

State Vs. Sonu Kumar Yadav

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Court : Delhi

Decided On : Nov-26-2014

Judge : Pratibha Rani

Appellant : State

Respondent : Sonu Kumar Yadav

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision :

26. h November, 2014 % + CRL.L.P. 76/2014 STATE Through : Petitioner Mr.Rajesh Mahajan, ASC for the State with Ms.Shinjan Jain, Adv. and SI Alok Kumar Rajan, PS Sarai Rohilla. versus SONU KUMAR YADAV Through : Respondent None. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

(ORAL) 1. The State is seeking leave to appeal impugning the judgment dated 26.10.2013 passed by learned Addl. Session Judge in Session Case No.151/2013 whereby the Respondent Sonu Kumar Yadav was acquitted of the charges under Section 354-A/363 IPC and Section 8 of POCSO Act.

2. The grievance of the State is that from the statement of the child victim (PW-4) as well as the Complainant (PW-1), the Prosecution has been able to prove its case against the Respondent/Accused beyond reasonable doubt. However, learned Trial Court has failed to appreciate their testimony in correct perspective

and acquitted the Respondent on non-existent grounds.

3. Mr.Rajesh Mahajan, learned ASC for the State submitted that in this case, the Respondent/Accused was apprehended at the spot. He further submitted that though the child victim did not identify the Accused to be the same person but she stated before the Court that he was apprehended at the spot. Learned ASC further submitted that since the Respondent/Accused was apprehended at the spot and FIR has been registered on the statement of mother of the child victim, who was also present there, leave to appeal may be granted.

4. Notice of the petition was sent to the Respondent but the same could not be served for want of correct address.

5. The accusations on the basis of which the Respondent was chargesheeted, are as under : (i) On receipt of DD No.36-A dated 14.06.2013, when SI Gopeshwar Nath Tiwari alongwith Ct.Shambhu reached the spot, he met PW-1 Smt.Yashoda, the Complainant. He recorded her statement to the effect that she alongwith her daughter aged about 6 years was purchasing spices from Gupta Masala Wala. When she was busy in shopping, at about 8.30 pm, one boy came and pressed the mouth of her daughter and started running alongwith her. She happened to see him and raised alarm. The public persons caught that boy and on inquiry the name of that boy was revealed as Sonu Kumar Yadav, resident of Gulabi Bagh Patri, who had been given beating by the public persons. She also stated that somebody had informed the PCR and Sonu Kumar Yadav had been handed over to the police. She prayed for legal action against the offender and put her thumb impression on the complaint.

6. During investigation, the statement under Section 164 Cr.P.C. of the child victim J was also got recorded on 19.06.2013 which is to the effect that about 3-4 days ago, she had gone to the market with her mother. A boy came there and was having katta/bori in one hand and was also carrying a blade. She was taking ice-cream and her mother was purchasing the goods. At that time, that boy put hand on her mouth and eyes and took her towards park gate. In the meantime, many public persons gathered there and started beating him with legs and danda. Police was called and then she returned home with her mother.

7. The Complainant Smt. Yashoda when examined as PW-1, had deposed that on 14.06.2013 at about 8.30 pm when she was purchasing spices and vegetables from Gupta Masala Wala and her daughter was standing behind her, one person dragged her daughter after gagging her mouth. She raised alarm and apprehended that person with the help of public persons. That person was given beating by public persons. Someone informed the police and when the police came, that person was handed over to the police and she made the complaint Ex.PW1/A.

8. Statement of PW-4 J - the child victim was recorded in question and answer form. The relevant questions put to the child victim and answers given by her are as under: Question Answer : : What happened at that time?. I was eating ice-cream behind my mother. One boy came and he has closed my eyes and mouth and took me. I bite on his hand and called my mother. My mother raised alarm and public gathered there. That boy was apprehended and was beaten. Some one informed the police on phone. Police came there and apprehended him. Question : Answer : Can you identify the person, who closed your eyes and mouth?. No.9. Question : Answer : Did the said boy was apprehended at the spot?. Yes. Question Answer : : That boy was carrying anything?. He was carrying one Katta/bori. Question Answer : : Where did you bit?. On his palm. Question Answer : : Did that boy run away when you bite him?. Thereafter, I ran towards my mother and told her the incident then my mother apprehended that boy. Question : Answer : Do you want to say that that boy did not go anywhere during the said period?. My mother raised alarm, public gathered there. Public apprehended that boy near Gupta Store Masala. Question Answer : : Did accused ran away when you bite?. Yes. Question Answer : : How far. At some distance. Since the entire incident is stated to have taken place in front of Gupta Masala Wala, PW-3 Sh.Chetan was also examined by the prosecution but he has not supported the prosecution case at all. Although he stated that he knew the Complainant as she used to visit his shop for purchasing items but he denied any incident having taken place on 14.06.2013 or any hue and cry being heard by him. PW-3 Sh.Chetan was cross examined by learned APP for the State at length but without any success. Rather he stated that police did come to inquire from him but at that time also he informed that he had no knowledge about this incident.

10. It may be noted here that PW-3 Sh.Chetan was an independent witness and the incident had taken place in front of his shop. Since it is a case where the Respondent/accused was badly injured due to alleged beating being given by the public persons, it is highly improbable that the shopkeeper would not come to know about the incident which has taken place in front of his shop in the manner stated by the Complainant. It may also be noted that the Accused in this case was a Kabadi and Vegabond and not having the capacity to win over or influence the independent public witness.

11. After appreciating the entire evidence, learned Trial Court was of the following opinion : 12. From the testimony of PW1 & PW4, it becomes clear that there is contradiction between their testimony on material point as PW1 deposed that she had herself seen the accused while he was taking away her daughter after gagging her mouth whereas PW4 deposed that she informed her mother about the incident, thereafter her mother raised alarm and apprehended the offender with the help of public persons.

13. Admittedly, PW4 failed to identify the accused. Since, PW1 was busy in shopping, thus probably due to that reason she had not seen the offender while taking away the victim and the possibility that her attention was attracted when PW4 rushed to her cannot be ruled out. Thereafter, PW1 made hue and cry, consequently, accused was apprehended by public persons. In these circumstances, the possibility that accused had been apprehended by crowd under confusion can not be ruled out.

14. Though, in order to show that accused is the culprit, prosecution has also examined Chetan (PW3), owner of the shop but unfortunately, he did not support the prosecution case by deposing that he did not know anything about the incident and he did not hear any hue and cry. Thus, the testimony of PW1 is not corroborated from any corner to establish the identity of accused.

15. In these circumstances, I am of the opinion that the testimony of PW1 is not sufficient to prove the identity of the accused. 12. Legal position is well settled that the Appellate Court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment

cannot be set aside merely because the Appellate Courts view is more probable. The Appellate Court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law. (Vide :

2009. (10) SCC2006.

13. In the case of State of U.P. vs. Nandu Vishwakarma AIR 2009 SC3188 it was observed that when on the basis of the evidence on record two views could be taken - one in favour of the accused and the other against the accused - the one favouring the accused should always be accepted.

14. Thus, I do not find it to be a fit case to grant leave to appeal. Accordingly, the leave petition is hereby dismissed. Trial Court record be sent back forthwith along with a copy of this order. PRATIBHA RANI (JUDGE) NOVEMBER26 2014/st

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