

Ram Dass vs.state

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Court : Delhi

Decided On : Aug-02-2018

Appellant : Ram Dass

Respondent : State

Advocate for Pet/Ap. : Mr. Sumit Chaudhary

Judgement :

\$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 572/2018 & Crl.M (Bail) 827/2018 Through: Mr. Sumit Chaudhary, Advocate (DHCLSC) Appellant versus RAM DASS CORAM: JUSTICE S. MURALIDHAR JUSTICE VINOD GOEL STATE Through: Mr. Kewal Singh Ahuja, APP Respondent for State % JUDGMENT0208.2018 Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 5th March 2018 in SC No.109/2014 passed by the learned Additional Sessions Judge-I, North West, Rohini Courts whereby the Appellant has been convicted under Section 6 read with Section 5 (m) and (n) of the Protection of Children from Sexual Offences Act 2012 (POCSO Act). Since the Appellant has been convicted under the aforementioned provisions of the law, no separate conviction was recorded under Sections 376 (2) (i) and (f) IPC with which he was also charged. The appeal is also directed against the order on sentence dated 7th March 2018 whereby he has been sentenced to imprisonment for life along with fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for three months. Crl

A572of 2018 Page 1 of 8 2. This is an extremely unfortunate case where the Appellant has been charged with having committed the aforementioned offences against his own minor daughters, K1 and K2, aged 6 and 5 years respectively at the time of the alleged offences being committed. The Appellant has been acquitted insofar as the charge pertaining to the elder daughter, i.e. K1, is concerned. The aforementioned conviction has been recorded by the trial Court with respect to the charge pertaining to the offences committed by the Appellant against his younger daughter, K2.

3. In her statement to the police, the mother of the victims (PW-13) and the wife of the Appellant, has stated that her husband was committing the aforementioned crimes against the two children and despite her protestations continued to do so. She took the two children to a private doctor and the public that had gathered there after learning of the conduct of the Appellant, beat him up. At that point, someone called the Police Control Room (PCR) and the police came and arrested the Appellant.

4. Both the children were medically examined on 23rd April 2014 at the Sanjay Gandhi Memorial Hospital, Mangolpuri. PW-13 consented to their internal examination as well. In both MLCs (Ex.PW-9/A and Ex.PW-9/B), it is stated that there were no visible external injuries. It has been noted, however, that in both instances the hymen of the victim was torn.

5. The MLCs were prepared by Dr. M. Dass (PW-9) who referred both victims for gynaecological examination. Dr. Jyoti Sahu (PW-10) confirmed that on gynaecological examination, she found the hymen of K-2 torn with CrI A572of 2018 Page 2 of 8 no congestion and no edema. In her cross-examination by the counsel for the accused, she stated that it is correct that there are several reasons for the tearing of hymen such as cycling, stretching and skipping.

6. For the purposes of the present appeal, this Court will constrain itself to examining the statement of the victim K2 recorded under Section 164 Cr PC before the learned Metropolitan Magistrate (MM). The statement has been recorded in a question and answer form by the learned MM and reads as under: Q.1 What is your name?. A. K Q.2 What is your Father's name and address?. A.

Ram Das R/o G-398 Mangol Puri Delhi. Q.3 What is your age?. A. 5 years. Q.4 Which language do you read or write. A. Hindi Q.5 Why do you have come today A. For giving my statement. 7. The learned MM, after asking certain questions to the victim, recorded her satisfaction that the victim was making her statement voluntarily and was in a fit state of mind to depose. She then went on to record the statement of the victim under Section 164 Cr PC on 25th April 2014.

8. It appears that soon after the arrest of the Appellant, PW-13 moved to Calcutta to live with her parents. She came from there to depose in the trial. The statements of PW-13 as well as of the two victim children were CrI A572of 2018 Page 3 of 8 recorded on the same day, i.e. 28th February 2015.

9. As far as K1 was concerned, she turned hostile and failed to support the case of the prosecution. Although she did confirm that she had been sexually assaulted, she claimed ignorance as to who had committed such assault upon her. It was put to her in various ways that it was the Appellant who had committed sexual assault upon her but she denied such suggestions. Even though the MLC of this victim showed that the hymen was torn, seeing as she did not support the case of the prosecution, the charge against the Appellant qua the alleged sexual assault upon her was held to have not been made out.

10. As far as K2 was concerned, she was very clear that it was the Appellant who had committed sexual assault upon her. The specific questions and answers in this regard were as under: Q. Beta Kya hua tha?. A. Mere sath bahut ganda kaam karte the. Q. Koon ganda kaam karte the?. A. Papa (the accused) Q. Kaya ganda kaam kiya tha?. A. Papa ne balde se mere su-su ko kat diya tha, aur apne su- su dal diya tha. Q. Kahan par kiya tha?. A. Ghar par raat ko let kar. Q. Kaya tumne ghar me, mummy ko bataya the?. A. Maine blade wali baat nahi batayi thi. Q. Phir kaya hua tha?. A. Mummy mujhe doctor ke pass le gayi thi. Q. Kyon le gayi thi?. CrI A572of 2018 Page 4 of 8 Court observation: The witness is not answering the question despite being gently and repeatedly asking from her. 11. In her cross-examination by the learned counsel for the defence, she confirmed that the Appellant used to consume alcohol and that after doing so, would fight with and hit her mother. When asked which of her parents she loved more, the victim

answered that it was her mother. She also denied the suggestion that she was tutored by her mother and had falsely accused her father. She was very categorical even in the cross-examination that it was not some other person who had committed the crime but, in fact, the Appellant. A reading of the deposition of K2, who was examined as PW-14, makes it abundantly clear that she was in no doubt as to identity of the perpetrator of the crime.

12. Learned counsel for the Appellant referred to the depositions of K1 and K2. According to him, the Appellant was in prison during the trial and was far away from his children as they were in Calcutta with their mother. Therefore, there was no occasion for him to influence them in any manner. Learned counsel submitted that while K1 turned hostile and did not support the case of the prosecution, K2 appeared to be too intelligent for a 5 year old and her deposition was unbelievable.

13. The Court finds no merit in these submissions. A reading of the deposition of K2 reveals that the child was clear about what she underwent. Her responses during the cross-examination reinforce this. While it is true that K2 did not respond to certain questions during the recording of her statement under Section 164 Cr PC before the learned MM, it is not as CrI A572 of 2018 Page 5 of 8 though she was completely silent. She did state therein that her father (the Appellant) had committed sexual assault upon her.

14. Learned counsel for the Appellant then submitted that the description of the offence by K2 was not consistent with what had been recorded in the MLC. The MLC shows no external injury but does note that the hymen was torn. It is clear that K2 experienced a sharp pain when the crime was committed and she appears to have described that to the best of her ability. The Court finds no inconsistency between what is stated by the child and what is revealed in the MLC prepared pursuant to her examination by PW-9 and PW-10.

15. Learned counsel for the Appellant then referred to the deposition of PW-13, the victims mother, wherein she initially appeared to suggest that both children told her about ganda kaam being done to them and that when she asked them, they said that they did not know. However, only when she was asked pointed questions by the Court did the witness state that the Appellant had committed ganda kaam

with their daughters. She then stated in her cross-examination as follows: Ye kahna sahi hai, ki jab longo se mujhe pata chala, ki meri pati ne meri betiyon ke sath galat kam kiya hai, to maine is par vishwas kar liya, kyonki mujhe apne pati par vishwas nahi tha. 16. The submission of the learned counsel for the Appellant was that this witness (PW-13) was not herself aware as to whether it was the Appellant who was the culprit. It has also been suggested that, with the Appellant and his family belonging to an economically weaker section of society and Crl A572of 2018 Page 6 of 8 residing in a single-room rented accommodation, it would not have been possible for the Appellant to have committed such acts without the knowledge of PW-13. However, such a submission is purely speculative considering that the victim herself was absolutely clear as to what happened with her and who the culprit was. The child victim has suffered a trauma which is no doubt hard to simply forget and that she would falsely accuse her own father is simply unimaginable.

17. The Court thus finds no ground made out for taking a view different to that taken by the trial Court in the present case. There is no cause to interfere with the conviction recorded by the trial Court against the Appellant. Considering that the Appellant was the father of the 5 year old victim, the Court also finds the sentence of life imprisonment together with fine awarded by the trial Court to be appropriate.

18. The Court notices that the trial Court has awarded compensation of a meagre amount of Rs. 20,000/- to K2. The trial Court ought to have referred to the Victims Compensation Scheme for Delhi formulated under Section 357A Cr PC. The minimum compensation for a rape victim is specified as Rs. 3 lakhs and the maximum Rs. 5 lakhs. The Court, therefore, directs the Delhi State Legal Services Authority (DSLISA) to examine this issue forthwith and to ensure that the victim (K2) receives the appropriate compensation that she is entitled to in accordance with the aforementioned compensation scheme. A copy of this judgment be immediately delivered to the Secretary, DSLISA through a Special Messenger for that purpose.

19. This being a legal aid matter, the copy of the judgment also be delivered Crl A572of 2018 Page 7 of 8 immediately to the Superintendent of the concerned Jail

through a Special Messenger for being handed over and explained to the Appellant.

20. The trial Court record be returned forthwith with a certified copy of this judgment.

21. The appeal and application are dismissed with the above directions.
AUGUST02 2018 mw S. MURALIDHAR, J.

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