

State vs.guddu Pal

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SooperKanoon Citation : sooperkanoon.com/1222132

Court : Delhi

Decided On : Mar-19-2019

Appellant : State

Respondent : Guddu Pal

Advocate for Pet/Ap. : Mr. G.M. Farooqui

Judgement :

\$~5 * + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

19. h March, 2019 CRL.LP. 603/2018 STATEAppellant Through: Mr. G.M. Farooqui, APP for State with W/SI Manisha Versus GUDDU PAL

... RESPONDENT

Through: None CORAM: HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J (ORAL) CRL. L. P. 603/2018 1. By the present Leave Petition filed under Section 378 (3) of the Code of Criminal Procedure (hereinafter referred as Cr.P.C.) the State seeks leave to appeal against the judgment dated 18.05.2018 passed by the learned Additional Session Judge-01, Special Court (POCSO) South East District, Saket Court, New Delhi, whereby the respondent (accused before the Trial Court) was acquitted of the charge punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO). CRL.LP. 603/2018 Page 1 of 10 2. Brief facts of the case are as under:-

"(i) That DD No.26-A was registered at Police Station New Friends Colony on 19.03.2014, on receipt of the information that a minor girl, Baby R aged about 15 years has been sexually assaulted at her residence, the said DD was marked to SI Sukhvinder Singh(PW-6) and accordingly SI Sukhvinder Singh along with SI Seema(PW-5) arrived at the spot i.e. H.No.158, Saria Julena, Near Buland Masjid, Delhi. The statement of the victim was recorded by SI Seema wherein she stated that on 19.03.2014, at about 06:30 pm, in absence of her mother; accused Guddu Pal who used to work at Rameshs Dhaba, gave a tooth bite on her check and forcibly pressed her breast, inevitably when she tried to raise an alarm, the accused clogged her mouth and ran away from the spot. (ii) Based on her statement recorded by SI Seema, FIR No.1

under Section 354 of the Indian Penal Code and Section 8 of the POCSO Act was registered at Police Station New Friends Colony. During the course of investigation, the statement of the victim U/s 164 Cr.P.C was recorded on 20.03.2015 and the accused Guddu Pal was arrested on 23.03.2015 vide arrest memo (Ex.PW1/D). (iii) After the completion of investigation, the charge sheet was filed and after committal, arguments on the point of charge were heard and charges U/s 8 of the POCSO Act 2012 (hereinafter referred to as the Act), were framed against the accused, to which he pleaded not guilty and claimed trial. CRL.LP. 603/2018 Page 2 of 10 3. To bring home the guilt of the respondent, the prosecution has examined 7 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. wherein he denied the charges framed against him and claimed to be falsely implicated in the case and did not to lead any evidence in his defence.

4. After hearing the counsels for both sides and on appreciation of entire evidence available on record, the learned Trial Court acquitted the accused for the charged offences.

5. Mr. G.M. Farooqui learned counsel appearing for the State contended that the impugned judgment dated 18.05.2018 is based on conjectures, surmises and the learned Trial Court has not appreciated the testimony of the prosecutrix in its right perspective ignoring the well-settled proposition of law that the sole testimony of the victim of sexual assault is sufficient to base conviction of the accused.

6. Learned counsel for the State further contended that the learned Trial Court has placed undue weightage on the minor discrepancies in the statements of the PW-1 (the victim) and PW-2 (mother of the prosecutrix), contrary to which both the statements are consistent and corroborative in nature and there are no major omissions and contradictions in their testimonies. He further contended that the learned Trial Court had erred in disregarding the MLC of the victim, which categorically reveals that the victim was subjected to sexual assault. Counsel for the State has lastly urged that the trial court has not correctly appreciated the facts and circumstances of the case; hence, the impugned judgment is liable to be set aside. CRL.LP. 603/2018 Page 3 of 10 7. I have given my anxious consideration to the submissions advanced on behalf of counsel for the State and also perused the material available on record.

8. Returning to the facts of the present case, the moot point involved for consideration in present leave petition is whether evidence adduced by the prosecution, particularly the testimony of the victim (PW-1) is trustworthy, credible and worthy of reliance.

9. From the perusal of the record, it transpires that there are material contradictions in the testimony of the victim recorded by the police and the statement recorded under Section 164 of the Cr.P.C. As per her initial statement (Ex.PW1/A) recorded by the police, she has emphatically stated that 19.03.2014 ko sham ko 06:30pm par meri mummy kaam karne gayi hui thi. Main apne bhai behen kaih sath ghar par akeli thi, mereh ghar ke pass hei Ramesh keh dhaba par kaam karne wale ladka guddu gali keh samne saih jaaraha tha. Main apne bhai ko awaaz deh kar bula rahi thi, ki achanak Guddu S/o Hoori Lal, R/o Village Madhai Pura, Post Bandia Distt. Sitapur, UP naih mera gaal kaat liya tha, meri chatti dabadi, jab maih chillayi toh mera muh dabanneh laga aur waha saih bhag gaya. Issi dohraan meri mummy ghar par aagayi, aur maine apni mummy ko sari baat batayi. However, when her statement was recorded under Section 164 of the Cr.P.C(Ex.PW1/B), she has altered her version and has stated main gali maih thi. Bhai ko awaaz deh rahi thi. Itne main ek ladka aaya piche saih aur jabardasti karne ki kosish kiya. Gaal par daanth kata aur bhaag gaya. Usne meri chaati bhi dabai. Main chillayi toh padhosi aaye. 100 number par phone kiya. Main uss ladke

ko nahi CRL.LP. 603/2018 Page 4 of 10 janti, par main usse pehchan sakti hun. It is also to be given a vital concern, that in her initial complaint, there are specific allegations of sexual assault against the accused Guddu S/o Hoori Lal, but in her statement recorded under Section 164 Cr.P.C, she reveals that she is not aware about the physiognomies of the accused person.

10. The prosecutrix was examined as PW-1 and during her examination- in- chief she deposed as under:-

"I reside at the aforesaid address alongwith my parents, one sister aged 7 years and one brother aged 5 years. After days of Holi in the year 2014, the exact date I do not remember, on the said day I was calling my brother and sister who were playing outside and was standing on the door of my house when one boy came who was drunk at that time. The said boy caught hold of my hand, gave a tooth bite on my cheek and pressed my breast. I did not know the said boy but he was working with another boy named Salman at the nearby hotel. Thereafter, the said boy ran away from there. Then I had rang up my mother who was on duty at that time. My mother came and rang up the police at 100 number. Police came and thereafter, we went to the police station where the police recorded my statement Ex.PW1/A bearing my signature at point A. The said boy was arrested by the police on the next day. I was brought to saket court where my statement was recorded by Magistrate u/s 164 Cr.P.C. At this stage, one envelop sealed with the seal of BK is opened from which the proceedings u/s 164 Cr.P.C. are taken out. The witness is shown her signatures on her statement running into 1 page, on which she identifies her signatures at point A. The statement is now Ex.PW1/B. CRL.LP. 603/2018 Page 5 of 10 I was not taken at any other place. I came to know about the name of the said boy as Guddu later on when he had ran away from the spot. The said name was disclosed to me by his friend Salman. 11. During her cross examination she deposed as under: The accused was not arrested in my presence. My mother had rang up the police at 100 number at about 07:00PM. Nobody else was present at the spot when the accused had fled away. I do not know what is written in my statement Ex.PW1/A by the police as I am illiterate. The name of accused was disclosed to me by Salman on the day of incident itself after the accused ran away

from the spot. I do not remember if I had shown the place of incident to the police or not. The police had recorded my statement in the police station and my statement was also recorded in the court. Police had recorded my statement once however made inquiries from me two times. Police had reached the spot within minutes after my mother made a call. It is wrong to suggest that the accused was not present at the spot or that he had not misbehaved with me or that I am naming the accused in this FIR falsely at the instance of Salman. 12. After examining the testimony of PW-1 with regard to the incident, it is observed that the story of the prosecution has a lot of astonishing defects from its inception. Accordingly, as per the testimony of prosecutrix, she has deposed that she was standing near the door of her house, when one unknown boy who was in a drunk state of mind, caught hold of her hand, gave a tooth bite on her cheek and pressed her chest. Subsequently it is relevant to highlight that the prosecutrix CRL.LP. 603/2018 Page 6 of 10 in her initial statement has leveled specific allegations of sexual assault against the accused Guddu S/o Hoori Lal, but in her statement recorded U/s Section 164 Cr.P.C (Ex.PW1/B) and her deposition in the court she has deposed that she is not acquainted with the identity of the accused person. Interestingly, in her cross-examination, PW-1 has made a contradictory statement and has deposed that she is not conversant with the contents of her statement (Ex.PW1/A) recorded by the police because she is illiterate.

13. Further, she has deposed that the name of the accused person was disclosed to her by a person named Salman, but Salman being an important spectator has neither been named as a witness nor he has been examined by the prosecution. Therefore, the denial for examining Salman as a prosecution witness creates a doubt on the story of the prosecution.

14. Auxiliary, the most substantial testimony is of Ms. Rabina Bibi (mother of the prosecutrix), as she stepped into the witness box as PW-2 and deposed that: On 19.04.2014 I had gone to my work. My daughter had telephonically called me. On her call, I returned to my house and noticed that marks of teeth biting was present over the cheeks of my daughter. When I searched the accused, he had fled away. Thereafter I made 100 number call. Police visited at the spot. My daughter was medically examined. X X X I am resident at house No.158 Saria Julena for last 6

years. My native village is Samartala, District: Jamui, Bihar. I am working as maid in nearby kothies. At the time of incident, I was at CRL.LP. 603/2018 Page 7 of 10 my job. On 19.03.2014 at around 07.00 PM I came back to my house and my daughter informed me about the incident. She told me that Guddu had given bite on her cheek. Accused has also embraced her. Accused Guddu is present in the court(correctly pointed out by the witness). Accused has already run away. Later on accused found me outside the gali and I asked him that why he had committed the said offence. I caught hold of the accused but he ran away after seeing me. I told police. Later on accused was arrested by Police near escorts hospital and I identified him. 15. During her cross examination she deposed as under: - I received call of my daughter when I was doing my job. My daughter is having mobile phone. One Salman was present in the Gali when I tried to apprehend the accused. It is correct to suggest that several other public person were present in the gali. Around

persons had gathered in the gali. I cannot tell the name and addresses of those public persons. I did not ask those public persons to help me in apprehending the accused. Police reached the spot within 5 to 10 minutes after I called at 100 number. 16. Accordingly, from the testimony of Ms. Rabina Bibi, it falls that the accused was arrested on the identification of PW-2 from the Escorts Hospital, however the Investigating Officer SI Sukhvinder Singh(PW-

6) has divulged that the accused was arrested on the identification of the prosecutrix and has deposed that, prosecutrix was called there and we all proceeded towards Chatari Hatt where accused Guddu, CRL.LP. 603/2018 Page 8 of 10 who is present in the court today correctly identified by the witness was apprehended on the pointing out of prosecutrix. He was arrested after interrogation vide memo already Ex.PW1/D and his personal search was conducted vide memo already Ex.PW1/C. Contrary to which the prosecutrix in her cross-examination has deposed that the accused was not arrested in my presence and I do not remember if I had shown the place of incident to the police or not. 17. Further the mother of the prosecutrix in her cross examination has deposed that when she was trying to apprehend the accused, many local individuals were also present in the neighborhood, but regardless of their presence, no independent witness has been examined by the prosecution to prove the guilt of the accused.

On the other hand the allegations of teeth bite on the cheek are also not supported by the MLC (Ex.PW1/C) because in the assault history it was specified that the patient was slapped by unknown person; whereas it is significant to emphasize that no doctor was examined by the prosecution to prove the injuries of the victim.

18. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidences on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities and found to be not supported with medical evidence. There are considerable inconsistencies and discrepancies in the statement of the witnesses, which consequently makes it fabricated and unreliable. Therefore, the prosecution has failed to disclose the true genesis of the crime and CRL.P. 603/2018 Page 9 of 10 establish the charges against the accused punishable under the POCSO Act.

19. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favors the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.

20. Having regard to the principles laid down by the Apex Court in the case of Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC450 I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed. MARCH19 2019 SU SANGITA DHINGRA SEHGAL, J CRL.P. 603/2018 Page 10 of 10