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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision 4th April, 2019

CRL.LP. 232/2018

STATE OF NCT OF DELHI

....Petitioner

Through: Mr. Rajat Katyal, APP for the State.

Versus

RAM LAKHAN

....Respondent

Through: None.

SANGITA DHINGRA SEHGAL, J (ORAL)

1. By the present Leave Petition filed under Section 378 (1) of the Code of Criminal Procedure (hereinafter referred as '*Cr.P.C.*'), the State seeks leave to appeal against the judgment dated 18.12.2017 passed by the learned Additional Sessions Judge-01/Judge Special Court, POCSO Act, Shahdara District, Karkardooma, Delhi in Case FIR No. 271/2013 under Sections 354A/354/506/341 of the Indian Penal Code (hereinafter referred to as '*IPC*') and Section 8 of POCSO Act registered at Police Station - M. S. Park, Delhi whereby the respondent was acquitted of the charged offences.
2. The case of the prosecution in a nutshell is that on 23.09.2013, mother of the victim/child came to the police station and made a written complaint against the respondent alleging that the respondent inappropriately touched her daughter. On this complaint, an FIR in the instant matter was registered and the accused was arrested. On completion of the investigation, chargesheet was filed before the concerned Court.

3. To bring home the guilt of the respondent, the prosecution examined 07 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. by the learned Trial Court wherein he pleaded not guilty, he reiterated his innocence and claimed that he has been falsely implicated by the mother of the victim/prosecutrix to avoid payment of the work got done by her from the accused. The respondent did not lead any witness in his defence.
4. Mr. Rajat Katyal, APP for State contended that the Impugned Judgment is based on presumptions, conjectures and surmises and cannot stand the scrutiny of law and is not sustainable; that the learned trial court failed to appreciate the testimony of the victim/prosecutrix as well as other incriminating evidence against the respondent, which are consistent and points towards the guilt of the accused person; that the learned Trial Court erroneously disbelieved the version of the victim/prosecutrix and the arrest of the respondent as well.
5. I have heard the learned counsel for the State and perused the available material on record.

Age of the prosecutrix

6. Admittedly, the school certificates being a legal document and having evidentiary value, has to be given due weightage as has been held by the Apex Court in the case of ***State of Chhattisgarh v. Lekhram*** reported in (2006) 5 SCC 736 . The Apex Court in the said case held as under:

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person

concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty

13. ...It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."

7. The prosecution has been able to bring on record the school certificates of the prosecutrix i.e. Ex.PW4/A (X class Marksheet), Ex.PW4/B (Admission Form for Class XI), Ex.PW4/C (Admission Form for Class VI), Ex.PW4/D (School Leaving Certificate). All these documents proved the date of birth of the prosecutrix as 06.02.1998, which remain unrebutted and unchallenged. The alleged incident is stated to have been taken place on 23.09.2013, which clearly suggest that the age of the prosecutrix was about fifteen and half years at the time of alleged incident. Thus, the onus on the prosecution to prove that the prosecutrix was minor, has been effectively discharged by the prosecution.

Testimonies of material witnesses

8. In ***Shivasharanappa and Others vs. State of Karnataka*** reported in **(2013) 5 SCC 705**, it was held :-

"17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible,

truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable."

9. In the instant case, the victim/prosecutrix in her initial statement recorded under Section 161 Cr.PC stated that :

"Jab mein upar se kapde lekar neeche jeene se aane lagi toh jeene me tisri manzil par hi carpenter Ram Lakhan S/o Bachhu Lal khada mila jisne mera raasta rok kar apne ek haath se mera muh daba liya aur dusre haath se mere chaati dabane laga mein badi mushkil se bachkar apne to churakar neeche bhaagi."

10. In her statement recorded under Section 164 Cr.PC, the victim/prosecutrix alleged that :

"Day before yesterday on 23.09.2013 at about 1:00 p.m., the accused who is working as a carpenter in our house, which is under construction, came upstairs and asked me for water. I told him that there was no water. My mother had asked me to bring some rough old clothes as required by the workmen. While, I was coming downstairs at 3rd floor, the accused caught hold of my mouth with his right hand and with his other hand, he touched my breast (CHHATI PAR HAATH MARA). When I told him that I would tell this to my mother, he said to

me TUM KISI KO BATAOGI TO ACHCHA NAHI HOGA. I came downstairs and informed my mother."

11. PW-1 (Prosecutrix) during her examination in chief deposed as under:-

"I do not remember the date and month but it year 2013 in the noon time I was present in the office of my mother downstairs at my residence. Construction work was going on at our house and I had gone to the fourth floor to remove the dried clothes the carpenter who was working at third floor came at the fourth floor and asked me for a glass of water. I told him that there was no bottle in the fridge and he may have the water from the shop. At that time he went away but stayed on the staircase but I was not aware of this fact. When I was going down from the stairs the accused closed my mouth with one hand and pressed my breast. I pushed the assailant and went to my mother requesting her to make him understand. The accused had said that it will be not proper to me if I disclose the fact to my mother. When my mother called him he was not coming downstairs and he told that he had not done nothing and thereafter he was taken to PS."

12. During cross examination on 26.04.2014 & 01.12.2014, PW-1 (Prosecutrix) deposed as under:-

"It is also correct that the accused was working as carpenter one day prior to the date of incidence."

XXX XXXXX XXX

"It is correct that accused Ram Lakhan was working as carpenter in our house for past one month"

13. From the perusal of the aforesaid testimonies, it is evident that there are various contradictions in the testimonies of PW-1 (Prosecutrix) and PW-2 (Mother of the prosecutrix) as well as the statements/testimonies given by the victim (PW-1) at various stages.

(a) PW-1 (Prosecutrix) while deposing under Section 164 Cr. P.C. improved upon her statement given under Section 161 Cr. P.C. and stated that 'the accused who is working as a carpenter in our house, which is under construction, came upstairs and asked me for water. I told him that there was no water' the same was not recorded in her statement recorded under Section 161 of the Cr. P.C.

(b) Further, PW-1 (Prosecutrix) during her statement recorded under Section 164 of the Cr. P.C. stated that her mother had asked her to bring some rough old clothes from 4th Floor, to the contrary during her examination in chief she deposed that 'I had gone to the fourth floor to remove the dried clothes'.

(c) Moreover, PW-2 (Mother of the prosecutrix) in her complaint Ex.PW2/A nowhere stated that she actually sent her daughter to bring the dried clothes. Further, PW-1 (Prosecutrix) during her cross-examination dated 26.04.2014 deposed that 'It is also correct that the accused was working as carpenter one day prior to the date of incident.' whereas in her cross examination by the learned defence counsel, she categorically stated that 'It is correct that the accused Ram Lakhan was working as carpenter in

our house for past one month.’ and ‘It is correct that for one month he worked, accused did not say anything to me. Voluntarily : I had also prepared tea for him.’

14. The arrest of the accused is also doubtful as PW-1 (Prosecutrix) during her examination in chief deposed that ‘When my mother called him, he was not coming downstairs and he told that he had done nothing and thereafter he was taken to PS’, however, during her cross examination she deposed that ‘It is correct that police also visited our residence and the accused was standing in the gali from where he was trying to run but was caught by the police’. PW-2 (Mother of the prosecutrix) in her examination in chief deposed that ‘I asked the accused about the incident but he did not tell anything initially but when I insisted upon to disclose about the incident he told me that he had committed the said act and what happened. Accused was given beatings by the persons of the locality. Accused was taken to PS by the public persons of the locality. The aforesaid contradictions in the testimonies of the material witnesses cast serious doubts on the veracity of prosecution story about the arrest of the respondent.
15. From the perusal of the above record, it is evident that the prosecution failed to establish the guilt of the respondent beyond reasonable doubt. The testimonies of the prosecution witnesses are not worthy of reliance and cannot form the basis of conviction. The arrest of the accused is doubtful, there are various inconsistencies in the testimonies/statements of PW-1 (Prosecutrix) as well as various

contradictions in the testimonies PW-1 (Prosecutrix) and PW-2 (Mother of the prosecutrix).

Conclusion

16. The Apex Court in ***Govindaraju @ Govinda Vs. State & Anr. (2012) 4 SCC 722***, court has discussed in detail the scope and power of the appellate court and reiterated that the presumption of innocence of an accused is reinforced by the order of acquittal. Relevant portion of the judgment reads as under:-

"11. Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence.

12. The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 Cr.P.C. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once

leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.

13. Under the scheme of the Cr.P.C., acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

17. In the case of ***State of Madhya Pradesh Vs. Dal Singh & Ors., reported at JT 2013 (8) SC 625***, the Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant material have been unjustifiably ignored, it would be a

compelling reason for interference. In the case of *Rukia Begum Vs. State of Karnataka AIR 2011 SC 1585* the Apex Court has held that in case two views are possible and the trial court has taken the view favouring acquittal, the High Court should not disturb the finding.

18. Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450*, I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the entire evidence on record. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J

APRIL 04, 2019

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