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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 28th January, 2022Decided on: 4th July, 2022

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CRL.A. 640/2017**SHRI KANT**

..... Appellant

Represented by: Mr. Biswajit Kumar Patra, Adv. with
appellant thru VC from jail.

versus

GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr. Amit Gupta, APP for State with
SI Garima Bhagat, PS Mukherjee
Nagar.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal, the appellant challenges the impugned judgment dated 31st January, 2017 whereby he was convicted for offences punishable under Section 342 IPC and Section 6 of the POCSO Act and the order on sentence dated 2nd February, 2017 whereby he was directed to undergo rigorous imprisonment for a period of 15 years and to pay a fine of ₹5000/- for offence punishable under Section 6 POCSO Act in default of payment of fine to undergo simple imprisonment for 30 days as also rigorous imprisonment for a period of one year and a fine of ₹5000/- for offence punishable under Section 342 IPC in default whereof to undergo simple imprisonment for 30 days.

2. Learned counsel for the appellant contends that the prosecution has not been able to prove beyond reasonable doubt the charge against the appellant that he committed penetrative sexual assault upon the victim as the



version of the victim and her mother is not supported by medical evidence or the forensic evidence. There is no evidence at all of any penetrative sexual assault as the hymen of the victim was found intact. There are material inconsistencies in the testimony of the victim, her mother and other witnesses showing that the appellant has been falsely implicated on the basis of false and fabricated depositions. During the course of examination, the victim was not even able to tell the location of the room where the appellant allegedly took her, or as to the time for which she stayed in the room of the appellant. Conviction is based on the testimony of interested witnesses and no independent witness was associated despite other people residing in the neighbourhood. Learned Trial Court erroneously concluded that there was no ulterior motive to falsely implicate the appellant as there was no previous animosity or ill-will between the child witness and the appellant. Explanation of the appellant that he had given a sum of ₹34,500/- to the mother of the victim and when the appellant demanded back the said amount, the mother of the victim did not return the same and falsely implicated the appellant in this case has not been considered by the learned Trial Court.

3. In the alternative, it is also contended that the sentence of rigorous imprisonment of 15 years awarded to the appellant is excessive. The appellant himself has a minor child aged 4 years, appellant was the only earning member in the family and hence the sentence be reduced to the minimum sentence prescribed for the alleged offence.

4. Countering the arguments of learned counsel for the appellant, learned APP for the State submits that the victim and her mother have stood the test of cross-examination and despite extensive cross-examination nothing could



be elicited from them. The offence was reported immediately and blood was found on the underwear of the victim. When the complainant entered the room of the appellant, immediately after being informed by the victim, she found the appellant only in his underwear and was in the process of wearing other clothes. Besides, the other neighbour Vishnu also noticed the victim crying. Version of the victim and her mother is duly supported by the FSL report as well. Since the appellant committed a serious offence of rape on a minor victim aged 4 years, no leniency be shown and the conviction and sentence of the appellant be upheld.

5. FIR No. 644/2014 was registered at PS Mukherjee Nagar for offence punishable under Section 342/376 IPC and Section 6 of the POCSO Act on a statement made by the mother of the victim, who stated that on 24th June, 2014 at about 8.00 PM while she was cooking dinner, her elder daughter the victim aged 4 years was playing outside. On hearing cry of the victim, she came outside and saw that victim was coming out of the room of the appellant. On asking her daughter, she informed her that the appellant called her to his room on the pretext of giving mango, thereafter he closed the room and sexually assaulted the victim after removing her underwear. Complainant found blood on the underwear of the victim. She then immediately went to the room of the appellant where she saw him only in underwear and the appellant was at that time in the process of wearing his clothes. Hearing the shouts of the complainant, neighbours gathered and the appellant was locked in his room. A PCR call was made and the appellant was handed-over to the Police. The Police also took the victim to the hospital for medical examination and recording of her statement.

6. During trial, prosecution examined 25 witnesses including the victim



and her parents. The learned Trial Court asked general questions to the victim to ascertain whether she was competent to depose and thereafter recorded her testimony.

7. In her statement, the victim stated that she was playing outside her house, one uncle showed her mango and toffee. He took her to his room where he touched his private part. The child demonstrated what she meant by the private part and that thereafter blood came out. The child also stated that she could identify the said uncle and pointed out towards the appellant. The child was cross-examined by learned counsel for the appellant who clarified that the appellant lived near their house. She was studying in nursery class and her mother was cooking at the relevant time. She also stated that her father was not present in the house as he had gone out. In cross-examination, she further stated that the appellant had taken off her clothes. She also remained silent to the Court question as to how much time she stayed in the room and stated that she did not remember the location of the room. She came back to her home on her own as it was getting dark by that time.

8. Mother of the victim appeared as PW-2 and reiterated her version on which FIR was registered. She stated that she heard the cries of her daughter, came outside and saw that her daughter was coming out of the room of the appellant who was living in the neighbourhood and her daughter was weeping. She noticed blood stains on her private parts. Her daughter told her that uncle had taken her to his room on the pretext of giving her toffee and mango where he touched his private part with her private parts. In her cross-examination this witness stated that her daughter had come back after about 10 – 15 minutes of her playing outside the house and that her son



who was also playing there had come inside the house prior to the daughter. She stated that the appellant had possession of one room and that he had come to that place a week prior to the incident.

9. A suggestion was given to complainant that a quarrel had taken place between the appellant and the complainant's husband around two days prior to the incident and that is why the accused has been falsely implicated, which she denied. When the father of the victim appeared in the witness box he was also given the same suggestion, which he also denied. However, in his statement under Section 313 Cr.P.C. the appellant stated that he was residing as a tenant in the premises for past one month. Complainant was having ice-cream rehdi and their work was not going on well. Since the appellant received his salary and the complainant sought loan from him, he lent ₹34,500/- to them for 15 days. When he demanded back the money, they delayed the payment on one pretext or the other. On the date of incident at about 5.00 PM while he was washing utensils, the complainant came to him and started accusing him. Thus, the appellant was innocent and falsely implicated by the parents of the victim and he had not done any wrong act.

10. The landlord of the house which was rented out to the complainant appeared in the witness box as PW-9 and stated that he had rented out a room to the appellant a week prior to 24th June, 2014 thereby belying the version of the appellant in his statement under Section 313 Cr.P.C. that he had taken the room on rent a month prior and had paid a sum of ₹34,500/- to the complainant's husband for 15 days and when he demanded the money back, he was falsely implicated is belied by the testimony of parents of the victim as also the landlord, as the appellant had been staying in the room



since one week prior to the incident only.

11. The alleged incident took place on 24th June, 2014 at around 8.00 PM and immediately a PCR call was made. As per PCR form Ex.PW-24/A, the call was received at 20.57 hours informing that rape has been committed on a girl. Medical examination of the victim was conducted vide Ex.PW-6/A on 24th June, 2014 at 9.30 PM wherein the Doctor opined fresh injury present on labia majora and labia minora, though it also noted hymen was normal and no tear/ redness, no discharge. In the medical history of the child recorded it was noted that the appellant lured the victim while she was playing outside her home and the victim told her mother that the appellant opened his panty and did something in the groin. After that she started crying and ran to her mother who saw blood-stained panty. Version of the mother that the underwear of the victim was blood-stained is fortified by the FSL report which notes blood on the underwear of the victim.

12. Considering the consistent testimony of the victim and her parents, soon after the incident the offence was reported to the Police and the victim was medically examined with fresh injuries on the labia majora and labia minora as also blood stains were found on the underwear and the defence of the appellant that since he lent money to the complainant and sought return of the same, or that there was a quarrel two days ago with the father of the victim stands falsified and not proved by any other evidence on record, this Court finds no error in the impugned judgment of conviction of the appellant for offences punishable under Section 6 POCSO Act and 342 IPC.

13. The appellant has been awarded sentence of imprisonment for a period of 15 years. Appellant has placed on record various certificates of appreciation from Tihar Jail indicating that he has now reformed himself.



Even as per the nominal roll, the conduct of the appellant in jail is satisfactory. Considering the nature of offence, does not warrant leniency by awarding minimum sentence prescribed to the appellant, this Court finds no error in the impugned order on sentence.

14. Consequently, the appeal is dismissed.

15. Copy of this judgment be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

JULY 04, 2022
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