

State Vs. Sabir

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Court : Delhi

Decided On : Aug-06-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Sabir

Judgement :

\$~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: August 06, 2014 + CRL.A. 335/2014 STATE Represented by: Appellant Ms.Aashaa Tiwari, APP Insp.R.K.Jha and SI Sushil Kumar, Karawal Nagar versus SABIR Represented by: Respondent Mr.Nasimuddin, Advocate with Mohd.Shadab Abbasi, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. It is settled law that the presumption of innocence in favour of an accused is reinforced by an order of acquittal and in appeal unless it is shown that the view taken by the learned Trial Judge is perverse and not sustainable on the evidence led at the trial, the Appellate Court would not set aside the verdict of innocence.

2. With the aforesaid legal principle in mine we note that the respondent faced a trial for having raped Baby T, aged 7 years when the respondent allegedly raped her on August 15, 2010. She deposed in Court on August 18, 2011 when she was

aged 8 years.

3. Baby T deposed that on August 15, 2010 she was flying a kite on the roof of her house at 2:00 PM and the accused Sabir, to whom she referred to as Chacha, called her saying that her phuphi (paternal aunt) was calling her and she told Sabir that her phuphi was not there at which Sabir told her to bring Kuber (tobacco). She brought the tobacco and as she was going to her house Sabir caught hold of her hand and muffling her mouth took her inside his room. He made her lie on a cot and removed her salwar. He removed his clothes and lay himself on her. He inserted his penis in her vagina. Something white came out. After the act Sabir threatened to kill her. She bit him on his hand and fled to her house. Her mother washed her clothes. She took bath. The police took her to the hospital where she was medically examined.

4. On being cross-examined she admitted that when she made her statement before the Magistrate under Section 164 Cr.P.C. a lawyer had accompanied her and her mother. Before going to the Magistrate she and her mother had gone to a lawyer. She admitted that she did not know how to tell the time and questioned as to who told her that the time was 20 clock when she was flying the kite, she said that when she was coming back after purchasing Kuber she asked a person as to what was the time and said person told her that it was 2:00 PM. On being questioned as to whether she could name the person who told her the time, she said that it was a girl whose name she did not know. She said that she cannot point out the house of the girl, but in the next breath she said that the girl lives in the same gali where she resides. She said that when the incident happened she was in pain but did not bleed. She said that Sabir did the offending act within a minute and she managed to flee after biting Sabir. She denied that there was a dispute between her family and Sabir but said in the next breath that Sabir was in unlawful possession of a bakery belonging to her family. Baby PW-2, the mother of T, deposed said that she was in her house 5. at around 2:30 PM on August 15, 2010 her mother Khursidan @ Firdos had come to meet her. Her daughter T aged 8 years came weeping and on inquiry replied that when she was flying a kite on the roof Sabir chacha asked her to bring Kuber from a shop. She brought Kuber and gave it to Sabir who took her inside the room and raped her. Her daughter

fled, as told to her, giving a teeth bite on his hand. She washed her daughters salwar.

6. During cross-examination she said that that Sabir had illegally occupied their shop and had reported the matter to the police which took no action. She said that a civil suit was pending concerning possession of a hall on the ground floor. She said that they lodged a report to the police on August 16, 2010 when her husband returned.

7. Ankur Jain M.M.Karkardooma Court PW-4 proved the proceedings Ex.PW-4/A concerning Baby T having made a statement before him under Section 164 Cr.P.C.

8. Khursidan PW-6, the mother of Baby PW-2 deposed in sync with her daughter.

9. In his defence Sabir pleaded being falsely implicated with a view to pressurize him to vacate the tenanted premises which his sister Zarina had taken on rent from Mst.Baby, the mother of T.

10. The learned Trial Judge has noted that DD No.18A being the information which commenced police investigation was lodged on August 16, 2010. The learned Trial Judge has noted that MLC Ex.PW-11/A of Baby T evinced no sign of rape. The MLC was prepared after T was medically examined by Dr.Parul Aggarwal, PW-11 on August 17, 2010. The hymen was intact and there was no visible injury to the genital or anal region of Baby T. MLC Ex.PA of Sabir shows that there was no local injury or lesion on his body. The learned Trial Judge has disbelieved T that Sabir managed to push/thrust his penis in her vagina. Her story of flying a kite and going to purchase tobacco for Sabir and returning to hand over tobacco has been found to be fanciful. Her claim that the time was 2 O'clock and was known to her as such because a small girl told her the time when she was returning after purchasing tobacco has also been found to be fanciful because on the one hand she said that she does not know the name of the girl and could not point out even her house in the same breath she said that the little girl live in the same gali. Her claim of fleeing after biting Sabir on his hand has been found to be untrue with reference to Sabirs MLC which does not record any such injury.

11. The reasoning of the learned Trial Judge is sound. Indeed, the possibility of the young girl being made to speak a fanciful story at the instance of her parents who had an axe to grind against Sabir looms large in the realm of reality. That T had not even a scratch mark on her body belies her claim that Sabir managed to penetrate her vagina. Her claim that she saw Sabir having ejaculated a white liquid is a fanciful claim for the reason there was no penetration in her vagina. The vaginal swab taken by the doctor who examined T did not exhibit presence of semen as per the FSL Report Ex.C-2. If a male penetrates a vagina of a young girl aged 7 years there are bound to be injury in the female genitalia.

12. That semen was detected on the underwear of Sabir as per FSL Report Ex.C-2 is not incriminating of Sabir for the reason he is a married man. He was apprehended on August 18, 2010. He was medically examined on August 19, 2010 when the doctor who examined him seized his undergarment and handed it over to the Investigating Officer. It is not the case of the prosecution that Sabir was practising celibacy with his wife.

13. T being manipulated by her parents to speak a fanciful theory to pressurize Sabir to vacate the portion of the house taken on rent by Sabir in the name of his sister from the mother of T has rightly been held by the learned Trial Judge to be the motive for the false complaint.

14. The appeal is dismissed.

15. The bail bond and surety bond furnished by the respondent are discharged.

16. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
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