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

Date of Decision: 25.02.2025

+ **CRL.A. 824/2023 & CRL.M.A. 29548/2024**

MOHD IQBAL

.....Appellant

Through: Mr. Gautam Khazanchi, Ms. Pooja
Deepak, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Dipesh Sharma & Mr. Sushant
Singhal, Advs.

Mr. Sunil Kr. Gautam, APP with SI Esther Dazei,
PS Haus Khas

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an application seeking suspension of sentence of the appellant on the ground that the appellant has undergone more than 40% of the sentence.
2. Since the Court was not inclined to entertain the application seeking suspension of sentence, Mr. Khazanchi, learned counsel for the appellant has argued the appeal itself.

CRL.A. 824/2023

3. This is an appeal seeking setting aside of the judgment of conviction dated 27.02.2023 and order of sentence dated 23.05.2023 passed by the learned ASJ (FTSC), (POCSO), South, Saket Court Complex, New



Delhi in Sessions Case No. 261/18 arising out of FIR No. 91/2018 PS Hauz Khas, New Delhi wherein the learned Trial Court convicted the appellant for the offences under section 10 read with section 9(e) of POCSO Act and section 354A of IPC and sentenced to undergo 7 years of rigorous imprisonment.

4. Briefs facts are that on 22.03.2018 at about 3.30 P.M., the prosecutrix visited the Ward No. AB-8, Operation theater as the operation of her right ear was scheduled. The prosecutrix was given an injection and made to lie on the stretcher. At that time, the appellant, who was wearing a green gown, started talking to the prosecutrix and asked whether she had come to the OT before. The prosecutrix thought him to be the Doctor. Thereupon, he started touching her inappropriately on the pretext of asking questions. As per the prosecutrix, the appellant asked her if she was wearing undergarments or not and also touched her lips. Thereafter, the prosecutrix told this fact to Dr. Anupam Kanodia. The prosecutrix also told the same to her mother and thereafter CCTV footage was looked into. The appellant was identified and was working on contract with M/s Becil in the Dept. of Biochemistry.
5. After completion of investigation, a charge sheet was filed against the appellant and the charges were framed under Section 10 read with Section 9(e) of POCSO Act and Section 354A of IPC.
6. The prosecution examined total 6 witnesses and none by the appellant.
7. Learned Trial Court, after analysing the evidence and documents on record, found the appellant guilty of offences under section 10 read with section 9(e) of POCSO Act and section 354A of IPC and



sentenced him to undergo 7 years of rigorous imprisonment.

8. As per the Nominal Roll dated 21.02.2025, the appellant has undergone 2 years 6 months 19 days, has a remission of 5 months 7 days leaving an unexpired portion of 4 years 4 days.
9. Mr. Khazanchi, learned counsel for the appellant states that the prosecutrix had first made the complaint to Dr. Anupam Kanodia, however, he was not examined by the prosecution even though he (Dr. Anupam Kanodia) was named in the list of witnesses.
10. He further states that since Dr. Anupam Kanodia was not examined, the prosecution could not have identified the appellant as he was not known to the prosecutrix or her mother in any way. Further, the mother of the prosecutrix was also not examined. Hence, the benefit of doubt must accrue to the appellant.
11. I have heard learned counsel for the parties.
12. It is true that in the cases of sexual offences, the sole testimony of the prosecutrix can form the basis of the conviction of the accused. However, the Courts have to be extremely careful while examining the sole testimony of the prosecutrix as cautioned in the case of *Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92*. In this case, the Hon'ble Supreme Court has observed that the accused can be convicted solely on the testimony of the prosecutrix, if the same is inspiring confidence of the Court. Since both the prosecutrix as well as the accused have a right for a fair trial, thus, if the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence, such as, medical evidence or the surrounding circumstances. The relevant para is extracted below:-



“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

- 13.** In the present case, reliance cannot be placed on the argument of the learned counsel for the appellant as the appellant himself, in his statement recorded under section 313 of Cr.PC, has stated that the appellant was present. Relevant portion is extracted below:-

“Q.9 It is in evidence against you that CCTV footage contained in Pendrive Ex. MO-1, CD Ex. MO-2 alongwith certificate under Section 65B of Indian Evidence Act Ex. PW-3/C and seizure memo of the CCTV footage Ex PW-3/D are in evidence against you. What do you have to say?

Ans. I am visible in the CCTV footage but my acts have been wrongly interpreted by the victim.

Q.10 It is in evidence against you that after the preliminary inquiry the matter was reported to the SHO PS Hauz Khas vide complaint Ex. PW-3/B. What do you have to say?

Ans. I am not aware of it.



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Q.16 Why has the case registered against you?

Ans. I have been falsely implicated. My acts have been incorrectly interpreted by the victim.”

14. On perusal, it clearly shows that the appellant himself has admitted that he was seen in the CCTV footage. The said aspect has been correctly appreciated by the learned Trial Court.
15. There is no other argument of the appellant and the learned Trial Court has correctly concluded in paragraph 29 which reads as under:-

“29. Coming to the facts of the present case, this Court is of the view that the accused has certainly failed in discharging the said burden and there is nothing on record which could suggest that accused had no such mental state. No credible material has been brought on record to show why the prosecutrix would falsely implicate the accused. No ground for enmity has been brought on record. The touching of the lips, shoulder, chest of the prosecutrix by the accused with no such duty assigned to check on the prosecutrix as to anaesthesia clearly suggest the existence of such mental state on the part of the accused so as to sexually assault the child and in itself is an act of physical contact without penetration done by the accused with sexual intent and clearly stands covered under the definition of sexual assault. Further, the prosecutrix was waiting outside the operation theatre of AIIMS hospital, where the accused was working as staff and breached the trust of the



prosecutrix by taking advantage of the vulnerability of the prosecutrix at that time. In view of the above discussion, the offence punishable under Section 10 read with Section 9(e) of the POCSO Act has been proved against the accused.”

(Emphasis added)

16. The conclusion regarding the offence punishable under Section 354A of IPC also has been correctly analysed by the learned Trial Court in paragraph 31 which reads as under:-

“31. Once again, the material witnesses to establish the culpability of the accused under the Indian Penal Code, 1860 is PW1 Ms. 'TS' who is the prosecutrix. As has already been discussed above. there is no reason emanating from record especially from the cross-examination of the prosecutrix to suggest that she has been tutored. From the evidence of the prosecution witnesses, discussed above, it has been established that the accused made physical contact and advances upon the prosecutrix despite her clear indication of disinterest. The defence has not been able to controvert her testimony on that aspect. Therefore. there is sufficient material to prove beyond reasonable doubt that the accused caused sexual harassment to the prosecutrix. Accordingly, offences punishable under Sections 354A of the Indian Penal Code, 1860 are also made out against the accused.

17. Learned Trial Court has correctly appreciated the evidence and convicted the appellant under Section 10 read with 9 (e) of POCSO Act



and Section 354A of IPC.

18. The offence of the appellant has been proved beyond reasonable doubt by the prosecution. I find no reasons to interfere in the impugned judgment. Hence, the present appeal is dismissed

JASMEET SINGH, J

FEBRUARY 25, 2025 / (MS)

(Corrected and released on 10.03.2025)

Click here to check corrigendum, if any