

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 21st March, 2017

Decided on: 25th May, 2017

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CRL.A. 326/2015

GULAB KANT YADAV

..... Appellant

Represented by: Ms. Seema Misra, Advocate for
Ms. Naomi Chandra, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offences punishable under Sections 377/506 IPC and Section 6 of Protection of Children against Sexual Offences Act, 2012 (in short 'POCSO Act'), Gulab Kant Yadav challenges the impugned judgment dated 26th July, 2014 and the order on sentence dated 4th August, 2014 directing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹2,000/- for offence punishable under Section 6 of POCSO Act, rigorous imprisonment for a period of five years and to pay a fine of ₹2,000/- for offence punishable under Section 377 IPC and rigorous imprisonment for a period of one year for offence punishable under Section 506 IPC.

2. Assailing the conviction, learned counsel for Gulab Kant Yadav contends that neither the aunt of the prosecutrix nor her friend was examined in the Court. As per the testimony of PW-5 Dr. Anudeep Arora, there was no sign of external injury, thus, the medical evidence does not support the prosecution case. Neither the site plan nor the pointing out memo was

prepared. There being uncertainty in the number of toilets, in the absence of site plan or pointing out memo, there is no corroboration to the version of the prosecutrix.

3. Per contra learned APP for the State submits that the demeanor of the prosecutrix in Court shows her truthfulness. Prosecutrix is a reliable witness because in her testimony, she categorically answers the questions put to her. Since the incident relates back to one year, thus, there could be no corroboration by medical evidence. Version of the prosecutrix is corroborated by the testimony of PW-1 Jyoti Joshi, the teacher.

4. The offence alleged against Gulab Kant Yadav unfolded when Yamuna Devi, PW-2 mother of 'H' a student of prosecutrix's class informed her on 12th April, 2013 around 9:00 AM that one of the friends of 'H' had complained that a student of her class was being harassed and someone was doing *galat kaam* with her. She called 'H' to verify the fact who informed that 'S' told her about the same. On 'S' being called, 'S' informed that the prosecutrix had complained to her that her uncle Gulab Kant Yadav was doing *galat kaam* with her and would touch her inappropriately since they used the common bathroom. Gulab used to take her to the toilet and did *galat harkat* with her. She called up the house of prosecutrix and around 2:00 P.M. aunts of prosecutrix arrived at school. Mother of the prosecutrix could not come due to indisposition. She talked to the maternal aunt of the prosecutrix and told her the facts which were brought to her knowledge by the prosecutrix. Her aunt stated that she did not know anything and thereafter spoke to the prosecutrix in private. Aunt of the prosecutrix confirmed what the prosecutrix had told her was truth. She told the prosecutrix to report the matter and was informed that Gulab was doing this act for the past one year

and threatened to kill her brothers and sisters if the prosecutrix told anyone.

5. Thereafter on 13th April, 2013, PW-7 the prosecutrix, along with her aunt visited PS Parliament Street wherein her statement was recorded by PW-15 W/ASI Ancy Philip. The prosecutrix stated that she lived in the staff quarter of Rashtrapati Bhawan, GRG Road along with her mother, maternal grandmother, brother, sister, maternal uncle and aunt and studied in class V at Navyug School. She stated that few days back she told her school friend 'S' that Gulab Kant Yadav, who stayed next of her house and worked as a cook in the house where her grandmother also worked, was doing *gandi gandi harkatein* with her since last few months. Initially, when the prosecutrix used to go to the bathroom, Gulab Kant Yadav used to say that since she won't be able to latch the door, he will stand inside and she can bath and use the bathroom. Once he held her inside the bathroom, removed his pants, made her sit on his lap and inserted his penis in her vagina. When she felt pain and started crying, Gulab Kant Yadav threatened to kill her. She did not tell anyone about the incident out of fear. Gulab Kant Yadav did *galat kaam* with her on multiple occasions sometimes in the bathroom and sometimes in his room. He had also put his penis in her mouth. She narrated the entire incident to 'S' who in turn narrated to 'H' who also studied in her class. Thereafter, 'H' narrated the facts to her mother who came to her school and told about the incident to her class teacher. Her class teacher called the mother of the prosecutrix to school and told her about the incident. FIR No. 58/2013 was registered under Sections 376/377/506 IPC at PS Parliament Street on the statement of the prosecutrix vide Ex.PW-7/A.

6. Thereafter, PW-15 W/ASI Ancy Philip along with PW-8 W/Ct. Reena took the prosecutrix to Lady Hardinge Medical College for her medical

examination where the prosecutrix and her maternal aunt refused for her internal examination. On 14th April, 2013 around 9:00 A.M., PW-15 W/ASI Ancy Philip along with PW-6 Ct. Rajesh Kumar went to the place of incident where the prosecutrix and her aunt pointed out Gulab Kant Yadav. After making enquiries from him, he was arrested. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C.

7. During the course of trial, PW-11 Pawan Kumar, Sub Registrar, NDMC, Birth and Death Unit, deposed that the date of birth of the prosecutrix, as per their record, was 20th January, 2003. The birth certificate was exhibited as Ex. PW-11/A. PW-3 Sukhbir Singh, LDC, Kendriya Vidyalaya, stated that as per the admission register Ex. PW-3/B, the date of birth of the prosecutrix was 20th January, 2003.

8. PW-7 prosecutrix deposed in sync with her statement made to the police. She further stated that '*Gulab uncle mujh se badtamizi kartey theey. Jab bhi mai bathroom jati, ye piche piche ata aur mere kapde utar deta*'. She stated that Gulab would remove his pants whenever he entered the bathroom, he touched her private parts with his private parts and inserted his private part in her mouth several times. She suffered pain all the time and stated '*jab meine shor machaya to Gulab uncle ne mere muh par hath rakh liya aur kaha ki shor macha toh mere chote bhai ko jaan se maar dega*'. She was forcibly taken to his room when his wife and children were away and he did *galat kaam* with her. During her cross-examination, she stated that her grandmother and her mother had cordial relationship with Gulab and his family.

9. PW-12, mother of the prosecutrix, corroborated the version of the prosecutrix. PW-1 Jyoti Joshi, class teacher of the prosecutrix also deposed

in sync with her statement recorded under Section 161 Cr.P.C.

10. PW-2 Yamuna, mother of 'H', stated that her daughter 'H' had told her that one of her friend had informed her that some uncle was doing something galat with her. On 12th April, 2013, she had gone to her daughter's school and met the class teacher. She told the class teacher everything that was revealed to her by 'H'. In her cross-examination, she stated that she had not spoken to the girl who had revealed those facts to 'H' and does not know the girl with whom the wrongful act was done.

11. PW-5 Dr. Anudeep Arora, Senior Resident, Obstetrics and Gynecologist, RML Hospital, who had examined the prosecutrix and prepared her MLC Ex. PW-5/A, stated that he had given an opinion that possibility of sexual assault cannot be ruled out.

12. Contention of learned counsel for Gulab Kant Yadav that since the version of the prosecutrix was not supported by medical evidence the same should be ignored, deserves to be rejected. The allegations of the prosecutrix against Gulab Kant Yadav are that over a period of time he was harassing her and committing the offences alleged. She could not muster the courage to tell her family members and confided with the classmate who confided with other classmate who in turn informed her mother. The prosecutrix is consistent in her statement made before the police, under Section 164 Cr.P.C. and before the Court. Her version is duly corroborated by PW-1 the teacher and PW-2 Mrs. Yamuna Devi, mother of a classmate 'H'. In her deposition before the Court she reiterated that *'Gulab uncle mujh se badtamizi karte they. Jab bhi main bathroom me jati, ye pichey piche ata aur mere kapde utar deta tha.'* She further stated that Gulab used to remove his pant whenever he entered in the bathroom and touched his private part

with her private part. Gulab uncle had also inserted his private part in her private part and her mouth several times. She stated that she suffered pain and when she wanted to shout, he kept his hand on her mouth and threatened that he would kill her younger brother. She also deposed that Gulab used to forcibly take her to his room and do *galat kaam* with her. Though no site plan has been proved however, in her cross-examination the prosecutrix elicited that there were four servant quarters where they were residing and between her room and that of Gulab, there was one servant quarter. There were two common toilets, one in the front and the other on the rear side of the servant quarters. In fact the suggestion given to the prosecutrix is that the maternal grandmother and mother of the prosecutrix had cordial relationship with Gulab and his family.

13. The plea of Gulab in his statement under Section 313 Cr.P.C. is that he gave a loan to the mother and grandmother of the prosecutrix who owed towards him and when he requested for payment they quarreled and filed this false case against him. No defence evidence was led. Further as noted above, no such suggestion was given to the prosecutrix. The suggestion to the mother of the prosecutrix that her mother used to borrow money from the accused and when he demanded back the money, he was falsely implicated, was denied. In the absence of any further material on record, the defence of Gulab that he was falsely implicated due to a money dispute cannot be accepted.

14. The fact that the prosecutrix was pressurized not to disclose the offence is evident as she could not muster the courage to speak to her family members and only confided with one of the classmates who further told another classmate who in turn told her mother.

15. Considering the cogent and convincing testimony of the prosecutrix, duly corroborated by the testimony of other witnesses, I find no infirmity in the conviction of the appellant for offences punishable under Sections 377/506 IPC and Section 6 of POCSO Act and the order on sentence. Appeal is accordingly dismissed.

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

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 25, 2017
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