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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th November, 2021Decided on: 4th July, 2022

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CRL.A. 1049/2017**SATISH KANCHHA**

..... Appellant

Represented by: Ms.Inderjeet Sidhu, Advocate
(DHCLSC) with Mr.Jai Prakash,
Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Ravi Nayak, APP for State with
SI Anuradha Tyagi, SI Indra Pal
Singh, PS Madhu Vihar.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA**

1. In this appeal, the appellant lays a challenge to the impugned judgment dated 8th September, 2017 whereby he has been convicted for offences punishable under Section 376 IPC read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 15th September, 2017 directing him to undergo rigorous imprisonment for a period of ten years for offence punishable under Section 376 (2) (i) IPC and a fine of ₹15,000/- and in default whereof to undergo simple imprisonment for a period of three months. The fine if recovered was to be paid to the victim as compensation. No separate sentence was awarded to the appellant for offence punishable under Section 6 of the POCSO Act.

2. Learned counsel for the appellant contends that there are gapping loopholes and unexplained portions of the prosecution case which renders



the entire case of the prosecution unreliable. Though the claim of father of the victim is that the incident took place on 30th November 2013, however, Constable who reached on the spot on receipt of the call stated that he reached the spot at 8.10 am on 1st December 2013. Thus, though the alleged incident took place on 30th November 2013 at about 7 am, however, the call was made on 1st December 2013 at about 8 am. Thereafter, there was an unexplained delay of more than 24 hours in reporting the alleged incident. Parents of the prosecutrix who appeared in the witness box as PW-1 and PW-3 are not eye witnesses and thus, their testimonies being hearsay are required to be discarded. Further, PW-1 and PW-3 have made material improvements in their statements with which they were confronted with during cross-examination. Mother of the prosecutrix admitted that the toilet was used by ladies only and thus, it was incomprehensible that the appellant who is a male would have been permitted in the ladies toilet in the presence of several ladies. Though parents of the prosecutrix stated that there was only male attendant, however, PW-8 clearly stated that there was a female attendant in the ladies toilet present at that time. The said female attendant was not joined as a prosecution witness. Though PW-1 claims that the prosecutrix came out of the toilet after 5-10 minutes, however, PW-3 claimed that prosecutrix came out of the toilet after 30 minutes. There are material contradictions even in the testimonies of the police witnesses. Though the prosecutrix claimed that there were no separate ladies or gents toilets, however, PW-8 and PW-12 clearly stated that there were two separate blocks for ladies and gents. The prosecutrix in her testimony admitted that she had deposed as told by her mother. The learned Trial Court failed to note the explanation of the appellant that there was a quarrel



on the issue of payment of user charges for delux Shauchalaya between the parents of the victim and the appellant and thus, the appellant was falsely implicated.

3. Learned APP for the State submits that there is no delay in reporting the matter to the police. Version of the prosecutrix is consistent. Contractor of the Sulabh Shauchalaya appeared as PW-8 and stated that he had kept one boy namely Gopal to look after the said toilet who on the date of incident kept Satish Kancha, the appellant for cleaning the toilet, thereby, proving that the appellant was working in the Sulabh Shauchalaya at the relevant time. The contradictions as sought to be pointed out do not go to the root of the matter and while dealing with a child witness, the Court has to ensure that extensive cross examination is not meted out to the said witness. Even then, the prosecutrix has been cross-examined at length and nothing immaterial has been elicited.

4. FIR No.730/2013 was registered for offences punishable under Sections 376/396 IPC and 6 of the POCSO Act at PS Madhu Vihar on the statement of the eight years old victim child who appeared in the witness box as PW-7. She stated that on 1st December, 2013 she along with her parents came to Delhi from their native place by bus at ISBT, Anand Vihar, Delhi at about 7.00 AM. She had to go for the nature's call and thus, used the Shauchalaya. Her parents stood outside the Shauchalaya. The attendant told her father that he will take his daughter to the loo and thus, he took her inside. When she opened the jeans pant, the boy attendant inserted his finger inside her vagina. When she objected to it, the appellant did not stop. She stated that after easing herself when she came out and was washing her hands, the said boy came again and tried to open the buttons of her jeans



pant; she went out crying and told the incident to her parents. Her father apprehended the boy and called the police. Victim was medically examined and the appellant was arrested on the same day. Statement of the victim was subsequently recorded under Section 164 CrPC wherein also, she reiterated the same facts.

5. The victim appeared in the witness box as PW-7 on 1st September 2015 when she was aged 11 years and gave rational answers to the questions put to her. In her testimony, she reiterated what she stated in the complaint. She stated that when she along with her father went to the nearby Sulabh Shauchalaya, the attendant did not allow her father to go inside and when she finished, the attendant came and put his finger inside her vagina. When she protested, the attendant threatened her. She started crying and ran towards her father. She told the incident to her father. When her father asked the attendant as to why he did so, he replied that he did not do anything wrong, whereafter, her father called the police from his mobile phone and the police reached at the spot.

6. Learned counsel for the appellant had laid emphasis on the fact that the prosecutrix claimed that there was one common toilet whereas, there were separate toilets. Testimonies of the witness would show that in the same toilet, there were blocks and thus, there was no error in the victim stating that there was one common toilet. Only thing is that she could not specify that within the same toilet, there were separate blocks. She reiterated that when she went inside the toilet; no-one was present inside the toilet and only one person was standing outside the toilet who was the attendant, though there were some people standing outside. It is evident that since one by one were going inside the toilet, it was the minor victim only



who was present inside the toilet at the time of incident. The prosecutrix reiterated that the appellant touched her private parts twice, firstly, when she was inside the toilet and secondly, when she was washing her hands. She clarified that she went to wash her hands again as her father asked her to clean hands and accused again came behind her and repeated the act. She denied the suggestion that there was dispute between the father of the victim and the accused in respect of non-payment of charges for using the public toilet and when the accused asked for user charges for using the toilet, father of the victim threatened the accused or that she concocted the story.

7. Version of the victim is supported by her father who appeared as PW-1 and stated that on 30th November 2013 at about 7 am, when he along with wife took their daughter for a call of nature at public toilet at Anand Vihar, they were not allowed entry and the accused took the daughter inside the toilet. They remained standing outside the toilet and after 5-10 minutes, their daughter came outside weeping and when he asked her, she told that the appellant inserted his finger. Merely because this witness wrongly stated that the incident took place on 30th November 2013, same would not belie his evidence nor would it lead to an inference that the appellant has been falsely implicated. As noted, the suggestion given to the witnesses by the appellant during the cross examination is that he was asked for the charges for using the public toilet and the father of the victim denied, for which, an altercation took place resulting in false story being cooked up. However, in his statement under Section 313 CrPC, he stated that dispute was with regard to the tenant using the Sulabh Shauchalaya on which the quarrel took place and he was falsely implicated.

8. Mother of the victim who appeared as PW-3 also stated that the



appellant took her daughter inside the toilet and did not allow her husband to go inside and her husband remained outside the toilet. In the cross examination, she clarified that except the said public toilet, there was no other toilet. She also stated that though public persons were waiting outside to use the toilet and the said public toilet was mainly used by ladies and that from outside, nobody could see what was happening inside the toilet.

9. Considering the consistent version of the prosecutrix before the Court and that soon after the incident, the appellant was apprehended and handed over to the police; there being no delay in informing the police or lodging the FIR about the incident, this Court finds no error in the impugned judgment of conviction. The sentence awarded to the appellant is a minimum sentence that can be awarded for an offence punishable under Section 376(2)(i) IPC, hence, this Court finds no ground to interfere in the same.

10. Appeal is accordingly dismissed.

11. Trial Court record be sent back.

12. Copy of the order be sent to the Superintendent, Tihar Jail for updating the record and communicating to the appellant and be also uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JULY 04, 2022

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