

Pramod Kumar Vs. State

Pramod Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/1183627

Court : Delhi

Decided On : Mar-17-2016

Judge : S.P. Garg

Appeal No. : CRL.A. 1077 of 2014

Appellant : Pramod Kumar

Respondent : State

Judgement :

S.P. Garg, J.

1. Challenge in this appeal is to a judgment dated 09.05.2014 of learned Additional Sessions Judge in Sessions Case No. 141/13 arising out of FIR No. 344/13 P.S. Subhash Place whereby the appellant - Pramod Kumar was convicted for committing offences punishable under Sections 363/341/323 IPC and Section 7 POCSO Act punishable under Section 8 of POCSO Act. By an order dated 17.05.2014, the appellant was awarded Rigorous Imprisonment for three years with fine of Rs. 3,000/- under Section 363 IPC; Simple Imprisonment for one month with a fine of Rs. 500 under Section 341/323 IPC each; Rigorous Imprisonment for five years with fine of Rs. 5,000/- under Section 8 of POCSO Act. All the sentences were to run concurrently.

2. Briefly stated, the prosecution case as reflected in the charge sheet was that on 31.07.2013 in between 12.15 to 12.45 p.m. at G-560, Fourth Floor, J.J.Colony, Shakurpur, Delhi, the appellant kidnapped the prosecutrix X (changed name) aged about 6/7 years from the lawful guardianship of her mother and confined her in his room wrongfully. It is alleged that in the room, the appellant kissed her face and breast, made her to sit on his lap and attempted to remove her panty with sexual intent. The incident was reported to the police on 10.08.2013 and the Investigating Officer after recording statement of victim s mother Shaheen Bano (Ex.PW-6/A) lodged First Information Report. X was medically examined; she recorded her 164 Cr.P.C.statement. The accused was arrested and medically examined. Statements of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge sheet was filed against the appellant in the court. The prosecution examined nine witnesses to prove its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication due to non-payment of loan amount of Rs. 4,000/- advanced by him to victim s mother. The trial resulted in conviction as mentioned previously. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file. Counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Material infirmities emerging in the statements of prosecution witnesses were ignored without cogent reasons. Ten days delay in lodging the FIR has remained unexplained. The victim did not sustain any injury whatsoever on her body. The victim has been tutored to make a statement by her mother and no reliance can be placed on it. X gave statement to the police at the behest of her mother. Learned Additional Public Prosecutor refuting the contentions, urged that there are no sound reasons to disbelieve the minor victim.

4. Admitted position is that the prosecutrix X and her mother Shaheen Bano lived on the third floor of the house and the appellant lived on the fourth floor as a tenant. In her complaint (Ex.PW-6/A), victim s mother gave detailed account as to how and under what manner, her daughter X aged around 6/7 years was sexually assaulted by the appellant on that day. The victim recorded her 164 Cr.P.C. statement on 12.08.2013. Before recording the statement, various questions were

put to the victim by the learned Presiding Officer to ascertain her state of mind. After recording satisfaction that X was able to understand questions put to her and she was making her statement voluntarily, her 164 Cr.P.C. statement (Ex.PX) was recorded. The victim named the appellant to be the perpetrator of the crime who had sexually assaulted her in the room. She identified him to be the author of crime and to whom she used to call uncle . She appeared as PW-1 before the court for recording her statement. It was recorded in a very congenial atmosphere. X was made comfortable to give her statement. As the victim was a small child, learned Presiding Officer conducted preliminary enquiry to ascertain whether she was capable of understanding the questions and able to answer them. After being satisfied that she was capable of understanding the questions and answer them reasonably, her statement was recorded without administering oath. She was examined in question-answer form. She identified the appellant to be the individual who had defiled her. She specifically deposed that the appellant lived on the upper floor/roof. In response to a question Usne kya kiya tha , she deposed that usne badatamiji kari thi . When she was asked Aapko kya bura laga tha ; the victim hesitated to answer. The Presiding Officer gave her a book. After going through the pictures/photos of animals in the book, she became comfortable and responded that Kamre mein band kar diya tha . When asked aur kya kiya tha , she replied Aur kuch nahin kiya tha . The Presiding Officer noted that the victim was hesitant to answer questions in the presence of Additional Public Prosecutor and the learned Defence Counsel in the chamber. The court enquired from the child if she wanted all present in the court to cover their faces and eyes so that she could answer the questions. The victim answered in the affirmative by nodding her head. Thereon the learned Additional Public Prosecutor and the learned Defence Counsel were asked to cover their eyes with their hands.

The victim was questioned and she answered as under:

[LANGUAGE]

xxx xxx xxx xxx

5. In the cross-examination, the victim denied if the appellant was identified and recognised by her at her mother s behest. Material facts deposed and proved by

her in the examination-in-chief remained unchallenged and uncontroverted. Nothing was suggested to the victim if she was not found present inside the appellant's room at the relevant time. The appellant did not deny his presence in the room at that time. He did not offer any explanation as to what had prompted him to take the child in the room without prior permission of her parents. The role assigned by the victim to the appellant in the crime was not denied in the cross-examination. No ulterior motive was assigned to the victim to implicate him. Statement of the witness read in its entirety establishes beyond doubt that she was sexually assaulted by the appellant in the room. Timely arrival of her mother prevented the horrible crime. X's statement inspires implicit confidence. She was intelligent enough to describe the entire incident minutely. Two drawings made by her during her deposition annexed as Annexure P-1 (colly.) confirm her intelligence. No sound reasons exist to discard her natural version. Why a child of tender age would come forward in a court to make a humiliating statement against her honour? She would not tarnish or damage her own reputation and image by volunteering to falsely claim that she had been defiled. She is consistent throughout.

6. PW-6 (Shaheen Bano), her mother, has corroborated her version without any inconsistency. She deposed that on 31.07.2013 at about 12.15 p.m., the appellant-Pramod Kumar came and demanded key of his room which she gave through the window. Thereafter, the accused went upstairs. Her daughter asked if she could go upstairs to play to which she agreed. At about 12.45 p.m. on hearing her daughter's voice, she immediately went upstairs. She found appellant's room shut but not bolted from inside. On opening it, she saw that the appellant had made her daughter sit on him and she was crying and weeping bitterly. In response to the Court question as to what the accused and her daughter were wearing, the witness replied that the accused was wearing only his underwear and her daughter was wearing her panty that time. She further deposed that the accused had shut her daughter's mouth with his hand. On seeing her daughter's condition, she also started crying. On enquiry, her daughter told her that the accused had asked her to keep quiet and had given her a toffee and kite. She further informed her that the accused had kissed her and was trying to remove her panty. She also saw some red marks on her daughter's body. She immediately called her husband

from his workplace and apprised him about the incident. In the cross-examination, she admitted that none had come to intervene at the time of incident as no other individual on the said floor was available. She further informed that the accused had run away from the spot after putting on his clothes. She denied if Rs. 4,000/- were taken by her from the accused and to avoid its payment, she falsely implicated him. Apparently, nothing material has been elicited in the cross-examination to disbelieve her.

7. The appellant did not produce any cogent or clinching evidence to show if his false implication in the occurrence was due to non-payment of Rs. 4,000/-. Nothing has emerged as to when Rs. 4,000/- were borrowed by the complainant from the accused and for what purpose. For a petty amount of Rs. 4,000/-, the complainant is not expected to put the honour of her daughter at stake. The defence deserves outright rejection. It is true that the FIR has been lodged after a delay of around ten days. However, the complainant has given reasonable explanation for that. In the cross-examination, she reasoned that she was apprehensive about the family prestige and for that reason had not disclosed the incident to anyone except her husband. She further disclosed that after the occurrence, the accused had touched her feet and asked for forgiveness. Since the accused had fled the spot and had not returned to the spot, the FIR was not lodged soon after the incident. Moreover, the delay in lodging the FIR in sexual assault cases is not always fatal.

8. The Trial Court has minutely discussed all the relevant aspects and the impugned judgment based upon proper appreciation of evidence needs no intervention. The appellant was sentenced to undergo Rigorous Imprisonment for five years with fine of Rs. 5,000/- under Section 8 of POCSO Act, which is the maximum sentence that can be awarded. Nominal roll dated 9.4.2015 reveals that the appellant has undergone one year, seven months and twenty seven days incarceration besides remission for two months and twenty days as on 08.04.2015. He is not a previous convict and is not involved in any other criminal case. His overall conduct in jail is satisfactory. Sentence order records that the appellant is a married man having a wife and three school-going children.

9. Considering all the circumstances, the substantive sentence awarded under Section 8 of POCSO Act for Rigorous Imprisonment of five years is modified/alterd to Rigorous Imprisonment for four years. Other terms and condition of the Sentence Order are left undisturbed.

10. The appeal stands disposed of in the above terms. Trial Court record (if any) be sent back forthwith along with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

Appeal disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com