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

% *Decided on: 4th January, 2022*

+ **CRL.A. 705/2018**



..... Appellant

Represented by: Mr. Nitish Chaudhary, Advocate
through video conferencing.

versus

STATE

..... Respondent

Represented by: Mr. Tarang Srivastava, APP for the
State through video conferencing.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

The hearing has been conducted through Video Conferencing.

CRL.A. 705/2018

1. By this appeal, the appellant challenges the judgment dated 12th January, 2018 convicting the appellant for offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and the order on sentence dated 17th January, 2018 directing the appellant to undergo rigorous imprisonment for a period of 10 years and to pay fine of ₹5,000/- in default whereof to undergo simple imprisonment for one month.

2. Learned counsel for the appellant contends that at the time of alleged incident the victim was a 5 years old child of impressionable age and thus the appellant has been implicated by tutoring her by her parents who were inimical to the appellant. Even though as per the case of the prosecution, the MLC of the prosecutrix shows injury and tear on her vaginal area and

bloodstains on her undergarment, however, there is nothing to connect the appellant with the alleged offence. No recoveries have been made from the appellant and even in the FSL report no semen has been detected which could have connected the appellant to the offence alleged. Further, it is the case of the prosecutrix that the appellant took her to his room and to corroborate the version no bed sheet etc. were recovered to show that the appellant was the one who was involved in the alleged offence. Further, no public witness was associated at the time of seizure and arrest and there is no other eye witness who supports the claim of the prosecutrix that it was the appellant who took her inside the room.

3. FIR No.930/2014 was registered for offence punishable under Sections 376(f)(i)(j) IPC and Section 6 of the POCSO Act at Police Station Aman Vihar wherein after a DD entry No.4-B dated 29th August,2014 was received at 12:30 a.m. alleging rape on a 5 years old girl. When the Investigating Officer visited the hospital, he met the victim and her father. Statement of the mother of the victim was recorded who was at the residence, who stated that she was residing at the said place for the last 6 months with her husband and two daughters aged 6 years and 3 years. On 28th August, 2014 at about 10:00 a.m. her elder daughter was playing outside and at around 12:00 noon she came back weeping. On inquiry the victim told her mother that the appellant took her to his room, removed her panty, inserted his finger and male organ in her vagina. The child was crying due to pain. The mother of the victim saw her underwear which was smeared with blood. She changed the clothes of the child and made her sleep. In the evening when her husband came she informed him about the entire incident. Her husband searched the appellant who was the cousin brother of her

husband, however, he did not find him, thus PCR call was made and the child was taken to the hospital.

4. Statement of the minor child was recorded under Section 164 Cr.P.C. wherein she reiterated what was stated by her to her mother. As per the MLC the victim was found to be having perineal tear and repair was done, her bloodstained underwear was seized and sealed. The appellant has been named in the MLC Ex.PW-4/A, which is the document prepared first in time. The MLC noted 1x1 cm. actively bleeding tear at fourchette, hymen torn which was clearly indicative of penetrative sexual assault on the victim.

5. Undoubtedly, as per the FSL and DNA fingerprinting report neither any semen was detected nor were the alleles from the appellant accounted in the blood smears or the vaginal smears of the prosecutrix. To constitute an offence punishable under Section 376 IPC and Section 6 of the POCSO Act, penetration is sufficient and it is not necessary that semen needs to be essentially present. The prosecutrix though a minor child of impressionable age soon after the incident told her mother when she was in pain and the fact that she was sexually assaulted is duly corroborated by the medical evidence on record and has been cross examined at length before the Trial Court. Her statement to the mother, in the MLC, statement recorded under Section 164 Cr.P.C. and before the Court are consistent which are sufficient to prove the offence alleged against the appellant beyond reasonable doubt.

6. Contention of the learned counsel for the appellant that no public witness was associated at the time of recovery deserves to be rejected for the reason no recovery was made at the instance of the appellant and the clothes of the victim were handed over by her parents to the Investigating Agency,

which were duly seized and sealed and FSL report received. The explanation of the appellant in his statement recorded under Section 313 Cr.P.C. is that he has been falsely implicated, however, neither any defence evidence has been led nor anything elicited to show as to why the appellant has been falsely implicated.

7. In view of the statement of the minor victim as also her MLC, this Court finds that the prosecution has proved beyond reasonable doubt that the appellant committed the offence punishable under Section 6 of the POCSO Act. The sentence of rigorous imprisonment for 10 years awarded to the appellant is the minimum sentence prescribed for the offence punishable under Section 6 of the POCSO Act. Thus, this Court finds no error in the impugned judgment of conviction and order on sentence. Appeal is dismissed.

CRL.M.(BAIL) 1530/2021 (for suspension of sentence)

1. Disposed of as infructuous.
2. Judgment be uploaded on the website of this Court as also communicated to the Superintendent, Tihar jail for updation of record and intimation to the appellant.

**(MUKTA GUPTA)
JUDGE**

JANUARY 04, 2022

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