

**State vs.balram**

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**SooperKanoon Citation :** [sooperkanoon.com/1224323](http://sooperkanoon.com/1224323)

**Court :** Delhi

**Decided On :** Jul-29-2019

**Appellant :** State

**Respondent :** Balram

**Advocate for Pet/Ap. :** Ms. Aashaa Tiwari

**Judgement :**

\$~ \* + % IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.L.P4322019  
Date of decision:

29. 07.2019 STATE .....

... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State with SI Parmender Kumar, PS Sultanpuri, Delhi Versus BALRAM Through: None. .... Respondent CORAM: HON'BLE MR. JUSTICE MANMOHAN HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J1 The present leave petition is instituted on behalf of the State under Section 378(1) of the Code of Criminal Procedure, 1973, (hereinafter referred as Cr.P.C.) against the impugned judgment dated 08.05.2019 passed by the learned Additional Sessions Judge, Special Court (POCSO), Rohini Courts, Delhi, in SC No.57/2015 arising out of FIR No.186/2015, under sections 363/376(2)(n)/506 of the Indian Penal Code, 1860 (hereinafter referred as IPC) and Section 6 of POCSO ACT registered at Police Station

Sultanpuri whereby the respondent has been acquitted for the offences punishable under Sections 363/376(2)(n)/506 IPC.

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under: - DD No.3A dated 23.02.2015 was recorded when the victim came to PS at 12.30am and reported wrong act CRL.L.P. 432/2019 Page 1 of 15 the acts of with her by her neighbour. The statement of victim was recorded to the effect that she is living with her family at E-Block, Sultan Puri where one known neighbour Balram (accused herein) had been establishing physical relations with her since last 6-7 years. She is mentally weak and suffers from its. Accused also threatened her for life if she informs anyone about his acts. On 20.02.2015, accused came to her house under the impression that she was alone at home and started teasing her but her younger sister N who was at home saw him and informed her elder sister P. P made inquiries from her after accused had ran away and then she informed their father about the accused. After consultation at home, it was decided to lodge a complaint against accused. On this statement, present FIR was registered. Victim was taken for medical examination. Statement of victim u/s 164 Cr.P.C. was recorded. IO prepared the site plan at the instance of victim. Accused was arrested and was medically examined and the exhibits were seized and after completion of investigation, chargesheet was filed. Copy supplied. Charges for commission of offence punishable u/s 6 POCSO Act or in the alternate 376(2)(n) IPC and 8 POCSO Act and in the alternate 354 IPC and 506 IPC were framed accused on 01.05.2015 to which accused pleaded not guilty and claimed trial. 3. Prosecution to prove its case, has examined as many as 14 witnesses and two court witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C, wherein he had stated that he has been falsely implicated in the present case by the victim at the instance of her parents in order to avoid payment of friendly loan and no such CRL.L.P. 432/2019 Page 2 of 15 incident had happened. Accused did not examine any witness in his defence.

4. The learned Trial Court, upon analysis, examination and evaluation of the prosecution evidence and after considering the rival submissions recorded acquittal in favour of the accused for the charged offence.

5. Ms. Aashaa Tiwari, learned APP for the State contended that the impugned judgment dated 08.05.2019 is based on conjectures and surmises and has disregarded the cogent evidence, and needs to be set aside. Learned APP further stated that it is a settled law that the accused can be convicted on the sole testimony of the prosecutrix even if there are minor discrepancies and inconsistencies in the testimony which do not go to the root of the case, and given the mental condition of the prosecutrix such minor contradictions ought to be overlooked. Learned APP further contended that the Trial Court had failed to appreciate the testimonies of prosecutrix and other prosecution witnesses in correct perspective as it had come on record that PW-11 was being harassed and raped by the accused for a continuous period of 6-7 years and she did not disclose about the incident due to the constant threats of the accused.

6. 7. We have heard the learned counsel for the State and perused the entire material available on record. CRL.L.P. 432/2019 Page 3 of 15 Finding of the Trial Court 8. The trial court in the impugned judgment has held as under:-

"9. Coming to the main incident, admittedly, there is no date, time and year mentioned of the alleged incidents of rape, stated to be continuing since last 6- 7 years before this case. The testimony of the victim cannot be relied upon to convict the accused as is not of unimpeachable character. The victim in her statement given to the police stated that accused was committing rape upon her since last 6-7 years when they were living at E-3 Block, Sultan Puri, however she did not mention about any act of rape inter statement recorded u/s 164 Cr.P.C., where she mentioned only about the incident of 20.02.2015. Further, her sister PW-9 stated that they had left their house at E-3 Block about 6-7 years ago. In these circumstances, how the accused continued to rape the victim at his roof during these 6-7 years remains unexplained. Further it is case of the prosecution that the alleged incident of 20.02.2015 was witnessed by N who was present at home. The victim specifically stated in her cross examination that her sister N was not at home at the time of the incident. The possibility of N being planted cannot be ruled out. Further victim stated that her father was informed about the incident on the same night at about 8:00 pm, when he returned back to the home. The elder sister P of the victim stated that the father was not informed about the

incident on the same day as they were scared and had no idea to how the father would react. Further, there is no PCR call on 20.02.2015 as stated by the victim whereas her father stated that no PCR call was made and he brought the victim straightway to PS. Further, the alleged incident of 20.02.2015 was reported to the police at 12:30 am on 23.02.2015 and the delay of almost two days remains unexplained. If father was informed CRL.L.P. 432/2019 Page 4 of 15 to it was not reported about the incident on 20.02.2015 at about 8:00 pm then why the police immediately. Further, the alleged history in the MLC of the victim shows that the name of the accused is nowhere disclosed in that MLC. It is not the case of the prosecution that name or identity of accused was not known to the victim or her family members. In these circumstances, not mentioning the name of said person who raped the victim since 6-7 years is relevant fact. The father of victim stated that accused was not on visiting terms to their new residence. The same is contrary to statement of victim and her sister P who stated that they are on visiting terms. In these circumstances, it cannot be said that prosecution has proved any of the offences beyond reasonable doubt. Accused is accordingly acquitted (emphasis supplied) Testimony of the Prosecutrix 9. To elucidate the case before us it is essential to reproduce the deposition made by the prosecutrix at various stages. The Prosecutrix during her statement under Section 164 Cr. P.C. deposed as under: mere ghar me Balram aaya or tab ghar me sirf mere alawa mere bhai or behen the. Meri behan tuition chali gai or bhai ko usne chowmine lene bhej diya. Phir Balram mere sath gandhi harkat karne lag gaya. Usne meri chaati dabai or meri peshab wali jagah pe hath lagaya. Mene kafi mana kiya. Phir jese hi meri behan aai to mene shor machaya or balram ko chanta mara. Phir mene 100 number pe phone kiya. Bas yehi kehna hai. CRL.L.P. 432/2019 Page 5 of 15 10. The prosecutrix was examined as PW-11 and during her examination-in-chief she deposed as under: in the court Accused Balram, present today (correctly identified by the witness from the design of wooden partition) was known to my family as he was residing at E-3 where we were residing earlier. Our house and house of accused Balram were adjacent to each other. Accused used to fly pigeons on roof of his house and whenever he used to get opportunity, he used to call me on the roof and used to take me inside the annexi (darba of pigeons) and used to do wrong act with me. Q. What do you mean by wrong act?. A: He used to press my

breast and used to remove my clothes and thereafter used to commit rape upon me. My elder sister Poonam used to go for her job and my younger brother and sister used to go their school. I used to remain alone at home many times. Accused had committed the same act of rape with me when we had shifted to E-6 on a rented house. Once I was present at my home with my brother B and sister N. Accused Balram came at my home and sent my brother to bring chowmeen. My sister N was studying in the room, I was cooking egg in the kitchen. Accused Balram quietly came in the kitchen and started doing chedkhani with me. I objected to it and asked him to remain in his limit. Q: What do you mean by chedkhani?. A: He was touching my private parts and hugging me which was seen by my sister N. I warned accused that now onwards he should not touch me otherwise I will disclose about his conduct to everyone. In the evening, my sister CRL.L.P. 432/2019 Page 6 of 15 Poonam came back from her job, I and my sister N had narrated the incident of that day to my sister Poonam. My sister Poonam had advised me to stab a knife in case accused again dare to repeat the same act with me. Accused had been doing this wrong act (rape) with me when I was at the age of probably 10- 11 years. My sister N informed my parents and thereafter, they took me to the police station where my statement was recorded which is now Ex.PW11/A bearing my signatures at Point A. During cross-examination, PW-11 (Prosecutrix) deposed as under:-

"I have been taking treatment for seizure for about last one year. I had left my school on account of aforesaid problem. Prior to one year from today, I had no problem of seizures and as such there was no problem in my studies and had further no problem regarding memory. I had not told the name of accused to the doctor at the time of preparation of my MLC. xxxx xxxx xxxx court question: Can you tell as to how many times the accused had committed penetrative sexual assault upon you over a period of time?. Answer: He might have done it 3 or 4 times. I had also told he Ld. Magistrate who had recoded my statement u/s 164 Cr.P.C that the accused had been committing penetrative sexual assault upon me for the last 6-7 years. I had also told that accused had threatened me not to disclose about the said assaults to anybody failing which he would liquidate me. I had told that my sister N was present in the house at the time of incident. I had also told about the date of incident. CRL.L.P. 432/2019 Page 7 of 15 Xxxx xxxx

xxxx On the date of incident, a call at number 100 was made by me to the police. The police had not come to our house on that day. I had told the entire facts to my father on the date of incident and my father had reported the matter to the police on the same day. xxxx xxxx xxxx The accused had come to our house on the date of incident at about 2.00 p.m. Again said at about 4.00 pm. He remained at our home for about half and hour. He had left the house before my sister Poonam had come back from her office. At the time of incident, my sister N was not at home. 11. From the perusal of the statement of the PW-11 (Prosecutrix), it is evident that there are various inconsistencies and improvements which go to the root of the matter. a) PW-11 (Prosecutrix) in her statement under Section 164 Cr. P.C. had stated about the incident of molestation by the accused and there is no mention of repeated rape, for a period of 6-7 years, however, during her examination-in-chief she improved upon her statement recorded under Section 164 Cr. P.C. and deposed that He used to press my breast and used to remove my clothes and thereafter used to commit rape upon me further during her cross examination she improved upon her earlier testimony and deposed that the accused had been committing penetrative sexual assault upon me for the last 6-7 years. CRL.L.P. 432/2019 Page 8 of 15 b) The prosecutrix during her examination in chief deposed that My sister N was studying in the room, I was cooking egg in the kitchen. Accused Balram quietly came in the kitchen and started doing chedkhani with me. I objected to it and asked him to remain in his limit. She further reiterated her stand by deposing that he was touching my private parts and hugging me which was seen by me sister N. however to the contrary during her cross-examination she deposed that At the time of incident, my sister N was not at home. c) Further, PW-11 (prosecutrix) in her statement of 164 as well as in the cross examination, PW-11 (the prosecutrix) had deposed that On the date of incident, a call at number 100 was made by me to the police, to the contrary the record reveals that there no call was made to the PCR and PW-4 (father) took the prosecutrix to the Police Station to lodge a complaint. Testimony of other witnesses 12. It is settled law that if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for other evidence, direct or substantial. In Narender Kumar Vs. State (NCT of Delhi) :

2012. (7) SCC171 it has been observed:

16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there CRL.L.P. 432/2019 Page 9 of 15 are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix is a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or to her substantial, which may testimony. (Vide: Vimal v. Chaluverapinake Apal S.P. and Anr.: AIR 2003 SC818 and Vishnu v. State of Maharashtra : AIR 2006 SC508. Suresh Kamble lend assurance 17. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. 13. At this stage, we deem it appropriate to test the authenticity of the allegations made by the prosecutrix by analyzing the testimonies of the other relevant material witnesses. The younger sister of the prosecutrix N was examined as CW-2 and she deposed as under: CRL.L.P. 432/2019 Page 10 of 15 On 20.02.2015 in the afternoon, accused had come to our new house. At that time, I had come back from my tuition class and was present in the house. I was studying in my room. My sister K was preparing food in the kitchen. I was accused touching my sister K inappropriately at her breasts and private parts while she was working in the kitchen. My sister K was asking the accused to desist from doing all that but he persisted with it. I felt really bad. Thereafter, the accused left our house after about 15 minutes. After sometime, my brother Bunty came to the house with place of chowmeen. I ate the same. I

thought of telling about the act of accused to my elder sister Poonam when she would return from her work. Before I could disclose the same to my sister Poonam, my sister K herself disclosed about the same to her. I also communicated the facts to my sister Poonam and parents. 14. Sh. Ram Prasad, father of the prosecutrix was examined as PW-4. He during his examination-in-chief deposed as under: Q. What do you mean by misbehaviour?. A. the accused was hugging my daughter K and was trying to kiss her which was seen by my daughter N, who had told this to my another daughter P and who had further told to me about this PW-4 (father) during his cross examination deposed as under : Prosecutrix was born in Delhi at Sultanpuri at my residence. I did not get her birth registered with the MCD. I do not have any document to show that she was born on a particular day at my residence. I do not remember her exact date of birth. I had got recorded her DOB at the time of her admission in school on the basis of approximation. It is quite possible that the age of prosecutrix as on today may be around 19 years. CRL.L.P. 432/2019 Page 11 of 15 xxxx xxxx xxxx xxxx I was told about the incident at about 10.00pm in the night when I had returned back from my work. I did not make a call at number 100 after coming to know of the aforesaid fact. Vol. I took prosecutrix to the police station directly. I did not inquire the matter from my neighbours after coming to know of the facts. XXXX XXXX XXXX Vol. However, my daughter P was there in the PS with the prosecutrix. 15. From the perusal of the testimonies of the prosecution witnesses, it is evident that they are not in consonance with each other as well as the deposition made by the prosecutrix and there are various discrepancies and improvements in their version. a) CW-2 (N) during her examination-in-chief deposed that I thought of telling about the act of accused to my elder sister Poonam when she would return from her work. Before I could disclose the same to my sister Poonam, my sister K herself disclosed about the same to her. to the contrary PW-4 (father) deposed that the accused was hugging my daughter K and was trying to kiss her which was seen by my daughter N, who had told this to my another daughter P and who had further told to me about this. b) Further in the cross examination PW-4 (father) had deposed that I and my daughter had gone to police station and I had not taken anybody else however at a later stage CRL.L.P. 432/2019 Page 12 of 15 he stated that The statement of prosecutrix was recorded in the presence of NGO and at that time I

was made to sit outside. Vol. However, my daughter P was there in the PS with the prosecutrix.

16. It is a settled law that the sole testimony of the prosecutrix is sufficient to implicate the accused if it inspires confidence. Reliance can be placed on Vijay v. State of Madhya Pradesh reported in (2010) 8 SCC191 Relevant para of the judgment reads as under: 14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix. 17. However, after perusing the testimonies of the prosecutrix at various stages, it is evident that there are various contradictions and inconsistencies in her testimonies, moreover, the testimonies of other material prosecution witnesses namely PW-4 (father of the prosecutrix), PW-9 (elder sister of the prosecutrix) and CW-2 (N) also failed to support the case of the prosecution. Conclusion 18. As per the case of the prosecution, the prosecutrix was raped repeatedly for a period of 6-7 years, however, it is highly improbable that not even once did the prosecutrix get a chance to raise any alarm or inform anyone regarding the alleged continuous act of the accused. The prosecution further failed to prove the age of prosecutrix on record as neither did PW-4 (father of the prosecutrix) CRL.L.P. 432/2019 Page 13 of 15 place the birth certificate of the prosecutrix on record nor the investigating agency took any step to prove the age of the prosecutrix through scientific modes. Further, it cannot be ignored that despite being repeatedly raped for last 6-7 years, the prosecutrix failed to mention the name of the accused in the MLC. Moreover, the delay of two days in registration of FIR has also not been explained by the prosecution.

19. From the above discussion, we are of the considered view that the evidence adduced by the prosecution has no ring of truth and is not found to be of sterling character and is not sufficient to base the conviction of the respondent. The prosecution fails to prove its case beyond any reasonable doubt as this Court finds that the testimony of prosecutrix fails to inspire confidence and the same cannot be relied for the conviction of the respondent.

20. The law with regard to grant of leave is well settled by a catena of judgments. Leave to appeal can be granted only 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 a petition merely because another view is possible or that another view is more conceivable. (Ref. Upendra Pradhan vs. State of Orissa, 2015 5 SCALE634 (Ref. Ghurey Lal vs. State of U.P., 2008 (10) SCC450 21. With the aforementioned reasons, we are of the opinion that the present leave petition holds no merit and we see no compelling and substantial reason to interfere with the order passed by the learned Trial Court in the present case and therefore, upon overall analysis, CRL.L.P. 432/2019 Page 14 of 15 we are of the view that the present leave petition preferred by the State being meritless deserves to be dismissed.

22. Accordingly, the present leave petition being devoid of merit is dismissed.  
SANGITA DHINGRA SEHGAL, J.

**MANMOHAN, J.**

July 29, 2019 afa/su CRL.L.P. 432/2019 Page 15 of 15

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