

State Vs. Mehkoolal and Anthor

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Court : Delhi

Decided On : Feb-24-2012

Judge : S. Ravindra Bhat & S.P. Garg

Appeal No. : CRL.L.P. 592 of 2011 & CRL.M.A. Nos.19614-15 of 2011

Appellant : State

Respondent : Mehkoolal and Anthor

Judgement :

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The State seeks leave to appeal against the judgment and order of the Ld.Addl. Sessions Judge dated 08.04.2011 in SC No.175/2008 by which the Respondents were acquitted of the charge for having committed offences under Sections 363/366/34 IPC read with Section 376(g) IPC.

2. The prosecution alleged that on 05.01.2006, the complainant Ashok Kumar, father of the prosecutrix informed the police that his daughter (prosecutrix) had gone missing. It is further alleged that information was received by the concerned police station the very next day that the girl had been traced in Mainpuri in U.P. The prosecution case is that the complainant visited the police station on 09.01.2006 stating that he had received a telephone call disclosing the girl's whereabouts somewhere in Mainpuri in U.P. The police proceeded

there along with the prosecutrix's father; she was rescued. Upon her return to Delhi, her statement under Section 161, Cr.P.C. was recorded on 10.01.2006. In this statement, she alleged that she had been abducted and had given certain details. However, she did not name any accused. She also claimed that she had been forced to have sexual intercourse several times during the time she was detained. The police apparently recorded a second, supplementary statement of the prosecutrix on 11.01.2006. In this, for the first time she named the Respondents/accused. The prosecutrix's statement under Section 164, Cr.P.C. was not recorded immediately but was recorded only on 17.02.2006. On the basis of these materials and girl's MLC collected during the investigation as well as the statement of other witnesses, the Respondents were charged for committing the offences. They denied their guilt and claimed trial. The prosecution examined several witnesses including the Magistrate who recorded the statement of the prosecutrix under Section 164 Cr.P.C. and the doctor who examined the prosecutrix. The complainant Ashok Kumar deposed in the proceedings, as did the prosecutrix. After considering all the materials, the Trial Court concluded that there were several inconsistencies in the prosecution story which rendered it unsafe for it to conclude that the Respondents were guilty as charged. Accordingly, they were acquitted.

3. Ld.Addl.PP urged that merely because the prosecutrix omitted to mention names of the perpetrators of the crime, the Trial Court should not have given them the benefit of doubt. It was submitted that even in the statement under Section 164, Cr.P.C., the prosecutrix described the Respondents/ accused and even stated their vocation. Having regard to these, as well as the testimonies of other witnesses, the acquittal was not justified.

4. We have considered the materials, including the Trial Court record which was called for the purpose of this proceeding. The Trial Court held that the prosecutrix's statement did not inspire confidence since she materially contradicted herself at several stages. Even though during her deposition in Court she named the Respondents as her abductors and the persons who raped her, the Trial Court concluded that her inconsistencies in the previous statement, (i.e. the first statement not naming the Respondents/accused

whereas in the second supplementary statement she named them, and yet again her silence when she deposed before the Magistrate under Section 164, Cr.P.C.) could not lead to any conviction. The Trial Court noted as follows:

“...32. It is further noted that the prosecutrix has not been recovered from Mainpuri from the house where she was allegedly kept by the accused persons or where she was raped by them and other persons. She has been allegedly recovered by her father from the house of Mulla ji and then produced before the IO at PS-Sangam Vihar. No evidence had been collected by the IO to identify the spot or the house where the prosecutrix was kept confined and raped by the accused persons. IO has not bothered to go to the said place at Mainpuri where she was kept confined or to make any investigation or to record the statement of the witnesses at that spot. The only evidence produced is of PW-4 Mohd. Israr, Mullaji who had stated that on 09.01.06 in the evening time he saw two small boys taking a girl forcibly; he scolded them and then he took that girl to his house and informed the parents of the girl on telephone. In the night time the father of the girl along with police official came from PS-Sangam Vihar to his house and he handed over Lalita (prosecutrix) to them.

33. Statement of this witness does not inspire confidence either. The prosecutrix had stated in her statement that it took an overnight journey in a car to reach said Mainpuri in UP i.e. she was kidnapped by these accused persons at around 7.00 pm and then on the next morning at around 6.00 am they had reached Mainpuri. But this witness Mullaji states that he informed the parents of the prosecutrix in the evening on 09.01.06 about their girl being in his house and her father came to his house with the police in the night of 9/10.01.06 itself and took her back.

34. As per the statement of the prosecutrix she was produced before WASI Nirmala, PS-Sangam Vihar in the morning on 10.01.06. How was it then possible that the father of the prosecutrix was informed in the evening of 09.01.06 about the whereabouts of the prosecutrix; he went to the PS; took the help of the local police and then went to District - Mainpuri at the house of Mullaji that night itself and returned that night itself with his daughter and

produced her in the PS-Sangam Vihar, covering the distance in less than half the time taken by prosecutrix to reach there by car (as alleged by her in FIR).

35. That aside, it is also seen that the other witness who had allegedly gone with the father of the prosecutrix i.e. PW-3 Ved Prakash, had turned totally hostile and had stated that though he knew Lalita (prosecutrix) was missing, he had not gone with them in the night to district Mainpuri to recover Lalita (prosecutrix) from the house of Mullaji. He categorically denied the statement alleged to have been made by him before the police.

36. The police official stated to have gone with the the father of the prosecutrix is constable Ishwar Singh, who has been examined as PW5. Even this witness has not stated anything to this effect i.e. though he talks about the arrest of the accused but he does not say that he had gone with the father of the prosecutrix to Mainpuri and had brought back the prosecutrix from the house of Mullaji. Only WASI Nirmala before whom the prosecutrix was produced by her father has testified that on 10.01.06, constable Ishwar Singh and the father of the prosecutrix had brought the prosecutrix from Mainpuri and they had produced the prosecutrix before her but that is only a hearsay evidence in her mouth. Not only this even the father of the prosecutrix i.e. Ashok Kumar has not been examined in this case. Thus we do not have any witness at all to say that the prosecutrix was recovered from Mainpuri and brought to Delhi and produced before the IO WASI Nirmala in the PS-Sangam Vihar on 10.01.06.

37. The medical examination of the prosecutrix in this case was done on 10.01.06 i.e. immediately after her alleged recovery. It is seen that during the examination by the doctor at AIIMS i.e. Ex.PW10/E she had given the history of having been kidnapped by strangers after consuming some drink on 05.01.06. She does not say about having been kept by two

unknown persons for two days at Sangam Vihar and then being taken to Mainpuri to the said doctor. It thus appears on the face of it that this naming and identification of both accused was an after thought by the prosecutrix when she decided to give the supplementary statement on 11.01.06 and implicate both the accused persons.

38. In the said medical examination i.e. Ex.PW10/E the doctor had noted that she had given the alleged history of being raped by four persons since 05.01.06. However, it was observed that there was no evidence of any injury or bruise. The hymen was ruptured with the vagina allowing two fingers. The doctor had herself noted that the prosecutrix had history of sexual contacts several times over the past two years. This only corroborates the statement of the defence witnesses as regarding nature, behaviour and conduct of the prosecutrix in the past...”

5. The High Court has to be satisfied before it grants leave to appeal (against an order of acquittal) that the judgment impugned before it discloses substantial and compelling reasons, which would mean no proper appreciation of evidence, mis-appreciation of the law or adopting an approach that manifestly leads miscarriage of justice. In this case, glaring inconsistencies in one statement of the prosecutrix coupled with the MLC, which indicated that the girl had sexual intercourse over a period of two years, persuaded the Trial Court to hold that she was not truthful. Primarily, the Trial Court disbelieved the testimonies of the prosecutrix on the ground that she was inconsistent as regards the identity of the perpetrators of the crime. On two accounts i.e. the second supplementary statement and before Court, she could name them. However, at the earliest opportunity on 10.01.2006 and even before the Magistrate under Section 164, Cr.P.C., she was silent regarding identity of the accused. Even in the MLC recorded at the earliest point i.e. on 10.01.2006 the prosecutrix did not name the accused. We are therefore of the opinion that the Trial Court’s view, is sound; we also notice that the Court had relied upon the decision in *Pratap Misra and Ors. Vs. State of Orissa, 1977 (3) SCC 41*. On an over all perspective, we do not find any infirmity in the Trial Court’s reasoning. The petition being unmerited is therefore dismissed in the above terms.