

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

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Reserved on: 2nd April 2019
Decided on: 10th April, 2019

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CRL.A. 1097/2016

GHANSHYAM

..... Appellant

Represented by: Mr. Vikas Padora and Mr.
Dipanshu Chugh, Advocates

versus

STATE

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
for the State with SI Surender,
PS Begumpur

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Ghanshyam challenges the impugned judgment dated 29th October, 2015 convicting him for offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and the order on sentence dated 2nd November 2015 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default whereof to undergo simple imprisonment for a period of six months, for offence punishable under Section 10 of POCSO Act.

2. Assailing the conviction, Learned Counsel for the appellant contends that there is no evidence on record except the statement of the victim child on whose testimony the conviction is based. He further states that there was

previous enmity between the appellant and the parents of the victim with respect to water due to which a false case has been registered against the appellant. Moreover, there is no investigation with respect to the '*kassi*' and the same has not been returned or seized. In the alternate it is prayed that the appellant be released on the period undergone.

3. Learned APP for the State on the other hand submits that the impugned judgment and order on sentence suffers from no illegality.

4. Prosecution has proved its case beyond reasonable doubt from the testimony of the victim. Prosecution case sprung from a PCR call received on 29th June 2013 at about 8:04 P.M., informing that one person was misbehaving with a girl at Sector 22, Pocket 10, House no. 25, Begumpur. Aforesaid information was recorded vide DD No.66 B (Ex.PW-2/A) and assigned to SI Rajesh. He along with Ct. Rajesh reached the spot where he met the victim aged about 10-11 years and her mother. He recorded the statement of the child victim in the presence of her mother who stated that on 29th June 2013 at about 10:00 A.M., her mother sent her to the house opposite theirs which was under construction to get a '*kassi*'. One person namely Ghanshyam (Appellant herein) was the guard on duty at the house. He used to stay there with his family but his wife and children had gone somewhere 3-4 days prior to the date of incident. When she went to House no. 51 and asked the appellant for the '*kassi*', he told her the same was kept on the first floor and she could take it from there. When she was going to the first floor to take the '*kassi*' the appellant also followed her. He caught hold of her, kissed her and pressed her chest. When he saw her panic, he left her after which she picked up the '*kassi*' and came home. In the evening she informed her mother of the incident. When her mother went to confront the

appellant regarding the same, he started fighting with her. Seeing the fight, people gathered over there and the appellant started abusing her mother after which he ran away from the spot. Aforesaid statement was recorded vide Ex.PW-4/A. On the basis of the aforesaid statement, FIR No. 206/2013 (Ex.PW-1/B) was registered at PS Begumpur for the offence punishable under Section 354 IPC.

5. SI Rajesh prepared the site plan vide Ex.PW-4/C at the instance of the victim child. He made inquiries about the whereabouts of the appellant from the neighboring people. After some time, they saw one person coming from the side of the park and the said person, on seeing the police tried to run away. On suspicion, he was apprehended and shown to the victim child and her mother who identified him as Ghanshyam. He was arrested vide arrest memo Ex.PW-4/D and his personal search was done vide Ex.PW-4/E.

6. On 30th June 2013, he called the landlord and contractor of House no. 51, Pocket 10, Sector-22, Rohini where the appellant was working as a guard and recorded their statements.

7. On 1st July 2013, the statement of the victim was recorded under Section 164 Cr.P.C. vide Ex.PW-8/B wherein she reiterated the statement on the basis of which FIR was registered.

8. SI Rajesh obtained the school certificate of the victim vide Ex.PW-3/E wherein her date of birth was mentioned as 29th September 2004.

9. After completion of investigation charge sheet was filed. Charge was framed for offences punishable under Section 354 IPC and Section 9(m) POCSO Act punishable under Section 10 POCSO Act vide order dated 20th January 2014.

10. The victim was examined as PW-4 in court. After ascertaining that

she was capable of understanding the questions put to her and was capable of giving rational answers thereof, victim child deposed in sync with her statement made to the police. In her cross-examination she stated as under

"Q. Kya jis makaan me aap kassi lene gaye the who makaan ban raha tha?"

Ans. Ha.

Q. Jis samaya ap waha gaye waha par mistri aur labour first floor par kaam kar rahi thi. Kya yeh baat sahi hai?"

Ans. Nahi.

Q. Jis makaan me aap kassi laine gaye the kya uss makaan me chowkidar ki family bhi rehti thi?"

Ans. Nahi who dusre makaan me rehte the.

Q. Kya aap chowkidar ke bachho ke saath khelne waha jate rehte the?"

Ans. Nahi.

Q. Kya aap, yah apke mummy papa pani bharne uss makaan me jate the jaha aap kassi laine gaye the?"

Ans. Nahi. Pehle ek baar gaye the tabhi mana kar diya tha.

Q. Kisne mana kiya tha?"

Ans. Chowkidar uncle ne.

Q. Kya uss samay apke mummy papa ka chowkidar Uncle se jhagda bhi hua tha?"

Ans. Nahi.

Q. Kya yeh sahi hai ki jis din ki yeh baat hai Chowkidar uncle Delhi me nahi the aur apne gaon gaye the aur shaam ko aaye the?"

Ans. Nahi who ussi makaan me the.

Q. Kya apke mummy papa ko yeh pata tha ki jis makaan me aap kassi laine gaye hai wahan par chowkidar uncle aur unki family nahi rehte?"

Ans. Unhe nahi pata tha. Kuch din ke liye Chowkidar

uncle jab gaon gaye the toh unki jagah unki bhatiji chowkidari ke liye rahi thi.

Q. Kya aap chowkidar ki ladki Neha ke saath khelne jati thi?

Ans. Nahi who hamare ghar aati thi tab me uske sath khelti thi.

Q. Aapko kitna samay laga jab aap kassi lene gaye aur wapas aaye?

Ans. Mujhe time nahi pata.

Q. Kya uss samay apko ko dhundhane waha par aaya tha?

Ans. Nahi.

Q. Aap jis makaan main kassi lene gaye the aur aapke makaan main kitni duri hai?

Ans. Pass main hi hai

Q. Kya aap wahan 2-3minute main pahuch jaate hai?

Ans. Ha.

Q. Jab aapse police uncle ne sign karwaye tab who kagaj khali the yah unn par kuch likha hua tha?

Ans. Unn par likha hua tha.

Q. Beta apke saath aisa koi bhi galatkaam chowkidar uncle ne nahi kiya that. Kya yeh baat sach hai?

Ans. Nahi, unhone aisa kiya tha.

Q. Beta aaj aap juth bol rahe ho kyunki aapke mummy papa ko Chowkidaar Uncle se jhagda hua tha aur apke mummy papa ne apko aisa karne ka bola hai?

Ans. Nahi yeh mere saath hua tha.

11. Mother of the victim was examined as PW-9 in court wherein she stated that on 29th June 2013 at about 10:00 A.M. she asked her daughter to bring a 'kassi' from the nearby house to remove the bushes and grass near her house. At about 6:00 P.M., while she was stitching clothes her daughter informed her that when she went to bring the 'kassi' from the house where

the appellant was working as a security guard, he followed her up to the first floor of the house kissed her and pressed her breast. She started weeping and immediately returned home with the 'kassi'. She did not disclose the same to her as she was afraid. When she went to confront the appellant about the incident, he started abusing her and even slapped her. When she raised an alarm, public persons came to her rescue and advised her to call the police. After hearing this the appellant escaped from there. She called the police on 100 number. They reached the spot and made enquiries from her and recorded her daughter's statement.

12. In her cross examination mother of the prosecutrix stated that there was no water meter installed in the house where she was residing. Since it was a kachhi colony, hand pumps were installed in the houses. Booster pump was installed in the house where the appellant was working as a security guard. On one occasion her husband had gone to take water from the house when the appellant informed him that the owner of the house had instructed him not to give water. She further stated that police reached her house before 6:30 P.M. They made enquiries from her and her daughter after reaching at the spot. They tried to search for the appellant for 2-3 hours and went to the police station.

13. Surender Malhotra (PW-5), owner of plot number 51 in his testimony deposed that he had given the contract of construction to one contractor Ram Swaroop who had employed the appellant as a security guard. The appellant was also working as mason in the said house

14. Ram Swaroop (PW-6), contractor in his testimony deposed that he was working as a private contractor of constructing houses. He knew the appellant as the appellant was working with him as mason and his wife was

working as labour. He had taken the contract of plastering house number 51, Pocket-10, Sector -22, Rohini through a builder. The house was owned by Surender Malhotra and his brother. The owner of the house had asked him for a security guard for his house and the appellant was ready to work as a security guard in the said house. On 29th June 2013 the appellant came back from his village after attending the engagement ceremony of his son and in the evening of the same day a quarrel ensued between the appellant and the complainant. In his cross-examination he stated that he had got his leg operated 15-20 days prior to the incident and since he was bed-ridden he did not visit the house on 29th June 2013. He was informed by his son that the appellant was present at the premises on that day. He further stated that many a times quarrels had taken place between the appellant and the parents of the victim child over the issue of taking water from the said house, prior to the incident in question.

15. Manu Yadav (PW-3), Teacher, MCD School stated that as per the school record, the victim child was admitted to school in 4th class and her date of birth was 29th September 2004. The copy of the Aadhar card of the child submitted by her mother was proved vide Ex.PW-3/A and Ex.PW-3/B.

16. Komal (DW-1), niece of the appellant in her testimony stated that at the time of the incident the appellant was not working as a security guard at Pocket 10 and was present in the village. He had gone to his village as some persons had come to see his son for marriage purpose in the village.

17. The appellant in his statement recorded under Section 313 Cr.P.C. stated that on 29th June 2013 he was not present at the house and had gone to his native village. He had been falsely implicated in the case at the instance of the mother of the victim as she used to take water from the house without

permission many times.

18. As noted the plea of the appellant is of alibi and that he was not present at the spot but at the native village at the relevant time and that there was previous enmity between the parties due to taking water from the house for which permission was not granted. To prove his plea of alibi the appellant examined his niece DW-1 who stated that on the date of alleged incident he was in the village and not at the place of occurrence. It has come in the evidence of witnesses that a quarrel ensued whereafter the mother of prosecutrix made a call to 100 number and on seeing the Police the appellant ran away. Even as per the employer of the appellant Ram Swaroop the appellant had come back in the morning on 29th June, 2013 after attending the engagement ceremony of his son and in the evening the quarrel took place. In view of the statement of the employer of the appellant, this Court does not find any substance in the plea of alibi. The second plea of the appellant is of false implication because of previous enmity. Though suggestions have been given to the victim and her mother with regard to quarrels on taking of the water, however as noted the appellant was not in town for a few days prior to the incident and had just come that very morning and therefore the earlier quarrels if any between the parties was no aggravating circumstance for the victim or her mother to have falsely implicated the appellant.

19. From the evidence of prosecution in the form of statements of victim and her mother and her immediately lodging the complaint, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt. Merely because the investigating agency did not seize the 'kassi' for which the prosecutrix had purportedly gone to the house where

appellant was employed, would not belie the otherwise cogent testimony of the prosecutrix. Thus, the impugned judgment of conviction for Ghanshyam for offence punishable under Section 10 POCSO is upheld. The punishment prescribed for offence punishable under Section 10 POCSO is minimum sentence of imprisonment for a period of 5 years which may extend to 7 years and to pay fine. Ghanshyam has been awarded the minimum sentence of imprisonment for a period of 5 years and thus the said sentence cannot be modified and the appellant cannot be released on the period undergone as prayed for.

20. Appeal is dismissed.

21. Copy of this order be sent to Superintendent Central Jail Mandoli for updation of the Jail record.

22. TCR be returned.

(MUKTA GUPTA)
JUDGE

APRIL 10, 2019

‘vj’

सत्यमेव जयते