

Musarfen vs.state

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SooperKanoon Citation : sooperkanoon.com/1203818

Court : Delhi

Decided On : Oct-20-2016

Appellant : Musarfen

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: October 03, 2016 Judgment Delivered on: October 20, 2016 CRL.A. 1674/2014 Represented by: Mr. Imran Khan, Adv. Appellant Represented by: Ms. Meenakshi Chauhan, APP. Respondent versus MUSARFEN CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA STATE MUKTA GUPTA, J.

1. Convicted for the offences punishable under Sections 354A/506-I IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) Musarfen challenges the impugned judgment dated 24th January, 2014 and the order on sentence dated 30th January, 2014 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of `2,000/- for the offence punishable under Section 10 of POCSO Act and rigorous imprisonment for a period of one year for the offence punishable under Section 506 Part I IPC.

2. Case of the prosecution in nutshell is that on 31st May, 2013 around 2 P.M., the prosecutrix along with her mother came to police station and met SI Sangeeta PW-9 who recorded the statement of the prosecutrix. The prosecutrix PW-3 stated

that she studies in 6th standard. Her maternal uncle Musarfen, who stays in their house, was misbehaving/teasing her since last one and a half month and she did not tell about it to her family members out CRL.A. 1674/2014 Page 1 of 4 of fear. On 29th May, 2013 around 2:30 P.M., Musarfen took her to a narrow lane near her house where he rubbed her breasts and private parts and kissed on her cheeks. She got scared and ran away from there. Musarfen had threatened her to cut her into pieces if she disclosed about it to anyone. She stated that out of fear she did not tell about this incident also to her family. On 31st May, 2013 around 1:30 P.M., when she was going to Turkman gate to fetch milk, Musarfen caught her and took her to the corner of the lane and started forcibly kissing her and rubbed her breasts and private parts. Thereafter, Musarfen gave her a note of `100, held her hand and asked her to accompany him to the JPN jhuggies but when she refused, he snatched the note. She got rid of herself came back to her house and narrated everything to her mother PW-2 who took her the police station. Thus, FIR No.81/2013 was recorded at PS Chandni Mahal under Section 354A IPC and Section 8 of POCSO Act.

3. After registration of FIR, MLC of the prosecutrix was conducted. Her statement was recorded by learned Metropolitan Magistrate under Section 164 Cr.P.C vide Ex. PW-3/B. During the course of trial, PW-1 Farat Banu, Principal, MC Girls Primary School, furnished a certificate Ex. PW-1/A proving that the date of birth of the prosecutrix as per the school records was 1st April, 2001.

4. PW-2 mother of the prosecutrix stated that Musarfen (her brother) had caught hold of the hand of the prosecutrix. During the cross examination, she stated that Musarfen had not committed anything else with the prosecutrix except catching hold of her hand and touching her body.

5. The prosecutrix was examined as PW-3. On the question being put whether she had any complaint from Musarfen, PW-3 stated that he teased CRL.A. 1674/2014 Page 2 of 4 her only once in the gali near her house. She explained teasing as touching of her breasts, private parts and kissing on her cheeks. She stated the Musarfen did not tease him prior to this incident. She also stated that Musarfen did not threaten her when she ran away after the incident. She further deposed that

Musarfen did not tease her after that. She stated that Musarfen had not teased her when she had gone to fetch milk but he had given her `100/- to take sweets but he took it back. During her cross examination, she was confronted with her statement made under Section 161 Cr. P.C. wherein she stated that the appellant had been teasing her for last 1 month but she did not make a complaint to her family members due to fear. She was also confronted with her earlier statement mentioning that Musarfen caught hold of her arm to take her to jhuggi in JPN after giving `100/- and when she refused, he snatched `100/- from her.

6. The defense of the appellant in his statement under Section 313 Cr.P.C. was that his two sisters including the mother of the prosecutrix were living in the same house comprising of two rooms with the appellant and his brothers. Since his sisters wanted to evict the appellant and his brothers, the appellant had been falsely implicated. In cross-examination this defense has not even been put to PW-2 the mother of prosecutrix. Further the other brothers of the appellant are still residing in the same house. Thus the appellant has not even been able to probablize his defense.

7. Though the prosecutrix in her statement before the Police stated about previous misbehaviour and two specific instances which two incidents she stated in her statement under Section 164 Cr.P.C. also but in the Court she deposed about one incident, however the fact remains that qua the last incident on the basis of which FIR was registered immediately, testimony of CRL.A. 1674/2014 Page 3 of 4 the prosecutrix is consistent. Considering the cogent and convincing testimony of the prosecutrix, duly corroborated by the testimony of PW-2 I find no infirmity in the conviction of the appellant for offence punishable under Sections 354A/506-I IPC and Section 10 POCSO Act and the order on sentence. Appeal is accordingly dismissed.

8. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record. TCR be returned.

9. (MUKTA GUPTA) JUDGE OCTOBER20 2016 ga CRL.A. 1674/2014 Page 4 of 4