

State (Nct of Delhi) vs.phool Chand

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Court : Delhi

Decided On : Sep-20-2017

Appellant : State (Nct of Delhi)

Respondent : Phool Chand

Judgement :

\$~5 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:
September 20, 2017 CRL.L.P. 16/2017 STATE (NCT OF DELHI)

... Petitioner

Through: Mr.Kewal Singh Ahuja, APP for the State PHOOL CHAND versus

Through: None. Respondent PRATIBHA RANI, J.

(Oral) 1. The State is seeking leave to appeal impugning the judgment dated 3rd March, 2016 passed by learned Addl. Session Judge in Session Case No.151/2013 whereby the Respondent Phool Chand was acquitted of the charges under Section 354A/509 IPC & Section 11(1)/12 of POCSO Act in FIR No.115/2013, registered at PS Ashok Vihar.

2. The grievance of the State is that the statement of the child victim/complainant (PW-3) was duly supported by her mother (PW-4) & father (PW-6) and was sufficient to prove the case against the respondent/accused beyond reasonable doubt. However, learned Trial Court has failed to appreciate their testimony in correct perspective and acquitted the respondent on non-existent grounds.

CRL.L.P. 16/2017 Page 1 of 6 3. Mr.Kewal Singh Ahuja, learned APP for the State submitted that in this case the respondent/accused was the neighbour of the complainant and there is no dispute about his identity. The delay was duly explained as the case was registered after the father of the child victim reached the spot. The testimony of the child victim to the extent that she had seen the accused taking out his private part and showing to her, could not have been disbelieved by the learned Trial Court as she had no motive to get the accused falsely implicated.

4. Learned APP for the State has also referred to the statement of the Court witness child N (name withheld to conceal her identity) who was with the complainant child (PW-3) when the incident had taken place. CW-1 has admitted that she had come to the Court at the instance of the defence counsel Mr.S.K.Senger and this was required to be appreciated by the learned Trial Court that she was deposing under the influence of the defence counsel.

5. The case FIR No.115/2013 was registered at PS Ashok Vihar on the statement of the child P (name withheld to conceal her identity) wherein she has narrated the incident as under: Jo main v meri saheli N bhi tanker ke paas pani lene ke liye khade the. Jo hamara padosi neta uncle ne jab hum dibbe le kar apni jhuggi me jaa rahi thi. To vahi neta uncle ne pant khol kar apna peshaab vala dikhaya aur humare ko kuch nahi bola. The statement of the child victim was recorded under Section 6. 164 Cr.P.C. During her deposition before the Court as PW-3 she made certain improvements by stating that when she reached near the CRL.L.P. 16/2017 Page 2 of 6 house of neta uncle she kept her dibba containing water on the road. When she was questioned about the incident she stated as under: Q. Phir kya hua?. Ans. Neta uncle kabhi mujhe apne is darwaje se aur kabi us darwaje se apni pant khol kar apna susu karne wala dikha rahe the. 7. Another child N who was accompanying PW-3 when examined by the Court as CW-1 stated as under: Q. Beta us din jab aap dono paani lekar aa rahe the to accused Phool Chand @ Netaji joki apne ghar ke bahar khada tha, ne appko or child victim P ko apna susu karne wala ang dikhaya tha?. Ji haan kyoki child victim P mujhse aage the to A. usne use dekha tha par maine nahe dekha. 8. During cross-examination by learned APP for the State, she stated as under: xxxx Victim Child

P ab bhi usi gali me rehti hai jaha me rehti hai. Ye kehna galat hai ki Neta uncle apni pant khol kar apna susu dikha rahe the to maine bhi dekha tha. 9. The Prosecution has examined 13 witnesses in all to prove its case. The accused person in his statement under Section 313 Cr.P.C. denied the case of prosecution and pleaded his innocence.

10. It has been held and reiterated in numerous cases by the Honble Supreme Court that the High Courts jurisdiction in examining a petition for leave to appeal is confined to considering whether the judgment impugned before it raises substantial and CRL.L.P. 16/2017 Page 3 of 6 compelling questions which ought to be gone into for the purpose of granting a leave. The law makers in their wisdom did not permit the State to prefer an appeal against the acquittal by a competent court as it was to be considered as an affirmation of an accuseds innocence. In these circumstances, the authorities have primarily ruled that the expression substantial and compelling reasons would extend to only grave misappreciation of evidence, grave misapplication of law and adoption of an approach by the trial court which would lead to miscarriage of justice.

11. The law with regard to the grant of leave is well settled by catena of judgments. Leave to appeal can be granted where it is shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain petition merely because another view is possible or that another view is more plausible.

12. In the case of State of U.P. vs. Nandu Vishwakarma AIR 2009 SC3188 it was observed that when on the basis of the evidence on record two views could be taken - one in favour of the accused and the other against the accused - the one favouring the accused should always be accepted.

13. The impugned judgment has been examined in the light of the above legal position.

14. After considering the testimony of the prosecution witnesses the accused was acquitted by learned Addl. Sessions Judge for the following reasons: CRL.L.P. 16/2017 Page 4 of 6 15. 35. I am conscious of the settled preposition of law that

conviction can be based on the sole testimony of a child victim provided it inspires the confidence of the Court and appears to be free from blemish and there are no chances of any kind of tutoring. In this case because of the material improvements made by the child victim in her various statements and child N having not supported her allegations it would be highly unsafe to place reliance upon her evidence. In the instant case at the time of reporting of the FIR the statement of the child victim was only to the extent that ..To vahi neta uncle ne pant khol kar apna peshaab vala dikhaya aur humare ko kuch nahi bola. PW-3 substantially improved her statement at the stage of recording of statement under Section 164 Cr.P.C. as well while deposing before the Court. CW-1 N who is also a child and was with PW-3 P at that time, did not see the respondent showing his private part.

16. There are also material contradictions in the statement of the mother Smt.Ramwati (PW-4) and the father Sh.Radhey Shyam (PW-6) of the child victim as to what happened when PW-3 P reached home and reported the matter.

17. Learned trial Court has acquitted the accused/respondent giving him benefit of doubt. CW-1 child N was neither produced by the defence counsel Mr.S.K.Senger nor there is material to gather that he tried to influence her (CW-1). It is a matter of record (as referred to in para No.32 of the judgment) that to elicit the truth the child N was summoned by the Court as Court witness, but she did not support the case of the prosecution. CRL.L.P. 16/2017 Page 5 of 6 18. Thus, I do not find it to be a fit case to grant leave to appeal. Accordingly, the leave petition is hereby dismissed. Trial Court record be sent back forthwith along with a copy of this order. PRATIBHA RANI, J.

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