

State Vs. Sushil Kumar

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Court : Delhi

Decided On : Mar-10-2014

Judge : Kailash Gambhir

Appellant : State

Respondent : Sushil Kumar

Advocate for Pet/Ap. : Mr. Mukesh Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 203/2014 STATE
Through: Petitioner Mr. Mukesh Gupta, APP for the State. versus SUSHIL
KUMAR Respondent Through: None. CORAM: HON'BLE MR. JUSTICE
KAILASH GAMBHIR HON'BLE MR. JUSTICE SUNITA GUPTA

ORDER

% 10.03.2014 KAILASH GAMBHIR, J.

(ORAL) CrI. M.A. No.4038/2014 Allowed subject to all just exceptions. The application stands disposed of. CrI.L.P.No.203/2014 1. By this petition filed under Section 378 (3) Cr.P.C., the petitioner is seeking leave to appeal against the order dated 5.8.2013 passed by learned Additional Sessions Judge (North-West), Karkardooma Courts, Delhi, thereby acquitting the respondent from the charges framed against him under Sections 363/366/376 IPC.

2. The prosecution case can be summarised as under: The case of the prosecution is that on 19.06.2010 on receiving information about DD No.31A dated 19.06.2010, i.e., Ex. PW-1/A, PW13 SI Ina Kumari reached PS Mahendra Park where she met the prosecutrix, her father Ganga Prasad and the accused Sushil Kumar, who was under the custody of Ct. Raju. SI Ina Kumari made inquiry from the prosecutrix. In the meantime, Smt. Kalpana from NGO Sampurna also reached at the police station and she also made inquiry from the prosecutrix. Thereafter, PW13 SI Ina Kumari recorded the statement of prosecutrix vide Ex. PW2/A. She also directed Ct. Raju and Ct. Sunil to get the medical examination of accused Sushil Kumar conducted at BJRM Hospital while she herself took the prosecutrix to BJRM Hospital for her medical examination. In the hospital, the medical examination of prosecutrix was conducted vide MLC Ex. PW3/A. After examination of the prosecutrix, the concerned doctor handed over a sexual assault kit, sealed with the seal of BJRM Hospital, along with the sample seal which was seized by PW13 SI Ina Kumari vide seizure memo Ex. PW9/A, in presence of L/Ct. Meenal, who in the meantime also reached at the hospital. Ct. Raju handed over two sealed parcels, containing samples taken from the accused by the concerned doctor, having the seal of BJRM Hospital along with sample seal, which were further seized by the IO vide seizure memo Ex. PW-12/A. Thereafter, PW13 SI Ina Kumari prepared rukka Ex. PW13/A and handed over the same to the Ct. Sunil Kumar, who left the hospital with rukka for registration of case FIR. In the meantime, PW13 SI Ina Kumari went along with the prosecutrix, her father and W/Ct. Meenal to the house at J-1969, Jahangir Puri, where the prosecutrix was kept by the accused and at the instance of prosecutrix, she prepared site plan Ex. PW13/B. Thereafter, they also went to B-27, Ramgarh, i.e., the other house where prosecutrix had been kept by the accused. The Ct. Sunil Kumar also reached the said place and handed over original rukka and computerized copy of FIR i.e. Ex. PW1/B to IO. PW13 SI Ina Kumari prepared a site plan vide Ex. PW13C of B-27, Ramgarh at the instance of prosecutrix. Thereafter, prosecutrix was brought back to the PS Mahendra Park. At the PS, accused Sushil Kumar was interrogated by PW13 SI Ina Kumari and during the course of said interrogation, accused Sushil Kumar made disclosure statement Ex. PW13/D. The accused was arrested vide arrest memo Ex. PW2/B and was personally searched vide memo Ex. PW13/E.

On the same day, accused Sushil Kumar led the Police party to the first floor of House No.J-1969, Jahangir Puri, and pointed out the room where he had kept the prosecutrix and committed rape upon her. Thereafter, accused Sushil Kumar led the Police party to House No.B-27 Ramgarh and pointed out memo Ex. PW13/F at the instance of accused. On 20.06.2010, IO moved an application before the Court concerned for recording of statement of prosecutrix under Section 164 Cr.P.C. and her statement Ex. PW2/C was finally recorded on 22.06.2010. PW13 SI Ina Kumari obtained a copy of the said statement by moving an application in this regard. On 21.06.2010 IO also got conducted the ossification test of prosecutrix vide Ex. PW13/H. During the course of further investigations, IO had sent the exhibits of the case to FSL through Ct. Sanjay vide RC No.36/21 on 13.07.2010. IO also received the documents of age of prosecutrix i.e. certification from Veer Haqiqat Public High School, Goushala Road, Ludhiana, which was sent through post by father of prosecutrix. After completion of investigation, charge sheet was prepared and filed in the court of learned MM through SHO concerned. Upon committal of this case to the court of Sessions, charge for the offences under Sections 363/366/376 IPC was framed against the accused on 11.11.2010. However, the accused pleaded not guilty and claimed trial and thereafter, the case was fixed for prosecution evidence.

3. To prove its case, the prosecution examined 18 witnesses and on completion of prosecution evidence, the statement of accused under Section 313 of Cr.P.C. was recorded wherein the accused/respondent pleaded his innocence and false implication. The accused declined to lead any evidence in his defence.

4. Addressing arguments on behalf of the State Mr. Mukesh Gupta, learned APP submits that learned Trial Court failed to give due weightage to the testimony of the prosecutrix who in her deposition unequivocally placed the correct facts as in what manner she was raped by the accused. Counsel further submits that learned Trial Court has committed a grave error by deciding the age of the prosecutrix after placing reliance on the medical report given by the Radiologist while ignoring the best evidence, which was produced on record in the form of birth certificate of the prosecutrix. Counsel further submits as per the birth certificate proved on record the date of birth of the prosecutrix was 29.12.1996 and with this date of

birth the prosecutrix was about 13 years as on the date of the commission of the offence. Counsel further submits that even father of the prosecutrix had also categorically deposed in his examination-in-chief stating that his daughter was 13 years of age at the time of incident. Counsel also submits that even the prosecutrix in her deposition also deposed her age as 13 years at the time of the incident. Learned counsel argued that there is no major contradiction or improvement in the testimony of the prosecutrix, which could discredit her version on material facts. Learned counsel also argued that the learned Trial Court also failed to appreciate that even uncorroborated testimony of the prosecutrix by itself is sufficient to convict the accused person so far the offence of rape was concerned.

5. Based on the above submissions counsel for the appellant urges that the impugned judgment passed by the learned Trial Court is illegal and perverse on very face of it and, therefore, leave be given to the State to challenge the impugned judgment of the learned trial court.

6. We have heard learned counsel for the petitioner and given our thoughtful consideration to the arguments advanced by him. We have also gone through the impugned judgment and other material placed on record.

7. The learned trial court has rightly not given due credence to the various versions advanced by the prosecutrix as she has constantly changed her statements. The prosecutrix is the sole witness put forth by the prosecution to testify regarding the allegation of enticement or kidnapping of the prosecutrix by the accused and subsequently raping her. From the testimony of the prosecutrix it is clear that she had accompanied the accused herself from place to place without raising any alarm or protest against him. It is also a well established fact that it was the prosecutrix who told the accused about the family going to Rai Bareilly in the vacations.

8. We are also unable to comprehend that the prosecutrix (PW-2), the victim of the crime, could not raise any alarm during her stay with the accused. There is no gain saying that the element of taking away or enticement does not arise. The prosecution has failed to place any cogent or material ground in order to prove that the victim was not a consenting party. The trial court has rightly not placed reliance

on the school certificate produced by the father, as he himself in his cross examination has testified that he got married in the year 1992 and his first child was born after three years of his marriage. Therefore, suspicion does arise about the date of birth of the victim by the testimony of none else but PW-10 - father of the victim. The Id. Trial court has rightly dealt with this aspect of computation of age after taking into consideration the view of the radiologist as per which the margin of 2 years could be given either side. We do not find any infirmity in the order of the Id. Trial court in this regard. For ready reference, the gist of reasons, on which the accused has been given a benefit of doubt by the learned trial court are reproduced as under: a) Victim being a consenting party in accompanying the accused. b) Not raising any alarm from 09.06.2010 till 16.06.2010, when she ran away from the train at Ambala station while going with her family to Rai Bareilly with the accused. It was only on 16.06.2010, that she called her father and that on 19.06.2010, she finally met him that it was brought to the notice of the police. c) The delay in getting the FIR lodged also does not stand proved to the satisfaction of the trial court. d) The age of the prosecutrix was also not adhered correctly by PW-10, the father of the victim.

9. The findings reached by the learned trial court giving benefit of doubt to the accused persons is neither found to be perverse nor illegal and the same appears to us to be based on sound reasoning, after objective analysis of the material placed on record by the prosecution.

10. It is a settled legal position that in an appeal against an order of acquittal, the Appellate Court should not normally interfere with the findings of fact arrived at by the learned Trial Court unless the reasoning given by the learned Trial Court is perverse or illegal on the very face of it. It is useful here to refer to the judgment of the Honble Apex Court in the matter of Rangaiah vs. State of Karnataka reported in AIR 2009 SC1411 Relevant paras of the same are reproduced as under:

From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge: (1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded; (2) The

Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law; (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion. (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

11. In the aforesaid background of the legal position and on appreciation of the material on record, we are not persuaded to take any contrary view as has been arrived at by the learned Trial Court in acquitting the accused.

12. In view of the above factual matrix and legal position, we find no merit in the present leave to appeal petition and the same is hereby dismissed. KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

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