

Ram Singh vs.state

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Court : Delhi

Decided On : May-22-2017

Appellant : Ram Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

8. h MAY, 2017 DECIDED ON :

22. d MAY, 2017 RAM SINGH STATE CRL.A. 414/2015 Through : Mr.S.K.Sethi with Ms.Dolly Sharma, Appellant Advocates. versus Through : Ms.Meenakshi Chauhan, APP. Respondent CORAM: HON'BLE MR. JUSTICE S.P.GARG + S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 22.12.2014 of learned Addl. Sessions Judge in Sessions Case No.42/2013 arising out of FIR No.43/2013 PS Shalimar Bagh by which the appellant - Ram Singh was held guilty for committing offences punishable under Section 10 POCSO Act and Section 342 IPC. By an order dated 23.12.2014, the appellant was sentenced to undergo RI for seven years with fine `5,000/- under Section 10 POCSO Act and RI for one year under Section 342 IPC. The sentences were to operate concurrently.

2. Briefly stated the prosecution case is projected in the charge- sheet was that on 26.01.2013 at around 08.30 a.m. the appellant sexually assaulted the victim X

(changed name) aged around two and a half years in CrI.A.414/2015 Page 1 of 7 his jhuggi No.437, Ayurvedic Hospital, Haiderpur, Delhi. Information about the occurrence was conveyed to the police promptly and DD No.9A (Ex.PW-13/A) came into existence at 09.50 a.m. at PS Shalimar Bagh. The Investigating Officer after recording statement of the victims mother (Ex.PW-11/A) lodged First Information Report. X was taken for medical examination. The appellant was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. Upon complete of investigation, a charge-sheet was laid before the Trial Court against the appellant for commission of the aforesaid offences. To establish its case, the prosecution examined thirteen witnesses. In 313 Cr.P.C. statement, the appellant denied his complicity in the crime and claimed himself to be innocent; he did not produce any witness in defence. Trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred by him.

3. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the prosecutrix was aged around two and a half years on the day of occurrence. PW-1 (Mukesh Kumar), Record clerk from the office of Sub Registrar, North Zone, North Delhi Municipal Corporation, proved various documents (Ex.PW-1/A to Ex.PW-1/C) invariably disclosing Xs date of birth as 04.07.2010. Genuineness of these documents has not been suspected in the cross-examination.

4. Admittedly, the victims family and the appellant lived in the jhuggies under PW-7 (Chander Pal). He informed that jhuggi No.429 was a double storey construction. There were two small rooms on the ground floor and two on the first floor. All the four rooms were let out by him to different tenants including the appellant - Ram Singh. PW-9 (Sunil) lived in jhuggi CrI.A.414/2015 Page 2 of 7 No.307 in front of Ayurvedic Hospital, JJ Colony, Haiderpur. The appellant was acquainted with the prosecutrix and her family members.

5. The incident took place on 26.01.2013 in between 08.30 to 08.45 a.m. in the appellants jhuggi. The victims father PW-9 (Sunil) was away to his duty. PW-11 (Reena) - victims mother immediately informed him on mobile about the

unfortunate incident. Without wasting any time, PW-9 (Sunil) rushed to the spot and made a telephone call at 100. DD No.9A (Ex.PW-13/A) came to be recorded at PS Shalimar Bagh at 09.50 a.m. Information was recorded in the PCR form to the effect Ek old aged aadmi 10 sal ki larki ke sath galat kam karta hua pakra gaya. Name of the informant finds mention in the PCR form. The appellant was apprehended at the spot and the public persons gathered there thrashed him after coming to know the heinous crime committed by him.

6. In her complaint (Ex.PW-11/A), the complainant - Reena Devi gave vivid account of the occurrence and implicated the appellant by name to have defiled her daughter aged around two and a half years. Since the FIR was lodged without any delay, there was least possibility of the complainant to fabricate or concoct a false story in such a short interval.

7. Crucial testimony to infer the appellants guilt is that of PW-10 X aged around four years on the day of her Court examination. Before recording her statement, the learned Presiding Officer conducted preliminary inquiry to ascertain if she was capable to understand the questions put to her and was able to give rationale answers. After recording her satisfaction that the witness was capable to understand questions and answer them reasonably, her statement was recorded in question-answer form without oath. Victims statement was recorded under congenial atmosphere. She CrI.A.414/2015 Page 3 of 7 even prepared a drawing (Annexure P1) while deposing before the Court. It can be inferred that the child was under no coercion or fear to make the statement. Her testimony was recorded as under : Niche kaha par sulaya tha ?. Aur bhi kuch kiya tha usne ?. Beta batao apko kisne chudaya tha ?. Beta aap Nepali ko pehchan sakte ho?. Beta Nepali ne apke sath kya kiya tha ?. Q. Beta batao kya hua tha ?. Ans. Kuch nahi hua. Q. Ans. Nanga karke niche sullaya diya tha. Q. Ans. Yaha par (the witness pointed with her hand at the floor). Q. Uss samay Nepali kya kar raha tha ?. Ans. Woh nange hokar, mujhe pakad kar so raha tha. Q. Ans. Nahi. Q. Ans. Phir mummy ne mujhe le liya tha. Q. Ans. Ha. The witness identified the accused as 'Nepali'. During cross-examination by learned L.A.C, the witness deposed as under : Q. Ans. Yaad hai yehi Nepali hai. Q. mummy ne bataya tha ?. Ans. Nahi apne aap se bol rahi hu. Beta yeh batao ki aap aaj jo bhi bata rahe ho woh apki Beta apko Nepali ki

shakal theek se yaad nahi hai na ?.

8. On scanning the entire testimony of the child witness, it can be inferred that she was emphatic to identify the appellant to be the perpetrator of the crime. She affirmly claimed that the statement given by her was not at her mothers behest. She attributed specific and definite role to the appellant. Nothing more can be expected from a child aged around two and a half years. Material facts deposed by her remained unchallenged in the Crl.A.414/2015 Page 4 of 7 cross-examination. Nothing was suggested to her if the child was not taken inside the jhuggi. It was not suggested if victims mother had not arrived inside the jhuggi after getting no response from her daughter to her call. The appellant did not deny his presence in the jhuggi at the relevant time. It is unclear if other family members of the appellant were available in the jhuggi or nearby.

9. PW-11 (Reena) - victims mother is an important witness who has corroborated the victims statement in its entirety. She deposed that on the night intervening 25/26.01.2013, her husband was on his duty at his work place at Wazirpur Industrial Area. On 26.01.2013 at around 08.30 a.m. when she was giving oil message to her six months old son, the appellant allured her daughter X aged around two and a half years playing in the jhuggi with 3 - 4 toffees in his hands. After 3 - 4 minutes, she called her daughter by name but she did not get any response. The appellant rather responded abhi aa rahi hai. Getting no response from her daughter, she became suspicious and went to the appellants jhuggi. On opening it, she saw that her daughter was lying naked on an old blanket on the floor; the appellant who had no clothes on his body was touching his penis on the private part of her daughter. On seeing it, she screamed and confronted the appellant as to what he was doing. The appellant immediately stood up, put on his clothes and attempted to flee. Reena pushed her inside the jhuggi and raised alarm. The appellant started apologizing with folded hands but Reena asked her to wait till her husband arrived. In the cross-examination, she denied if her husband used to pick quarrels with the appellant or that he wanted to get his jhuggi vacated to take it on rent. Crl.A.414/2015 Page 5 of 7 10. On scanning entire statement of the complainant, it reveals that despite lengthy cross-examination, no material infirmity or inconsistency could be extracted. No ulterior motive was assigned to

the witness to level serious allegations of sexual assault upon an infant against the appellant who lived in her neighbourhood since long. Material facts deposed by the victim remained unchallenged in the cross-examination. Presence of the complainant at the spot was quite natural and probable. When she did not get any response from her daughter X on her call, she got suspicious and went to the appellants jhuggi. There, she was shocked to find that both the child and the appellant were naked and the appellant had put his sexual organ on Xs private part. Post-event conduct of the victims mother was quite natural. She not only confronted the appellant as to what he was doing but also she raised alarm and many public persons from the locality gathered and thrashed the appellant for his misadventure. No valid reasons exist to disbelieve the version given by the victims mother. PW-9 (Sunil) - victims father has corroborated her version without any variation.

11. Minor inconsistencies or discrepancies highlighted by the appellants counsel are inconsequential as they do not affect the core of the prosecution case. In 313 Cr.P.C. statement, the appellant did not furnish plausible explanation for his false implication. He did not elaborate when any quarrel had taken place with the victims father over any specific issue. No suggestion was put to PW-7 (Chander Pal) if victims father had ever attempted to get the jhuggi vacated from him. PW-9 (Sunil) was categorical to claim in the cross-examination that accommodation in his possession was sufficient and he did not need any additional accommodation. PW-9 (Sunil) was not the landlord or owner of the jhuggi to get it vacated from the Crl.A.414/2015 Page 6 of 7 appellant. Moreover for a trivial issue, the victims parents cannot be expected to put the honour of their young child at stake. By no imagination they would use their own tiny child to settle score.

12. Statements of the prosecutrix and other witnesses are consistent. The post-event conduct of the prosecutrix and her parents was quite natural and reasonable. They had put the police machinery into motion without any delay. The impugned judgment based upon fair and proper appreciation of the evidence deserves no intervention.

13. Regarding modification of the Sentence Order, I find no substance in it. The victim in the instant case was a child aged around two and a half years. She unsuspectingly accompanied the appellant jhuggi where the appellant aged around 55 years aware of the consequence of his act defiled or sexually assaulted her. Timely intervention / arrival of victims mother prevented big harm. The appellant had no occasion to disrobe the child and to touch his private part on her. The appellant ravished the girl akin to her grand-daughter when the Nation was celebrating its Republic Day; he deserves no leniency. Instead of providing security being a good neighbour, he indulged in nefarious activity. Sexual assault on a tender aged girl is bound to create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely.

14. The appeal lacks in merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.
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