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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL. L.P. 824/2018

Judgment reserved on: 20th March, 2019
Judgment pronounced on: 29th March, 2019

STATE (NCT OF DELHI)

....Appellant

Through: Mr. G.M. Farooqui, APP for State with SI
Raju Yadav, PS Sultanpuri.

Versus

VISHAL

....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By this petition under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter as '**Cr.P.C**'), the appellant/State seeks leave to appeal against the judgment dated 01.09.2018 passed by the learned Additional Sessions Judge, POCSO Court, North West District, Rohini Court, Delhi whereby the respondent/Vishal was acquitted of the charge under Section 12 of POCSO Act and Section 504 read with Section 506 of the Indian Penal Code, 1860 (hereinafter as '**IPC**') in FIR No.659/2013, Police Station Sultan Puri.
2. Brief facts of the case, as noticed by the learned Trial Court, are as under:-

"i. On 12.07.2013 Smt. R and Sh. M came to PS alongwith their respective daughters S and P and reported that one boy Vishal who is student of class IX in the school of victims has misbehaved with their daughters yesterday and today and also threatened to deface them with blade and acid.

ii. DD No. 25A was recorded in this regard and NGO was called to counsel the victims and their statements were recorded where they stated that they are students of class VII in govt. school D-2, Sultan Puri and on 11.07.2013, they were standing at the door of their class room when the neighbor Vishal who is in class IX came there and asked them to marry him or else he will deface them with blade and acid. When they told him that they will inform the principal then he replied “principal kya mera danda ukhad legi” then they informed this to their madam who asked them to go to the class room. After school was over, victims informed to their respective parents. Today when they came to the school then he again asked whether they want to marry him or not. They informed the principal who called the PS.

iii. On their statements DD No. 69B was recorded as accused Vishal appeared to be a juvenile. IO carried out the investigation and accused was apprehended and was produced before JJB-II. JJB conducted the age inquiry on the accused and vide order dated 10.10.2013 declared him adult as on the date of incident.

iv. Thereafter on 22.10.2013, present FIR was registered and statement of the victim P was recorded under Section 164 Cr.P.C where victim S was not traceable at that time. Accused was granted anticipatory bail on 20.11.2013.”

3. After completing the investigation, a charge sheet was filed. Charges were framed against the accused for the offence punishable under Section 12 of POCSO Act or in the alternate Section 509 read with Section 506 IPC to which he pleaded not guilty. In order to bring home the guilt of the accused persons, the prosecution has examined 5 witnesses in all.

4. Statement of the accused was recorded under Section 313 of Cr.P.C wherein he stated that a FIR bearing no. 382/2013 dated 25.06.2013 has been registered against the parents of victim (S) in which his mother is a witness and as such he has been falsely implicated in the present case at the instance of their parents. The accused lead four witnesses in his defence.
5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court acquitted the accused for the charged offences.
6. Assailing the impugned judgment, Mr. G.M. Farooqui, learned counsel for the State opened his submissions by contending that the impugned judgment dated 01.09.2018 is based on conjectures and surmises and the same is against the facts and the settled proposition of law. He further submitted that both the victims have been consistent in their testimonies and the trial court acquitted the accused on the basis of minor contradictions which do not go to the root of the case.
7. The learned APP further submitted that the trial court erred in placing reliance on the previous enmity between parents of victim S on one hand and mother and parental aunt of accused on the other hand. Mr. G.M. Farooqui, lastly submitted that the learned Trial Court erred in acquitting the accused and the impugned order should thus be set aside.
8. I have heard the learned counsel for the State and perused the available material on record.

9. The learned Trial Court has already established the age of the accused, the JJB had conducted an age inquiry of the accused and found that at the time of the incident he was a major. The prosecution has also established the age of the victim P and victim S. They were both minors at the time of the incident. So, the accused was also charged under Section 12 of POCSO Act.
10. It is a well settled law that the conviction can be done solely based upon the testimony of the victim. The same is reiterated in the case of ***State of Himachal Pradesh v. Asha Ram: AIR 2006 SC 381***, the Apex Court highlighted the importance to be given to the testimony of the prosecutrix as under in para 5:

5. ...It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should

not be a ground for throwing out an otherwise reliable prosecution case.

11. The Apex Court in ***Shivasharanappa and Ors. vs. State of Karnataka and Ors.: (2013) 5 SCC 705*** had discussed about the credibility and reliability of a child witness, it was held as hereinbelow:

“16. 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 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, applies to a child witness who is competent and whose version is reliable.”

12. In the light of the principle discussed above, I deem it appropriate to peruse the testimonies of relevant witnesses i.e. victim (S) and victim (P) during her examination in chief, victim (P) deposed as under:

Examination in chief of victim (P)

“Pehle ek bar jab mein 7th class me padati thi, meri friend Sheetal aur mein class ke gate ke pass khade the toh Vishal, jo ki 9th class me padata tha, humare pass aaya. Vishal ne kaha ki mujhse shadi karlo nahi toh mei tum par tezaab dal dunga yah blade mar dunga. Hum uski complaint karne Vice Principal madam ke paas gaye toh

unhone kaha ki uska naam aur class puch kar aao. Hum uss ladke ke paas naam aur class puchne gaye toh who bola “kyu mere sath raat gujarani hai kya aur Principal kya mere jhande ukhad legi”. Humne yeh baat Vice Principal madam ko bata di thi. Unhone kaha ki kal aayega toh kal dekhenge. Phir maine ghar aakar apne mummy papa ko sari baat bata di. Mere papa ne phone kar diya.

Dusre din mei school gayi toh usne mujhe phir tang kiya. Usne kaha ki nahi karni mujhse shadi aur usne Sheetal ka hath pakadkar usko dhakka diya. Maine Sheetal ko pakad liya nahi toh who gir jati. Hum Principal madam ke paas gaye aur sari baat bata di. Principal madam ne humare parents ko bulaya aur police ko bulaya. Phir police humme thane le gayi. Vishal ko bhi thane le gayi...”

Victim (P) during cross examination deposed as under:

“...class ke bachhe bata rahe the aur phir jab maine Sheetal se pucha toh Sheetal ne bhi bataya tha ki ‘Vishal ke har me kissi ko kamare me bandh karke mara tha, Sheetal ke gharwalo ne’.

Victim (S) during her examination in chief deposed as under:

“...11.07.2013 ko mein Pallavi ke sath school gayi thi aur apni class ke bahar khadi thi toh humare pados me rehnewala ladka Vishal, jo humare school me 9th class me padata tha, humare pass aaya. Usne mujhse aur Pallavi

se kaha ki yah toh mujhse shadi kar lo nahi toh chirra mar kar, tejab dal kar chehra bigad dunga. Jab maine aur meri friend Pallavi ne kaha ki hum uski shikayat Principal se karenge toh Vishal bola ki Principal mam kya mera danda ukhad lengi. Hum dono Principal mam ke pass gaye aur unhe sab bataya. Tab Principal mam ne kaha ki aap class mei jao. Uske baad school over hone ke baad ghar aa kar humne apne parents ko sab bataya.

Dusre din jab hum school gaye toh Vishal humme school me mila aur bola ki batao shadi karni hai yah nahi yah chirra mar kar tejab dal kar chehra bigad du. Hum phir Principal mam ke pass gaye aur unhe sab bata diya. Principal mam ne police bula li...”

During cross examination of victim (S), she deposed as under:

“...Yeh sahih ai ki mere sabhi family members ka Mithlesh aur Babita ke sath jhagada hua tha. Mujhe nahi pata ki mere parivar ke khilaf Mithlesh aur Babita ne koi case banwaya tha yah nahi. Yeh baat sahih ai ki Mithlesh aur Bbita ka meri family se jhagada present case se pehle hua tha. Yeh sahi hai ki jhagade ke baad mere papa thane gaye the. Mujhe nahi pata ki mere bhai thane gaye the yah nahi. Mujhe nahi pata ki mere mummy, papa jhagadewale case ke liye Court jate the yah nahi...”

13. From the perusal of the statements of Victim P and Victim S it appears that there are various contradictions in their testimonies. At one instance it is portrayed that the victims did not know the accused

‘Hum uski complaint karne Vice Principal madam ke paas gaye toh unhone kaha ki uska naam aur class puch kar aao’ whereas victim S stated that ‘humare pados me rehnewala ladka Vishal, jo humare school me 9th class me padata tha, humare pass aaya’, signifying that she knew the accused. At another instance victim P stated that ‘Usne kaha ki nahi karni mujhse shadi aur usne Sheetal ka hath pakadkar usko dhakka diya. Maine Sheetal ko pakad liya nahi toh who gir jati’ but this specific detail was not reiterated by victim S in her testimony rather she had stated that on the next day ‘Vishal humme school me mila aur bola ki batao shadi karni hai yah nahi yah chirra mar kar tejab dal kar chehra bigad du’.

14. Another important aspect which comes to light is the fact that on 11.07.2013 both the victims had gone home and informed their respective parents about the incident yet no action was taken. The conduct of the parents of both the victims were unnatural. Instead of informing the police or reporting the matter immediately to the Principal of the school, they chose to send their children to school on the next which appears to be unnatural conduct. It was only on the next day, after a repetition of the alleged misbehavior by the accused the police was informed. The victims in their statement had stated that Principal madam ne humare parents ko bulaya aur police ko bulaya. Phir police humme thane le gayi. Vishal ko bhi thane le gayi’ which is again contrary to the case of the prosecution, as per which the victims had gone to the police station with their parents on their own. Strangely enough the Principal and vice principal of the school who were very important witnesses in the present case were not

arrayed as witnesses. As per the testimony of both the child victims, on both the occasions, they have diligently informed the Principal and Vice principal of the school about the repeated alleged offence, but prosecution to the best of their knowledge, chose not to array them as a witness who were vital witnesses in completing the chain of events.

15. At this stage it is essential to pour some light over the statement of the accused, the relevant portion of the same is reproduced below:

“An FIR No. 382 dated 25.06.2013, PS Sultan Puri u/s 323/341/342/34 IPC has been registered against the victim S’s parents namely Om Prakash and Rajbala and my mother also sustained injuries in the said incident and stood as a witness in the said case against them. Victim P being a friend of victim S has deposed against me.

I am innocent. I have been falsely implicated in this case by the victim children at the instance of their parents. I have nothing to do with the offence of the present case. This is a false case against me.”

16. In support of the accused, DW-1/mother of the accused testified the following:

“On 24.04.2013, at about 5/6 pm, a quarrel had taken place between Babita on one side and Om Parkash, Santosh, Kala and Raj Bala (wife of Om Prakash), on other side and all the four persons namely Om Prakash, Santosh, Kala and Raj Bala, were giving beating to Babita. At that time, Om Parkash was having one danda in his hand and he was giving beating Babita with the said danda. When, I tried to intervene and to rescue Babita, who is my relative, I was also given beatings by

all the aforesaid persons and Om Prakash abused me. All the aforesaid four persons dragged Babita in the room of Om Prakash. Someone informed the police and police arrived at the spot. Police got us medically examined and recorded my statement. An FIR in this regard was registered and same is having no. 382/2013 dated 25.06.2013 u/s 323/341/342/34 IPC, PS Sultan Puri.

After registration of the FIR, Om Prakash and his relatives came to my house many time and pressurized me to withdraw the said FIR and not to depose against them in the case, otherwise they would implicate me and my family members in false criminal cases.

17. From the aforementioned testimonies it becomes established that there was some enmity between the families of the accused and victim S, a FIR 382/2013 was also registered regarding an altercation which had taken place between the family members of the parties. Keeping in view the same, one cannot disregard the possibility of false implication of the accused in the present case.
18. Averting to the facts of the case, there are many contradictions in the statements of the victim's testimony, even the principal/vice principal was not examined by the prosecution, and she has been termed as a vital witness, given both the victims had reported the alleged incident to the Principal first.
19. 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**, we 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 evidence of all the witnesses. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

MARCH 29, 2019
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