

Vivekanand Shastri vs.state

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Court : Delhi

Decided On : Jul-01-2019

Appellant : Vivekanand Shastri

Respondent : State

Judgement :

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

7. h January, 2019 Decided on:

1. t July, 2019 CRL.A. 389/2016 VIVEKANAND SHASTRI Appellant
Represented by: Mr. Hemant Singh, STATE Advocate versus Represented by: Mr.
Ashok K. Garg, APP for Respondent CORAM: HON'BLE MS. JUSTICE
MUKTA GUPTA the State.

1. Vivekanand Shastri challenges the impugned judgment dated 5th April, 2016 convicting him for offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) and the order on sentence dated 7th April, 2016 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of 5,000/-, in default whereof to undergo simple imprisonment for a period of 15 days.

2. Assailing the conviction, Learned Counsel for the appellant contends that the prosecutrix in her statement stated that there was nobody present in the temple at the time of incident but the relatives stated that there was a katha of nine days

going on in the mandir. Mother of the prosecutrix in her cross-examination stated that there was katha on 2nd February, 2013 and around 20-25 people used to gather for the katha. He contended that moreover there were other people present in the mandir till 8:30 P.M. and no CrI.A.389/2016 Page 1 of 7 such incident as alleged took place. Moreover, the prosecution failed to examine any independent witness. The prosecutrix in her cross-examination has admitted that there was no katha in the temple on the day of the said incident rather she had gone there only to lit diyas. He further contended that the statement of the prosecutrix before the NGO is not consistent with her testimony before the court. Hence the appellant be acquitted.

3. Learned APP for the State on the other hand submits that there are no contradictions in the statements of the prosecutrix and her mother with regard to the incident. In view of the consistent deposition of the prosecution witnesses, the conviction and order on sentence be upheld.

4. Investigation started after a PCR call was received on 2nd February, 2013 around 8:46 P.M. stating that "House No.C-2, Bhagat Singh Park, Siraspur, Mahadev Mandir main jhagada hua hai. Mandir ke pandit ne ek ladki ke saath galat kaam kiya hai". Aforesaid information was recorded vide DD No.125B and was entrusted to SI Jai Kumar. He along with Ct. Rakesh went to Bhagat Singh Park, House No.F-3/4, Mahadev Mandir, Siraspur where he met the prosecutrix and her mother. Statement of the mother of the prosecutrix was recorded wherein she stated that at about 6:00 P.M., her daughter aged about 13 years had gone to the neighboring Panch Parmeshwar Mahadev Mandir. On her return, she informed her that the mandirs priest touched her on her cheek, body and private parts. On hearing this, she immediately went to the mandir and asked priest Vivekanand Shastri why he touched her daughter, who in turn got angry on her and asked her to leave the place or else he would do the same to her, as he did to her daughter. Thereafter, she came back home. Aforesaid statement was recorded vide Ex.PW-1/A. On the basis of the aforesaid statement FIR No.CrI.A.389/2016 Page 2 of 7 60/2013 (Ex.PW-4/A) was registered at PS Samaypur Badli for the offence under Section 354 IPC. Thereafter, he prepared the site plan at the instance of the prosecutrix and her mother vide Ex.PW-9/B. Vivekanand Shastri was found at the

temple and was apprehended at the instance of the mother of the prosecutrix. He was arrested vide arrest memo Ex.PW-3/B. His personal search was conducted vide Ex.PW-6/A.

5. On 3rd February, 2013, the prosecutrix was counselled by an NGO official. Copy of the date of birth certificate of the prosecutrix was obtained from her father vide Ex.P1.

6. After completion of investigation, charge sheet was filed. Vide order dated 13th March, 2013, charge for offence punishable under Sections POCSO Act was framed against the appellant.

7. Mother of the prosecutrix was examined as PW-1 in Court where she deposed that her daughter was studying in the 6th standard at the time of the incident. On 2nd February 2013, when her daughter had gone to visit Panch Parmeshwar Mahadev Mandir, the priest Vivekanand Shastri called her inside the room in the mandir and then he kissed her on her cheek and touched other parts of her body including her private parts. Vivekanand Shastri was known to her as he had been working as a priest in the mandir for past many years. In her cross-examination, she stated that on 2nd February, 2013, she had visited the mandir at about 10:00-11:00 A.M., for 15 minutes as Bhagwad katha was going on. She stated that Vivekanand Shastri used to perform the katha himself and it used to start either at 4:00 P.M. or 5:00 P.M. Around 20-25 people used to gather for the katha. The plot in which the temple is situated is about 200 sq. yards, while 50 sq. yards of the land was donated to the temple 150 sq. yards had been grabbed by Crl.A.389/2016 Page 3 of 7 Vivekanand Shastri. She stated that when she went to confront Appellant, his daughters were present outside the gate of mandir. Her brother-in-law Sushil Chaudhary had made the call to police at 7:00 P.M.

8. Father of the prosecutrix was examined as PW-2. He stated that on 2nd February, 2013 when he returned from his duty and reached his house in the evening, his wife informed him about the incident.

9. Prosecutix was examined in Court as PW-5. After ascertaining that she was capable of understanding the questions put to her and was also capable of giving

rational answers thereof; victim child's deposition was recorded. She deposed that on 2nd February, 2013 at about 6:00 P.M., she had gone to Hanuman Mandir near her house, where the priest called her inside his room behind the mandir. There he held her hand, kissed her on lips and touched her private parts. She freed herself, came back to the house and narrated the incident to her mother. In her cross-examination she stated that on 2nd February, 2013 there was no katha in the temple and she had gone there only to light diyas.

10. Sushil Chaudhary (PW-5), uncle of the victim stated that on 2nd February, 2013, the mother of the prosecutrix had come to his house at about 8:45 P.M., and informed him about the incident. He called the police on 100 number from his mobile phone. Thereafter he went to the temple to talk to Vivekanand Shastri, who justified the act by saying that whatever he did was correct. Vivekanand Shastri and his elder daughter Shobha started quarreling with him and after sometime the police came there. In his cross-examination, he stated that the katha was going on in the temple from 3:00 P.M. to 6:00 P.M. from 21st January, 2013 to 4th February, 2013.

11. Ramesh Chand (DW-1), Priest in his testimony stated that he had known Vivekanand Shastri for the last six years. He stated that he had received information regarding katha to be held in the mandir from 27th January 2013 to 4th February 2013 through a pamphlet. He placed the same on record vide Ex.DW-1/A. He stated that the time of the katha was from 3:30 P.M. till 6:30 P.M. every day and there used to be an Aarti and distribution of prasad till 7:30 P.M. On the day of the incident he was at the mandir till 8:30 P.M. but no such incident took place.

12. Amarjeet Sharma (DW-2), stated that on the day of the incident he reached the temple at around 3:15 P.M. and remained there until 8:30 P.M. but no such incident took place. He further stated that on 5th February, 2013 he came to know that some associates of Amarnath (relative of the father of the prosecutrix) had attacked the house of the Appellant and abused his children.

13. HC Bhim Singh (DW-3) brought DD No.48B regarding the complaint dated 6th February, 2013 made by Shobha Pandey. He stated that complaint (Ex. DW-3/A)

was duly investigated and closed on 30th March, 2013 vide report (Ex. DW-3/B).

14. Shobha Pandey (DW-4), daughter of Vivekanand Shastri stated that on 2nd February, 2013, there was katha in the mandir, which started at 3:30 P.M. and continued till 6:30 P.M., after which there was an aarti and distribution of prasad. Thereafter she went into the room behind temple and started cooking food for the family. At about 9:15 P.M., the police arrived and took her father to the Police Station. She further stated that on 4th February 2013, at about 9:00 - 9:30 P.M., Amarnath, who was a property dealer in the locality came along with 2-3 persons and threatened them by saying that they had already falsely implicated her father and now they CrI.A.389/2016 Page 5 of 7 should vacate the temple. She stated that again on 5th February, 2013 the same persons came threatened them, broke the gate of their house and gave beatings to them. She wrote an application on the dictation of some police official but did not mention anything about Amarnath and his associates.

15. The appellant, in his statement under Section 313 Cr.P.C., stated that he was taken by the PCR officials at about 9:15 P.M., to the Police Station Samaypur Badli alongwith the mother of the prosecutrix, where he was made to sit for about 6 to 7 hours before his arrest in this case. He denied the occurrence of any such event. He stated that he had been falsely arrested in this case on the behest of Amarnath Chaudhary who was a property dealer and wanted to grab the property of the temple.

16. From the defence evidence as led by the appellant as also the fact admitted by the prosecution witnesses including the mother and uncle of the prosecutrix who admitted that the katha was going on and it used to start at either at 4.00 p.m. or 5.00 p.m. and there used to be 20-25 people, it is proved that at the relevant time katha was going on daily in the temple and even accepting the version of the uncle of the prosecutrix it was from 3.00 p.m. to 6.00 p.m., after 6.00 p.m. sometime was required to be spent in Aarti and Prasad. Case of the prosecutrix is that the alleged incident occurred at around 6.00 p.m. However as proved at that time the appellant who was the pujari of the mandir, would be narrating the katha or would be busy in performing Aarti and distributing prasad, the defence version is

probablized as the specific case of the prosecutrix is that when she went, there was no katha going on and she went to light the diyas at 6.00 p.m. The daily timings of the katha have been proved to be between 3.30 p.m. and 6.30 p.m. and admittedly from 3.00 p.m. to 6.00 p.m. followed by aarti and distribution of prasad which would continue till at least 7.00 p.m., this Court deems it fit to grant benefit of doubt to the appellant.

17. Consequently, the impugned judgment of conviction and order on sentence are set aside.

18. Appeal is disposed of.

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

20. TCR be returned. JULY01 2019 vj/rk (MUKTA GUPTA) JUDGE
Crl.A.389/2016 Page 7 of 7

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