

Om Prakash vs.state

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Court : Delhi

Decided On : Jun-05-2017

Appellant : Om Prakash

Respondent : State

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI OM PRAKASH STATE
RESERVED ON : JUNE01 2017 DECIDED ON : JUNE05 2017. CRL.A. 212/2015
Through : Ms.Rakhi Dubey, Advocate. Appellant versus Respondent
Through : Ms.Manjeet Arya, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG
S.P.GARG, J.

1. The appellant -Om Prakash impugns a judgment dated 18.11.2014 of learned Addl. Sessions Judge in Sessions Case No.159/2013 arising out of FIR No.402/2013 PS Vasant Kunj South by which he was held guilty for committing offence punishable under Section 10 of POCSO Act (In short 'Act'). By an order dated 26.11.2014, he was sentenced to undergo Rigorous Imprisonment for six years with fine `10,000/-; default sentence being Simple Imprisonment for six months.

2. Briefly stated, the prosecution case as reflected in the charge- sheet was that on 18.09.2013, at around 01.30 p.m. at Jhuggi Shankar Camp, Rangpuri Pahari, the appellant sexually assaulted the prosecutrix 'X' Crl.A.212/2015 Page 1 of 7 (changed name) aged around four years. The incident was conveyed to PCR at

01.44 p.m. and DD No.17A (Ex.PW-4/E) came into existence at PS Vasant Kunj. It was informed that a girl aged around six years has been sexually assaulted at Shankar Camp, Rangpuri Pahari, Vasant Kunj. The investigation was assigned to SI Satinder who along with Constable Hukam Chand went to the spot. After recording statement of complainant (Ex.PW- 2/A), the Investigating Officer 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 completion of investigation, a charge-sheet was filed against the appellant. In order to establish its case, the prosecution examined nine witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. The appellants wife Geeta Devi appeared in his defence as DW-1. The trial resulted in conviction, as aforesaid. 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. The prosecutrix is appellants real daughter. Both her parents used to consume liquor. Victims mother DW-1 (Geeta Devi) has attempted to exonerate her husband of reasons best known to her. On the day of incident, she was also lying in the jhuggi under the influence of liquor, ignorant as to what was happening there. Apparently, both the parents had not taken due care of the child and it is informed that at present she is living at NGO home at Sangam Vihar.

4. PW-2 (Renu) was associated with an NGO Bal Vikas Dhara. She along with others used to visit the area. As usual on 18.09.2013 at about CrI.A.212/2015 Page 2 of 7 1.30 p.m. Renu was present at her Mahila Panchayat office for a field visit in Shankar Camp. She was informed by PW-3 (Ruksana), who lived in the appellants neighbourhood that a child aged around six years was being sexually assaulted by the appellant in the house. When Renu reached there, she found that the appellant had put off his clothes; had also disrobed X and was touching his private part upon her private part. He seemingly was under the influence of liquor. So was the position of victims mother. Renu made call at 100 on her mobile. In her complaint (Ex.PW-2/A), she give graphic account of the occurrence and named the appellant for sexual assault upon his own daughter.

5. X was taken for medical examination at All India Institute of Medical Sciences where she was medically examined vide MLC (Ex. A1). Arrival time recorded in the MLC is 06.23 p.m. Renu has been shown to the individual who had taken the child to AIIMS. The alleged history recorded therein reveals that a child aged around six years was sexually assaulted by her father. It was noted therein that her parents were drunk. Neighbours had seen the father to commit sexual assault and had informed the police and NGO. No external injuries were, however, noticed on her body.

6. In her 164 Cr.P.C. statement (Ex.PW-1/A) recorded on 19.10.2013 'X' implicated the appellant. Before recording her Court statement, the learned Presiding Officer had put various questions to ascertain if she was in a fit state of mind to make statement. After recording her satisfaction that 'X' was fit to make statement voluntarily, she recorded Xs statement. The child informed that her father had made her to lie upon him after putting off her underwear. Crl.A.212/2015 Page 3 of 7 7. At the time of her Court statement as PW-1, again, she was put certain queries by the learned Presiding Officer to understand the victims social, educational and psychological background. She was made comfortable. Questions were put to ascertain if she was capable of understanding and give rational answers thereto. After recording satisfaction that the witness was capable to understand questions put to her and give rational answers, her statement was recorded without oath. The witness had brought a soft toy horse of white colour with her. When she was asked as to what her father had done, the victim pointed out on her soft toy by pointing a finger towards the rear below side stating that her father had put his finger over there. She further revealed that her mother was present there. She added that she had consumed liquor (usne daru pee hui thi). She further revealed that her father was also under the influence of liquor (unke naak se khun bhi nikal raha tha). She reasoned that Masterni and Mummy had given beating to him. To a specific question whether her father had taken off her underwear, she answered in affirmative. In the cross-examination, she elaborated that the toy used to remain with her always. When asked whether her father used to love or beat her, she fairly said that he used to love as well as beat her.

8. On scanning the child's testimony, it transpires that she has implicated her father for committing sexual assault upon her. No extraneous consideration was imputed to the child for falsely implicating her own father. Since the child was aged around four years, nothing more could be expected from her.

9. Material and crucial testimony is that of PW-2 (Renu), aged around 26 years, who had put the police machinery into motion. The CrI.A.212/2015 Page 4 of 7 moment she came to know about commission of crime by the appellant upon her daughter, without wasting any time, she went to the spot and lodged the complaint with the police at 100. She became the complainant; lodged the FIR. In her court statement as PW-2, she proved the version given to the police at first instance without any variation, whatsoever. She deposed that on the day of incident she was attached with Bal Vikas Dhara, NGO at Village Rangpuri, Mahipalpur, for the last about one year. On 18.09.2013 at around 1.30 p.m. she as usual had visited Shankar Camp. When she reached in front of Mahila Panchayat, Rangpuri office, officials of Mahila Panchayat met her. They accompanied her for field visit in the area. There PW-3 (Ruksana), who was heavily drunk secretly told her at about 1.30/2.00 p.m. about the crime being committed by the appellant in his jhuggi. She went to the appellant's jhuggi and noted that he had put off his lower clothes (lungi) and had also put off the lower clothes of her daughter and had put her daughter upon his private part and was under the influence of liquor. She noticed the activities of the appellant Usne (accused) X ki kachchi utar rakhi thi aur woh bachchi kae guptang se apne guptang se ched chad kar raha tha aur nasha sharab mein lag raha tha. Some public persons also gathered at the spot. She made a call at 100. In the cross-examination, she elaborated that three other members of the NGO were also present there. Her office was at a distance of about one and a half kilometer from the spot. She fairly admitted that some ladies had slapped the appellant. Ruksana knew her for the past one year as she was a regular visitor to the said area. She denied that the appellant was falsely named at Ruksana's behest who wanted to usurp the appellant's jhuggi. CrI.A.212/2015 Page 5 of 7 On scrutinizing the testimony of the independent witness, it reveals that despite searching cross-examination, nothing material could be extracted to suspect her version. She was the regular visitor to the area in connection with the activities of NGO with whom she was associated. Her presence at the spot was

not denied. She was not familiar with the appellants family and did not nurture any ill-will or animosity to falsely implicate him. When victims mother due to consumption of liquor was unaware as to what was being done by the appellant with her own daughter, Renu reported the incident to the police to protect the honour of the child. Her testimony cannot be suspected or doubted.

10. PW-3 (Ruksana) has supported the version given by PW-2 Renu in its entirety. She deposed about the information was given to Renu by her on the day of incident. Again Ruksana had no axe to grind to falsely rope in the appellant in the crime. Nothing has emerged if there used to quarrels between Ruksana and appellants family on any specific issue. Moreover, for the petty issues, Ruksana is not expected to level serious allegations of sexual assault. She herself did not inform the police; rather she was informant to PW-2 (Renu).

11. In 313 statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him. DW- (Geeta Devi) attempted to exonerate him alleging that a quarrel had taken place with Ruksanas son to whom the appellant had given beatings. Ruksana thereafter came and gave blow on the face of her husband as a result of which he started bleeding from the nose. Subsequently, she in connivance with the members of the NGO falsely implicated her husband. The defence deserves outright rejection. Nothing has emerged on record if CrI.A.212/2015 Page 6 of 7 any such quarrel has taken place on that day in which Ruksana had criminally assaulted the appellant. No report to the police about any such quarrel was made. The appellant did not get himself medically examined. No such suggestion was put to the prosecution witnesses in the cross-examination. It is pertinent to note that it was her own daughter which was being sexually assaulted. It was her duty to take proper care of the victim. She abdicated her responsibility under the influence of liquor and did not bother as to what crime was being committed by her husband.

12. The learned Trial Court has discussed all the relevant aspects. The conviction based upon fair appraisal of evidence deserves no intervention and is confirmed.

13. Since the crime committed by the appellant with her own tiny daughter is serious, no reasons exist to take lenient view to modify the sentence order which

is based upon fair reasoning.

14. The appeal lacks in merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information. JUNE05 2017/sa (S.P.GARG) JUDGE Crl.A.212/2015 Page 7 of 7

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