident. Further suggestion was given to the victim that her father had borrowed a sum of ₹5000/- from Ravinder prior to the date of incident. Learned counsel for the appellant further states that even as per the MLC there is no penetration and the hymen was found intact.

6. MLC of the victim notes abrasion around hymen and inside of labia-minora. Thus the contention of learned counsel for the appellant that the MLC does not corroborate the version of the prosecutrix is incorrect. Further, the victim was aged less than 6 years when the alleged incident took place and immediately after the incident she came crying and frightened and told about the incident to her mother. In her statement under Section 164 Cr.P.C. itself she stated that when she started crying he took her to his house, her underwear got wet and he poured water on the same. In her statement before Court, the victim has reiterated her version recorded under Section 164 Cr.P.C. Further, as per the FSL report semen was detected on the pajami, underwear, swab and the micro-slides of the vaginal secretion of the victim. On DNA profiling the alleles on the exhibits i.e. pajami, underwear, cotton wool swab of the victim and micro-slides of the vaginal secretion accounted for the alleles which tallied with the blood samples of the accused.

7. In view of the statement of the victim, her MLC and the FSL report including DNA analysis report, the prosecution has proved beyond



reasonable doubt that the appellant committed the offence of rape on the minor victim. In his statement under Section 313 Cr.P.C. appellant claims innocence and that he had been lifted from the factory. Though the suggestion given to the victim was that the father of the victim owed money to him, in his statement under Section 313 Cr.P.C. he stated that he had come to Delhi 10 days prior to the alleged incident only and that he had no acquaintance with the parents of the child. Though he sought to lead defence evidence, however he did not produce the witness Bablu.

8. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence.

9. Appeal is accordingly dismissed.

10. Order be uploaded on the website of this Court. Copy of the order be sent to the Superintendent, Tihar Jail for updation of record and intimation to the appellant.

CRL.M.(BAIL) 1515/2021

Application is disposed of as infructuous.

**(MUKTA GUPTA)
JUDGE**

DECEMBER 08, 2021/ 'ga'