

Sunil Alias Machhar vs.state

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Court : Delhi

Decided On : Aug-21-2018

Appellant : Sunil Alias Machhar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment Reserved on:

21. t February, 2018 Judgment Delivered on:

21. t August, 2018 CRL.A. 404/2016 SUNIL ALIAS MACHHAR Appellant
Represented by: Mr. Ajay Verma, Ms. STATE Katyayini, Ms. P.N. Sudha Reddy,
Advocates. versus Represented by: Ms. Meenakshi Chauhan, APP
Respondent CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA,
J.

for the State.

1. By the present appeal, the appellant challenges the impugned judgment dated 22nd April, 2015 convicting him for the offence punishable under Section 4 of Protection of Children against Sexual Offences Act, 2012 (in short 'POCSO Act') in FIR No.148/2013 registered at PS Ashok Vihar and the order on sentence dated 8th May, 2015 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of 5,000/- and in default to undergo simple imprisonment for a period of six months.

2. Learned counsel for the appellant contends that brother of the victim who stayed with him has not been examined as a witness. As per the FIR only one incident has been alleged, however, the victim child (PW-5) in his statement under Section 164 Cr.P.C. mentions about a number of incidents. Thus, there is glaring contradiction in the prosecution version. Child victim Crl.A.404/2016 Page 1 of 6 admits about his addiction in his cross examination which is in fact the defence of the appellant and has not been considered by learned Trial Court.

3. Learned APP for the State on the other hand contends that the MLC of the child victim corroborates the prosecution case. The injuries were 2 to 7 days old and were partially healed. Child victim deposed about one incident only in the Court and the said version is thus required to be accepted.

4. Briefly stated, prosecution case is that on the intervening night of 17th and 18th May, 2013 around 12:00 midnight, one person (elder brother of victim child) came to the police station along with the victim child (PW-5). The victim child got his statement [Ex. PW-5/A]. recorded wherein he stated that he resides at the Jhuggi situated in Ashok Vihar, Delhi on rent with his father and elder brother. On 16th May, 2013 around 11:00 P.M., when he was alone at home, the appellant whom he calls Sunil Chacha came to his house. Appellant asked him to come to the terrace to clean his room and throw away the garbage. When he entered the room, appellant held him from his back, gagged his mouth and took him towards the staircase in the dark. The appellant forcibly removed his clothes and forcibly inserted his penis into the victims anus. When he shouted out of pain, the appellant gagged his mouth. Thereafter, the appellant forcibly inserted his penis into his mouth and asked him to lick the same. When he refused to do so, the appellant gave him beatings and continued the act (gandi harkat) for almost 1 hours. When the appellant released him, he came to his room and slept. When his elder brother (PW-7) came, he narrated the incident to him who then brought him to the police station. On the basis of the aforesaid statement, FIR No.148/2013 [Ex. PW-5/B]. was registered under Sections Crl.A.404/2016 Page 2 of 6 377 IPC and Section 4 of POCSO Act at PS Ashok Vihar. Thereafter, SI Surender Singh (PW-10) took the victim child to BJRM Hospital for medical examination. SI Surender Singh prepared the site plan [Ex. PW- 5/C]. at the instance of victim

child. The appellant, who was present in house, was arrested by SI Surender Singh vide arrest memo Ex. PW-5/D and his personal search was conducted vide memo Ex. PW-9/A. Thereafter, the appellant along with Ct. Amit was sent to BJRM Hospital for his medical examination. On 20th May, 2013, the statement of the victim child was recorded under Section 164 Cr.P.C. vide Ex. PW-5/B. On 11th June, 2013, the exhibits were sent to FSL, Rohini. After completion of investigation, charge sheet was filed.

5. After ascertaining that the victim was capable of understanding the questions put to him and giving rational answers thereof the victim child was examined who deposed as under: Q. Kya hua tha, kab ki baat hai?. Ans. 16 May 2013, raat ko 11 baje, ye mujhe khinch kar apne ghar le gaya, aur bola chal jharoo laga. Q. Kaya us samay ghar me koi nai tha?. Ans. Mera mummy-papa gaon me dadi ki dawa karane gaye the, aur mera bhai pankha banwane gaya hua tha. Q. Phir kya hua?. Ans. Main machar (accused), usko Sunil bhi bulate hai, ke kamre ki jharoo lagane laga, to usne mujhe pichche se daboch liya, aur gand ki baat ki. Q. Kya gand ki baat ki?., Crl.A.404/2016 Page 3 of 6 Ans. Sunil mujhe upar siddi (stair) ke paas le gaya, aur mujhe bola, munh mein le, nahi toh bahut maroonga. Q. Phir kya hua Ans. Usne bola, muth maar, nahi to tujhe bahut maroonga. Usne mera munh bhi daab diya. Q. Phir kya hua Ans. Usne kaha gand de, nahi to bahut maroonga. Uske baad, Sunil ne mera kapde uttar diye aur meri gand mari, mujhe chusa raha tha, aur maar bhi raha tha. Q. Phir kya hua Ans. Main chilla raha tha. Sunil ne kaha, chillao mat, nahi to aur maroonga. Usne mujhe kafi der tak nahi choda, aur kah raha tha, ki kisi ko ye baat agar pata chali, to tujhe jaan se maar doonga. Q. Phir kya hua?. Ans. Phir main apne ghar aa gaya, aur so gaya. 6. During cross-examination, on being asked if he uses the rubber solution, used to fix puncture at home, he stated that now he was not taking the same but earlier he used to drink it around 2 months back. On being asked whether he throws the tubes in the toilet after using the solution, he replied in the affirmative. On a Court question being posed as to what he did with the rubber solution tube, he stated panni me ye rumal me dal kar, usko pita tha. On being asked that did the appellant scold and slap him on 16th May, 2013 because he had thrown the rubber solution tube in the toilet, he answered in affirmative.

7. Elder brother of victim child (PW-7) corroborated the version of the victim child.
8. Dr. Vaibhav Gulati (PW-3), CMO, BJRM Hospital, Delhi identified the handwriting and signatures of Dr. Haaris Rasheed who had medically examined the appellant on 18th May, 2013 and exhibited the MLC of the appellant as Ex. PW-3/A.
9. Dr. Mohit Tiwari (PW-4), CMO, BJRM Hospital, Delhi stated that he was directed to depose on behalf of Dr. Inder Bhushan Verma who had medically examined the victim child on 18th May, 2013. He identified the handwriting and signatures of Dr. Inder Bhushan Verma on the MLC Ex. PW-4/A. On examination, the victim child was referred to SR Surgery for further examination. He further stated that he had seen notes prepared by Dr. Narender, SR Surgery, on the MLC, wherein on local examination, following injuries were found: (i) One partially healed abrasion was found present at 6 O'clock and 12 O'clock in size 0.8cm X 0.6cm approximately, at anal region. (ii) Superficial partially healed abrasion present over pre-anal region in size of 0.6 X 0.7cm.
10. During cross examination Dr. Mohit Tiwari stated that the injuries get healed within 7 days of being so caused. In the present case, the injuries were partially healed and the duration from the day when they were caused could be between 2 to 7 days.
11. Sunil in his statement under Section 313 Cr.P.C., stated that he has been falsely implicated in the present case by the victim child as he had slapped the child on 16th May, 2013 because he had thrown rubber tube in the toilet. Undoubtedly the victim and his elder brother admitted that the victim was using liquids and the victim admitted that he threw the tubes in the toilet however, the said defence of Sunil is not sufficient to come to the conclusion that he has been falsely implicated particularly because of the fact that the version of the victim is duly corroborated by the injuries on his anal region which have been opined to be of a duration between two to seven days. Further delay in registration of FIR has been duly explained by the elder brother of the victim who stated that at the place of incident his father along with his two brothers

including the victim was residing. Earlier he was also residing at the said place however, he had shifted to village Daulatpur in District Basti, Uttar Pradesh. On 16th May, 2013 his father and younger brother had gone to native village leaving the victim alone at home and on 18th May, 2013, he was called by the victim and when he came to the house, victim informed him about the incident and he lodged the FIR. The delay in recording of the FIR having been duly explained and the version of the victim duly corroborated by his MLC, this Court finds no error in the impugned judgment of conviction or order on sentence.

13. Accordingly, the appeal is dismissed.

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

15. TCR be returned. AUGUST21 2018 vn (MUKTA GUPTA) JUDGE
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