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Sunder Vs. State

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Court : Delhi

Decided On : Aug-08-2016

Judge : The Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.A. No. 789 of 2015 & Crl.M.A. No. 9763 of 2015

Appellant : Sunder

Respondent : State

Judgement :

Mukta Gupta, J.

1. The instant appeal has been filed by Sunder challenging the impugned judgment dated 23 rd April, 2015 whereby the appellant has been convicted for the offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) in FIR No. 146/2013registered at PS Ashok Vihar and the order on sentence dated 1 st May, 2015 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 8 of POCSO Act.

2. The prosecution case is that on 17th May, 2013 around 6:13 PM, DD No. 23A was received with respect to eve teasing at Jailorwala Bagh. The aforesaid DD entry was handed over to SI Ram Kumar PW-11. He along with Ct Amit PW-5

reached the spot and found Smt. Nisha PW-6 along with two girls i.e. victim children M and N . PW-11 brought them to the policestation and handed over the victim children and the lady to W/SI Rajesh PW-10. PW-10 recorded the statement of N PW-3 aged 12 years who stated that her mother passed away after she was born and she used to work in the houses. She stayed with Nisha PW-6 who had a 11 years old daughter, the victim child M PW-7. PW-3 further stated that when she along with PW-7 used to come back in the evening after work, one dark complexioned boy aged 25 years use to follow them (peeche lag jata tha) since past three days. PW-3 further stated that on 15th May, 2013 around 5:00 P.M., the appellant held her hand near the dustbin, pulled her and asked her to sit in the car. PW-3 bit his hand and escaped from there and informed Nisha about it. PW-3 further stated that on the same day at night, when M was sleepingon the roof, the appellant fondled with his hands her chest/breast, thighs and removed her pants/leggings till the thighs, on which PW-7 screamed and the appellant left. PW-3 further stated that on 16th May, 2013 when she along with PW-7 had gone to call the bangle seller, the appellant came and started making obscene gestures and said mere naam ki chudiyan pehen le . PW-6 Nisha saw all this and called back both the children. PW-3 stated that on 17th May, 2013, in the evening when she along with PW-6 Nisha and PW-7 were returning back from work, the appellant was standing near Rahul s shop.Both the victim children pointed out towards the appellant who tried to run away. However, the appellant was apprehended by the public persons and police was called. On the basis of the statement of PW-3, FIR Ex. PW-2/A was registered for the offence under Section 7 punishable under Section 8 of POCSO Act and Section 354 IPC.

3. Learned counsel for the appellant contends that there is an unexplained delay in recording of the FIR. There was previous animosity between PW-6 Nisha and the sister of the appellant, Guddu as a result of which the appellant has been falsely implicated in the present case. Further, it was contended that there were a number of public persons present but no one was cited. It was also pointed out that the learned Trial Court failed to appreciate that the appellant was arrested from Jailer wala Bagh and not from the spot. Furthermore, the appellant had produced two witnesses but the evidence of the defence witnesses was not appreciated by the Learned Trial Court. There was no reference to the dustbin incident in the

statement of victim child M recorded under Section 164 Cr. P. C. Learned counselfor the appellant further contends that there was no previous complaint against the appellant and there being material contradictions and improvements in the testimony of the three witnesses, he is entitled to be acquitted.

4. Learned APP for the State on the other hand contends that there are no inconsistencies or contradictions in the statements of the witnesses. Furthermore, witnesses have not been confronted with their previous statements under Section 164 Cr.P.C. There are material contradictions in the statement of DW-1, Shailesh Kumar and DW-2, Suraj. DW-2 who is the brother of the appellant stated in his cross-examination that there was no enmity with PW-6, Nisha and Guddu, their sister. Hence the defence of the appellant was falsified by his own witness.

5. Victim Child N who was aged 12 years at the time of the incidentwas examined as PW-3. After satisfying that PW-3 was capable of understanding the questions and give rational answers, the learned Magistrate recorded the statement of the victim child N . She deposed insync with her earlier statement made before the police.

6. Smt. Nisha, mother of victim child M , who was examined as PW-6,corroborated the testimony of PW-3. She stated that M and N hadcomplained her that one boy of dark complexion used to follow them and once he eve teased N in the area of Jailorwala Bagh, nearthe public dustbin. She further stated that she gave 3-4 slaps to the appellant when he was apprehended by the public persons. During her cross examination, she stated that the appellant was not known to her prior to the incident. PW-6 further stated that she saw the appellant running from the roof after outraging the modesty of her daughter at night. PW-6 also stated that she heard the words mere naam ki chudiyan pehen le when the appellant came after seeing the victim children near the bangle seller. She deposed that she did not protest on the conduct of the appellant at that time because he was under the influence of alcohol and she called back the victim children to avoid further interaction with the appellant. PW-6 denied the suggestion that family of the appellant was her earlier neighbour and she also denied to have known any girl by the name of Munni.

7. Victim Child M who was aged 11 years at the time of the incidentwas examined as PW-7. PW-7 also corroborated the version of PW-3. She also stated that the appellant fondled over her chest/breast and thighs and pulled down her black coloured leggings upto the knees. She further stated that when she started shouting, the appellant gagged her mouth.

8. PW-1 Suraj Gupta, Head Teacher, Primary School, Muradpur, Block Safipur, District Unnao, Uttar Pradesh stated that as per the records the date of birth of N was 4th May, 2000 . PW-4 Sh. Hari Om, Assistant Teacher,MC Primary Model School, Ashok Vihar, New Delhi stated that as per the affidavit filed by the father of M , the date of birth was 10th April, 2003 .Thus the prosecutrix proved that both the victims were minor at the time of incidents i.e. N was aged 13 years and M was aged 10 years.

9. Learned counsel for the appellant contends that there are contradictions in the testimony of the three witnesses. It would be appropriate to note the testimony of each of the witness with regard to the three incidents i.e. at the dustbin, while buying bangles and at the roof top. The chart illustrating the statements of the three witnesses for the three incidents is as under:

PW S Statement	1 st INCIDENT (DUSTBIN)	2 nd INCIDENT (CHUDIWALA)	3 RD INCIDENT (ROOFTOP)

PW3 Victim N	Pg 3: Ek baar sham ke samay, isne (Accused) mujhe kuredan ke paas roka aur mera haath pakar liya aur mujhe khinchte hue bola ke chal gadi mein baith. Maine uske haath per kaat liya aur main apna haath chudwa kar bhag gayi aur ghar pahunch kar maine sari baat Nisha aunty ko batai.	Pg 3: Ek bar hum kaam karke aa rahe the toh sadak per ye (Accused) khada hua tha. Wahan per ek chudiwala bhi aaya hua tha. Meri mausi ne hum se kaha ke jao chuddi dekh lo. Hum chudiwala ko bulane gaye to ye (Accused) aadmi humare samane khada ho gaya aur galat galat ishare karne laga aur bola ke mere naam ki chudiyaan pehen lo. Mausi ne hume dekh liya aur usse	Pg 2: Ek baar mere chacha apane jhuggi ki chaat banwa rahe the toh hum log neeche wali chaat par so rahe the toh ye aadmi (Accused) raat mein aagya aur Manju ko per se khichne laga aur uske saath badtamizi karne laga. Manju zor se chilai to wahe chaud kar bhag gaya. Pg 4: Q: Apne doctor ko tab kuch bataya? A: Maine kaha tha ki usne (Accused) meri chhati aur jhango (breast and thighs) par haath phera tha aur meri pant utarne ki koshish ki. Pg 6: Jab Accused ne Manju ke

PW6 (Mothe r of PW7/ Victim M)	Pg 3: The incident of eve teasing near public dustbin (Kudedan) was told to me by my daughter as victim child N was scared	Pg 1: One day a Bangle seller came to our galli and I asked both the victim children to call the said bangle seller. The Accused was present near the said bangle seller and he made obscene gestures towards Victim N and asked her to wear bangles in his name (mere naam ki chudiyaan pehen le). I called both the girls back at home. Pg 3: I had heard the words mere naam ki chudiyaan pehen le with my own ears and thereafter I called both the victim children back to the house.	Pg 2: In the same night, I was sleeping with the victim children on the roof as some construction work was going on in my house. The Accused came on the roof and pulled the pant of my daughter i.e Victim M and he touched her entire body. My daughter raised alarm and due to which we got up but Accused had run away by jumping from the iron stairs of the other jhuggi. Pg 3: I myself saw the Accused running from the roof after outraging the modesty of my

PW7 Victim M	Pg 2: Pichle saal 15th May ko, mein aur Neetu kaam karke ghar wapas ja rahe the. Kudedan ke paas yeh jo ladka betha hai, ne Neetu ka haath pakad liya. Usne Neetu ko bola chal mere saath gadi mein. Phir Neetu ne uske haath par kaat liya	Pg 2: Durse din chudiwali gali me aayi thi. Mummy ne bola ja usse bula lao. Mein aur Neetu chudiwali ko bulane gaye. Yeh jo ladka hai samne aakar khada ho gaya aur Neetu se bola mere naam ki chudi pehen le. Usne ishare karke bhi yeh bola. Phir hum ghar aa gaye.	Pg 3: Ussi din raat me 12 baje yeh ladka hamari chat par aaya tha. Hamare landlord uncle apne ghar mein kaam karwa rahe the toh unhone hame dusre makaan ki chaat par sone ko bola tha. Hum waha so rahe the. Yeh ladka chhat phand (jumped over) kar aa gaya. Usne hamare yaha par hath phera (the witness has made a gesture of fondling with hand over her chest/ breast and thighs). Maine kale rang ki legging pehni thi, uss ladke (Accused) ne meri legging pakad kar

10. As noted in the chart there is no contradiction at all nor any improvement with regard to the testimony qua incident at the dustbin or while buying bangles. The defence of the appellant in his statement under Section 313 Cr.P.C. is that he has been falsely implicated in this case due to the previous enmity between his sister Guddu and Nisha PW-6. Appellant examined defence witnesses including his brother Suraj as DW-2. Suraj deposed that he had no knowledge that appellant used to follow the two girls or that we went to the roof of their house. He further deposed that there was no enmity between his brother and the said lady i.e. Nisha and the two children. He volunteered that once a quarrel took place between Nisha and his cousin sister, when his brother abused Nisha due to which they were having inimical relations. He could not tell the date, month or year when this quarrel took place and stated that this was when his cousin was living in the jhuggis which had been demolished about 5/6 years back. DW-2 also admitted that he had asked the lady why she was beating Sunder, to which she replied that yeh idhar udhar ladkiyo ko dekhta hai . Thus the defence of the appellant of false implication due to enmity has not been probablised.

11. Considering the evidence on record, I find no infirmity in the conviction of the appellant for offence punishable under Section 8 of the POCSO Act and the order on sentence. Appeal and the 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.

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