

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

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Reserved on: 22nd March, 2017
Decided on: 28th April, 2017

+ **CRL.A. 592/2016 & CrI.M.B. 1261/2016**

CHANDER SHEKHAR @ CHANDU Appellant
Represented by: Mr. V.K. Katiyar, Adv.

versus

THE STATE (NCT OF DELHI) Respondent
Represented by: Mr. Ravi Nayak, APP with SI
Vikas PS Sonia Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Chander Shekhar @ Chandu challenges the impugned judgment dated 9th May, 2016 convicting him for offences punishable under Section 451 IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 12th May, 2016 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/- for offence punishable under Section 8 of POCSO Act and rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- for the offence punishable under Section 451 IPC.

2. Assailing the conviction, learned counsel for the appellant submits that there is a dispute with respect to the place of incident. As per the DD entry, the incident took place at Sai International School which is near the house of the victim. However, as per the testimony of the victim, the place of incident changed to her house. The chappal recovered from the house of the victim which was alleged to be of the appellant was not proved as neither the same

was sealed nor produced nor proved to be belonging to the appellant. There are contradictions with respect to the time of incident as per the rukka and testimonies of mother and father of the victim. Further, even as per the prosecution case, the door was bolted from inside. No investigation was conducted to verify as to how the appellant opened it from outside. There are contradictions as to the time when the parents of the victim left for the hospital.

3. Learned APP for the State on the other hand clarified that the place of incident is the house of the victim as per the DD entry and the testimony of the various witnesses. With respect to the difference in the time of incident, learned APP submits that it was due to the fact that cross examination took place after a period of 2 years from the date of incident. Further, since the age of the victim stands proved by the testimony of PW-1, Section 8 of POCSO Act is attracted. The testimony of the victim is corroborated by the testimony of the mother of victim. Minor contradictions, if any, are not fatal to the prosecution case. The mother of victim calls the father of the victim who immediately send PW-8 Jihad completes the chain of the prosecution case. Thus, the appellant has been rightly convicted.

4. Process of law was set into motion on the receipt of DD No. 16A Ex.PW4/A on 16th April, 2014 at 1:32 P.M. stating that a girl was molested at Sonia Vihar, 5th Pusta, Block G-5, near Sai International School at the house of OP. The aforesaid entry was assigned to PW-5 HC Manoj who went to the spot where he met the victim and her mother. Statement of the victim was recorded wherein she stated that on 16th April, 2014, she was alone at home as her father and mother had gone to Gandhi Nagar Hospital at 6:00 A.M. After finishing the work, when she was sitting inside after

latching the door, Chandu, who stays in the neighbourhood, opened the latch, came inside the house and started molesting her. He held her hands and gagged her mouth and took her inside. She tried to rescue but he did not leave her. In the meantime, her mother came and started beating him, however, he pushed her and fled away. On the basis of the aforesaid statement, FIR No. 163/2014 was registered under Sections 354/452 IPC and Section 8 of POCSO Act at PS Sonia Vihar. On the same day around 5:00 P.M., PW-10 SI Yogesh Kumar went to the house of the victim and seized the chappal of Chandu which he had left there. On pointing out by the victim, he prepared the site plan of the place of incident. Around 9:30 P.M., Chandu was arrested by SI Yogesh Kumar. After the completion of investigation, charge sheet was filed and charge was framed against the appellant.

5. PW-1 Kishore Kumar, Sub- Registrar, Birth and Death, City zone, NDMC, proved the date of birth of the victim as 9th April, 1997 vide entry in the record Ex. PW-1/A.

6. The victim who was examined as PW-2 in the Court deposed in conformity with her statement made before the police. She further added that around 11:00 A.M., Chandu came inside the house after opening the "jaali wala" gate, which she had latched and it can be opened by inserting hand from outside. Chandu hid himself besides the stairs and when she came out of the room, he caught hold of her hand, pressed her mouth and dragged her inside the room. Thereafter, he started using force on her (*"Mere Saath Jabardasti Karne Laga"*) and laid her on the bed. She pushed him aside, tried to escape from his clutches and inflicted blows on him. She stated that Chandu wanted to sexually abuse her and said that he would make her a

mother and defame her by doing so. In the meantime, mother of the victim came inside the house and started beating him. Chandu pushed her and ran away, leaving his chappals behind. In her cross-examination, she stated that Chandu entered her house at about 10:30 or 11:00 A.M. and stayed there till 12 noon. She stated that she tried to save herself, pushed him, bit him on his hand. Neither her clothes nor the clothes of Chandu got torn during the incident. Her hands were swollen as a result of being held tightly by Chandu but neither of them received any other injury. She stated that she did not know the boy named Hemant. She stated that the photograph resembled her but it was not her and she failed to recognize the boy in the photograph. She denied the suggestion that her marriage with Chandu was proposed.

7. PW-6 the mother of the victim supported the version of the victim. During her cross examination, she stated that she does not know anyone by the name Hemant. She stated that Hemant was the boyfriend of the victim but they had severed relations. She denied the suggestion that when the parents of Chandu came to know about the relations of the victim with Hemant, they rejected the proposal of marriage between the victim and Chandu. She stated that she did not make any complaint of the incident to the aunt of Chandu.

8. PW-9 the father of the victim stated that he received a call from his wife regarding Chandu entering their house and molesting the victim. He called his friend Jihad and told him to go the place of incident and make a call at 100 number. Around 11:45 A.M., he reached home, after which he went to the police station. In cross examination, he stated that he does not know the boy in the photograph and the girl in it is not the victim. The boy in the photograph did not have an affair with the victim. He stated that he did

not fix the marriage of victim with Chandu. He denied the suggestion that he had falsely implicated Chandu because he had refused to marry the victim after seeing the photograph of the victim and her boyfriend.

9. As held by the learned Trial Court, the recovery of chappal of the appellant from the place of incident was not admissible in evidence for the reason neither the same was sealed nor deposited in the malkhana nor identified to be belonging to the appellant. The contention of learned counsel for the appellant that in the DD No.16A Ex.PW4/A the place of occurrence was reported as near the house of OP whereas in the FIR it is stated to be within the house of OP is incorrect for the reason DD No.16A notes that PCR call was received from Sonia Vihar, 5th Pusta Block G5, near Sai International School at the house of OP. There is no contradiction in the DD No.16A and the statement of the prosecutrix on the basis of which FIR was registered. Immediately upon the incident, information was given to the PCR and local police arrived at the spot. Statement of the victim and her mother were recorded leaving no room for improvement or manipulation.

10. The defence of the appellant is that since the victim was involved with some other boy and he rejected the proposal of marriage with the victim, the appellant was framed in the above noted case. Suggestions were given to the victim and her parents. Even though the mother of the victim admitted that Hemant was the boy friend of her daughter, she denied the suggestion of any marriage proposal between the appellant and the victim. No positive evidence has been led by the appellant for this defence. Even DW-1 who appeared in the witness box and stated that he was working with the appellant from February, 2013 to April, 2014 did not depose about the marriage proposal between the appellant and the victim.

11. Considering the cogent and convincing testimony of the victim, duly corroborated by the testimony her parents, this Court finds no infirmity in the conviction of the appellant for offence punishable under Section 451 IPC and Section 8 of POCSO Act and the order on sentence. Appeal and application are accordingly dismissed.
12. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
13. TCR be returned.

**(MUKTA GUPTA)
JUDGE**

APRIL 28, 2017

'v mittal'