

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

% Decided on: 30th July, 2019

+ **CRL.A. 290/2019**

DINESH SHARMA

..... Appellant

Represented by: Deepak Anand, Advocate,
DHCLSC

versus

STATE (GOVT. OF NCT) OF DELHI

..... Respondent

Represented by: Ms. Rajni Gupta , APP for
the State with SI Manoj
Kumar, PS Sarai Rohilla

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Dinesh Sharma challenges the impugned judgment dated 31st October 2018 convicting him for offences punishable under Sections 354/506 IPC and the order on sentence dated 1st November, 2018 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.2,000/-, in default whereof to undergo simple imprisonment for a period of two months, for offence punishable under Section 354 IPC and rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default whereof to undergo simple imprisonment for a period of one months, for offence punishable under Section 506 IPC.

2. Assailing the conviction, Learned Counsel for the appellant contends that there are material contradictions in the statement of the prosecutrix made before the police, her statement recorded under section 164 Cr.P.C.

and her deposition in the Court. The conviction of the appellant is liable to be set aside as neither the prosecutrix, nor her mother nor her grandmother have supported the prosecution case in their depositions before the learned Trial Court. Appellant has been falsely implicated due to his bad drinking habit. In the alternative the sentence imposed is excessive and be reduced to the period undergone.

3. Learned APP for the State on the other hand submits that that the prosecutrix has specifically deposed about the incident and has identified the top which she was wearing at the time of incident. Appellant also threatened, the grandmother of the prosecutrix that he will throw her down. It is further submitted that it being a repeat offence by the appellant who was earlier also in jail for two and a half years for the previous offence committed.

4. Prosecution case stems from an information received on the intervening night of 4th -5th July 2016 at about 10:30 P.M. regarding a quarrel at 19/137, Sarai Basti, Sarai Rohilla, Delhi. Aforesaid information was recorded vide DD No. 42A and assigned to SI Jag Parvesh. He reached the spot where he met the prosecutrix and her mother. During the inquiry, the prosecutrix told him that her father, that is the appellant herein, molested her and also tore her shirt. Later, WSI Veena along with WCt. Pooja reached at the spot and recorded the statement of the prosecutrix wherein she stated that her mother works in Sadar Bazar and that her father did not do any work, remained at home and drinks alcohol. On the day of incident also he was in a drunken state. She and her brother used to go for tuitions at Shastri Nagar near Udam School. On 4th July 2016 at around 3:30 P.M. she along with her brother went for their tuition but on reaching she got to know that

her tuition teacher had not come. At around 4:30 P.M., she left her brother at the tuition center and went back home. She reached her home at about 5:30 P.M. where her father was present. At around 6:20 P.M. her father came to her and said that '*Mujhe tumse purana hisab chukta karna hai, tune mujhe pehle jail mein bandh karwaya tha*'. He caught hold of her and started hitting her on her breast and grabbed her breast. He also pulled her clothes due to which the neck of the top which she was wearing got torn. She got scared as her father was in drunken state and also threatened to kill her. On seeing the maternal grandmother of the prosecutrix, the appellant left. After sometime the mother of the prosecutrix also came. Her mother and maternal grandmother scolded the appellant. Appellant threatened the maternal grandmother of the prosecutrix stating that he will throw her down. She stated that the appellant was a danger to all three of them. She further stated that the appellant had previously harassed and misbehaved with her due to which he was in jail for two and a half years and her mother bailed him out eight months prior to the date of the incident. However, the appellant still threatens them. On the basis of the aforesaid statement, FIR No. 482/2016 (Ex.PW-3/A) was registered at PS Sarai Rohilla for the offences punishable under Section 354/354B/506 IPC and Section 8 POCSO Act.

5. Thereafter, WSI Veena along with WCt. Pooja took the prosecutrix and her mother to Hindu Rao Hospital for her medical examination. Prosecutrix was medically examined vide MLC No. 4459116 (Ex. PW-8/A). Appellant was also taken to the hospital by Ct. Vinod and HC Rajeev. He was medically examined and his blood sample was taken for alcohol content and was handed over to her by Ct. Vinod. The blood samples along with sample seals were seized vide seizure memo Ex. PW6/B. On the next

morning, the prosecutrix along with her mother visited the police station where she handed over her yellow colour top which she was wearing at the time of incident. The said top was sealed vide seizure memo Ex.PW-9/B and deposited in the malkhana.

6. On 5th July 2016 further investigation was carried out by SI Jag Pravesh. WSI Veena handed over the MLCs of the prosecutrix and the appellant, seizure memo of sealed blood sample of the appellant along with sample seal and the counselling report. Thereafter he interrogated the appellant and recorded his disclosure statement vide Ex. PW-7/C, conducted his personal search vide memo Ex. PW-7/B and arrested him vide arrest memo Ex. PW-7/A. WSI Veena further handed over him the seizure memo of the pulanda containing top of the prosecutrix Ex.PW9/B. Statements of the prosecutrix and her mother were recorded under section 164 Cr.P.C.

7. Prosecutrix in her statement recorded under section 164 Cr.P.C. stated that on 5th July 2016 at around 5:30 P.M. when she was sitting on the sofa her father came upto her and told her that '*Tune mujhe phasaya, mujhe tujhse badla lena hai, main tujhe jaan se maar dunga aur iss ghar mein rehne nahi dunga.*' He hit her on her breast and her top was torn. Thereafter, she narrated the said incident to her maternal grandmother.

8. Documents relating to the age of the prosecutrix were also collected from her school which were exhibited as Ex.PW-2/A, Ex.PW-2/B, Ex.PW-2/C and Ex.PW-2/D. The sealed blood sample of the appellant along with the sample seal were also deposited in the FSL for examination regarding the percentage of alcohol. After completion of investigation charge sheet was filed. Charge for offences punishable under Section 354/354-B/506 IPC and Sections 8/10 POCSO Act was framed against the appellant vide order

dated 18th October 2016.

9. Prosecutrix was examined as PW-1 in Court, after ascertaining that she was capable of understanding the questions put to her and was capable of giving rational answers thereof. Prosecutrix deposed in sync with her statement made to the police. In her cross-examination by Ld. counsel for the accused she stated that after her father was released from the jail on 17th October 2015, he used to reside with her and her mother. However, he was thrown out from the house as he used to misbehave with them by removing all his clothes in front of them after drinking. She further stated that the appellant after two months of living separately came back at the time of holi.

10. Mother of the prosecutrix was examined as PW-4 in Court wherein she deposed that on 5th July 2016 at around 7:30-8:00 P.M. when she came back home from work her children told her that the appellant came back home under the influence of liquor, abused them and that they had already informed the police on 100 number. She stated that the police reached at her house and the appellant was taken to the police station. She disclosed to the police that the appellant used to quarrel with them after consuming alcohol. She further denied that her statement was recorded under section 164 Cr.P.C, however she identified her signatures on the said statement. In her cross-examination by Ld. APP for the state she stated that she was under the impression that the appellant has mend his behavior and that she helped him to get bail from the High Court earlier. She also stated that the appellant quarreled with her children after consuming liquor and a case was registered against him. In her cross-examination by the Ld. Counsel for the appellant she stated that the top which the prosecutrix was wearing was in unstitched condition and was not torn. She further stated that she used to go and visit

the appellant in jail regularly along with the prosecutrix.

11. Maternal grandmother of the prosecutrix was examined as PW-5 in Court wherein she deposed that on 4th July 2016 at around 5:30-6:00 P.M. when she reached the house of her daughter, she saw that the appellant was quarrelling with her daughter on the issue of consuming liquor. She stated that she calmed the matter and thereafter, nothing happened in her presence. In her cross-examination by the Ld. APP for the state she stated that when the appellant returned home, she and her daughter made him understand, to which the appellant threatened her that he will throw her down from the roof. She further admitted that she wanted to save the appellant from the present case, being her son-in-law. In her cross-examination by the Ld. Counsel for the appellant she denied the allegation that the appellant had not threatened her in any manner. She stated that some quarrel took place on issue of consuming liquor. On further cross-examination by the Ld. APP in context of threat made by the appellant to her, she stated that it would have happened during some quarrel and that the appellant never threatened her in any manner.

12. Ms. Kumud Kaushik, Principal, Nigam Utkrishth Vidhyalaya stated that as per the admission and withdrawal register the date of birth of the prosecutrix was 28th July 1999. The photocopy of the admission and withdrawal register are proved vide Ex.PW-2/A(OS&R). According to the pasting file, the affidavit regarding date of birth of the prosecutrix was given by the appellant and her date of birth was mentioned as 28th July 1999 in admission form. Photocopy of the admission form and the affidavit were exhibited as Ex.PW-2/B(OS&R) and Ex.PW-2/C(OS&R) respectively. She further stated that the date of birth of the prosecutrix was inadvertently

certified as 22nd July 1999 instead of 28th July 1999.

13. Dr. Binni (PW-8), Medical Officer Department of Obstetrics and Gynaecology, Hindu Rao Hospital, Delhi deposed that the prosecutrix was medically examined by Dr. Supriti Gupta whose whereabouts are not available. The MLC of the prosecutrix was prepared. As per the MLC (Ex.PW-2/A) the victim was brought with alleged history of physical assault. The general physical examination of the prosecutrix was normal and she denied for UPT and internal medical examination.

14. The appellant in his statement recorded under Section 313 Cr.P.C. stated that he is innocent and has been falsely implicated in the present matter by her wife and the prosecutrix as he was a habitual drinker.

15. No doubt in her testimony before the Court the prosecutrix did not state that her father caught hold of her breast and grabbed it but she deposed that the appellant stated that since he had gone to the jail because of her, he would take revenge for the same and while saying so he pulled her top due to which it was torn. In view of omission of the version that the appellant caught hold of her breast and hit it, the appellant has already been acquitted for offences punishable under Section 8 & 10 of POCSO Act for which he was charged by the learned Trial Court. However, the fact that the appellant threatened her and caught her in a manner resulting in the tearing of shirt, which could be even by seams of the shirt coming out and that despite extensive cross-examination the prosecutrix stood to this version of her, even though her mother and grand-mother turned hostile and admitted that the same was to save the appellant, this Court finds no infirmity in the impugned judgment convicting the appellant for offences punishable under Section 354/506 IPC.

16. As regards the quantum of sentence is concerned, appellant has been awarded imprisonment for a period of four years and to pay fine for offence punishable under Section 354 IPC. This is the second conviction of the appellant as he has already been convicted for offences punishable under Section 354 IPC and Section 10 of the POCSO against the prosecutrix, his biological daughter. Hence, no case is made out for releasing the appellant on the sentence undergone.

17. Appeal is dismissed.

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

19. TCR be returned.

Crl.M.B. 497/2019

Application is dismissed as infructuous.

JULY 30, 2019
‘sk/ga’

(MUKTA GUPTA)
JUDGE

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