

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

CRL.A. 1174/2015

Reserved on : 01.10.2019

Date of Decision : 13.11.2019

IN THE MATTER OF:

AMIT YADAV @ RAJU

..... Appellant

Through: Mr. Pramod Kumar Dubey,
Advocate (DHCLSC), Mr. Kushank Sindhu,
Mr. Anurag Andley, Mr. Banke Bihari & Mr.
N. Singh, Advocates

versus

STATE

..... Respondent

Through: Dr. M.P. Singh, APP for State
with SI Vishvendra Singh, P.S. Mayur Vihar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present appeal is preferred under Section 374(2) Cr.P.C. by the appellant challenging the judgment on conviction dated 29.07.2015 and order on sentence dated 03.08.2015 passed by Addl. Sessions Judge, Delhi in SC No.154/13 arising out of FIR No.283/13 registered under Sections 376/323/341/506 IPC and Section 4/5(m)/6 POCSO Act at P.S. Mayur Vihar-I, Delhi.

2. The appellant was directed to undergo RI for 10 years with fine of Rs.2,000/- for the offence punishable under Section 6 of the POCSO Act. In default of payment of fine, he was directed to undergo SI for 3 months. The appellant was granted the benefit of Section 428 Cr.P.C.

3. The trial court noted the prosecution case, as under:

“1. The prosecution story as per final report under section 173 Cr. P.C runs to the effect that as on 15.08.13 one Smt. Chandana W/o. Amit Yadav (mother of the victim and wife of accused Amit Yadav) had lodged an FIR against her own husband Amit Yadav stating therein that she got married 12-13 years ago with a person named as Subhash who used to reside in village Chilla(UP) and out of the said wedlock, two children were born i.e one girl child aged about 9 years (victim herein) and one male child aged about 7 years at that time. Said Subhash expired some 6-7 years ago in a road accident as per FIR version. Thereafter she got married with the present accused i.e Amit Yadav. Things remained smooth for quite some time after re marriage with Amit Yadav. However, about 3 months prior to lodging of FIR, the accused started ill-treating the complainant and the children from her first husband. At that point of time the family shifted to village Balnasia, Greater Noida, UP in a rented accommodation and the life for a few days remained peaceful. However on 26.07.13 at about 11.00 PM, when the complainant was cleaning the utensils outside the rented house and her son namely, Rahul was playing outside, the accused along with victim was inside the room/house. The complainant when went inside the room to collect the remaining utensils for cleaning purpose, she noticed that accused i.e her second husband had overpowered the victim by putting his hand on her mouth and had put off the lower garments of the victim. The accused was trying to insert his private part into that of victim. On noticing this, the complainant immediately pushed the accused i.e her husband away and on this, the accused started giving beatings to complainant as well as victim. He also threatened them that in case they disclosed the incident to any one, he would kill the complainant and her children.

2. Next day, when accused had left for his work, the complainant along with both her children returned back to village Chilla and started residing there in a rented accommodation. After about 10-15 days, the accused also came there and felt sorry to complainant and children for his act and conduct of the alleged incident dated 26.07.13. The

complainant forgave him. Thereafter again on 13.08.13 (when the accused started residing with the complainant and children) at about 3.15 PM, (after noon) when all of them were taking a nap, the complainant all of sudden noticed that her daughter was sleeping and that accused was doing mischief with her by putting off her undergarments to the level of knee and he was touching her private parts with his toe. On noticing this and even prior to any verbal reaction from the complainant, the accused started quarreling with her and threatened while giving beatings to her that he would sell them off to some one. The accused also restrained the movements of complainant and children by confining them inside the room. The complainant and her daughter managed to escape therefrom as on 15.08.13 and lodged the present FIR. After

3. The victim was got medically examined vide MLC No. 176/13 at LBS Hospital. The accused was arrested and his disclosure statement was recorded. After the completion of the investigation, the final report was filed as on 13.11.13 for the offences as under section 376/323/341/506 IPC and Section 4/5m/6 POCSO Act. The cognizance of offence was taken vide the very order dated 13.11.13 and the due formalities of supplying the copies etc were duly complied with.”

4. After completing the investigation, a charge-sheet was filed. The charge was framed for the offences punishable under Sections 376/377 IPC and Section 6 of POCSO Act to which the appellant pleaded not guilty and claimed trial.

5. During trial, the prosecution examined 8 witnesses. The complainant, i.e. the mother of the child victim was examined as PW-2. The victim was examined as PW-3. The Doctor, who conducted the MLC was examined as PW-7. W/SI Sanyogita, the IO of the case was examined as PW-8. The prosecution also examined two independent witnesses, who were neighbors, as PW-4 & PW-6.

6. I have heard Mr. Pramod Kumar Dubey, learned counsel for the appellant as well as Dr. M.P. Singh, learned APP for the State and have also gone through the Trial Court record.

MLC

7. The MLC of the victim was recorded on 15.08.2013. The MLC of the victim was proved and exhibited by PW-7. As per the MLC, the appellant's name finds mention in the history of assault. The internal examination of the child victim was refused by her mother.

FSL

8. During investigation, the I.O. had taken samples of “*in between fingers*” of cotton wool swab, nail scrapings, breast swab, oral swab as well as urine sample however, neither blood nor semen could be detected on the source of the exhibits of the victim.

ANALYSIS

9. The child victim was examined as PW-3. On the day of reporting the incident, the victim was aged about 9 years. During trial, the appellant did not dispute the age of the child victim. It has come on record that the child victim was born out of the first marriage of her mother and the appellant was her stepfather. To appreciate the contentions of the parties, it would be profitable to reproduce the relevant portion of the child victim's statement made before the court :-

“Q. Where you used to reside with your mother and step father?”

Ans. Noida

Q. Since how long you stayed there?

Ans. From the last one year.

Q. What happened with you?

A. My father is not a good man. “woh apni susu wali cheej mere peeche tatha aage lagane ki kaushish karte the”. He did it for 20-25 times. At that time my mother used to be in the house. I used to feel pain when he used to do the same. I used to cry and he used to beat me. He also used to put his finger in my vagina and because of pain I used to cry. “Mein uchhal jati thi.”

Accused used to threaten me that in case I told about it to anyone, he will cut throat of me and my brother and put the same in the drain. Thereafter, we shifted to Chilla village. From there we went to Bistrak village at Greater Noida. One day when my mother was going to wash utensils, accused put oil on his penis and try to insert in my anus and vagina.

Next day we returned to Chilla. My mother forgave that accused but I did not forgive him. After 10-15 days he again started with me the same things. With his toe of foot he removed my underwear and tried to insert the toe in my anus and vagina.

Q. How your mother came to know about it?

Ans. One day Mummy had seen all this. At that time accused was trying to insert his penis in my vagina.”

10. During her statement, the victim identified the appellant as her stepfather. In the cross examination, she replied as under:

“Q. If accused had done “galat kaam” with you, as told by your for 20-25 times, at Chilla or Noida?

A. He did it at Chilla and NOIDA.

11. The solitary testimony of the victim, if the same inspires confidence, is sufficient to record the conviction. If the testimony is credible and inspires confidence, no corroboration is required. In State of

Himachal Pradesh vs. Manga Singh reported as **2018 SCC Online SC 2886**, Supreme Court held as under :-

“11. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts

to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contradictions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

12. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the ‘probabilities factor’ does not render it unworthy of credence. As a general rule, there is no reasons to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

12. It has been repeatedly held that “courts should find no difficulty to act on the testimony of a victim of a sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable”. Reliance is placed on the decision rendered in State of Punjab v. Gurmit Singh and Ors reported as **1996 (2) SCC 384**, which has been reaffirmed in Manga Singh (supra).

13. The child victim in all her statements, whether taken during investigation or the trial, had consistently stated that, prior to the two incidents witnessed by her mother, the appellant used to put his finger in

her vagina and because of the pain, she used to cry. She stated that “mein uchhal jati thi”. She also stated that the appellant tried to insert his penis in her vagina and anus about 20-25 times.

14. The mother of the child victim was examined as PW-2, She deposed on the lines of the testimony of PW-3. The relevant portion of her testimony is reproduced as under:

“On 26.6.13 at about 11 p.m. I was washing utensils outside my room and Rahul was playing outside the room and the victim and accused were inside the room. I went inside the room to collect the remaining utensils I saw that the accused had pressed mouth of victim and her undergarments were already removed and accused was trying to insert his penis into her vagina of my daughter i.e. victim and when I tried to rescue my daughter victim from the accused he gave beatings to victim and myself also and threatened that if I told about the incident to anyone I would be killed alongwith the victim.

On the next date accused had gone to his work and I took my children to Chilla Gaon and left them with my mother and after sometimes I started living alongwith my children on rent at the house of Subhash in Chilla Gaon. After about 10-15 days later accused came to us at Chilla Gaon and he felt sorry for the said incident and on his repeated requests I forgave him.

Thereafter on 13.8.13 at about 3.15 p.m. At this stage witness started crying and she is consoled and after about 3-4 minutes her examination is resumed. I alongwith the accused and my daughter victim were taking rest in the room and my daughter i.e. victim was sleeping. I saw the panty of victim was halfly removed and accused with toe of his foot was touching the vagina of victim and even prior to my objection he started quarrelling with us and started beating me and victim and also

threatened that he would sell myself and victim to someone and thereafter I alongwith victim were confined by the accused there.”

15. Learned counsel for the appellant contended that the child victim's testimony does not inspire confidence as there are material inconsistencies in the statements of the victim and her mother. He submitted that whereas the child victim stated that only one incident was witnessed by her mother, the mother deposed that she was witness to two incidents committed by the appellant. In support of his submission, Ld. Counsel has relied on the following portion of the cross examination of the child victim:

“Q. How many times your mother saw your father doing galat kaam with you?

A. Only once.

Q. Can you tell date or month when your father did galat kaam with you at Chilla?

A. No.”

16. A perusal of the statements made during examination-in-chief, it is seen that both the child victim as well as her mother stated that the initially the first incident witnessed by the mother happened at the house in Greater Noida and the second incident had taken place at the house in Chilla Gaon. The mother had deposed that while the first incident happened on 26.06.2013, the second incident took place on 13.08.2013. Looking at the totality of the statements of the child victim as well as the mother during the trial, the inconsistencies pointed out by the learned counsel for the petitioner are immaterial. The victim as well as her

mother have consistently stated that the mother was witness to both the incidents.

17. The fact that the child victim lived at the Greater Noida and later at Chilla Gaon is also proved by the testimony of two neighbors i.e, Satbiri and Subhash who were examined as PW-6 & PW-4 respectively. Satbiri deposed that the appellant had lived as a tenant for about 3-4 months during summer of the year 2013. She deposed that the appellant lived with his wife (mother of the victim) and two children. She also stated that they often used to quarrel and whenever she used to go to their room to intervene, she was told not to interfere as it was their personal problem. Subhash deposed that he had given a room on rent to the mother of the victim in Harijan Basti, Chilla Village at the rent of Rs.700/- per month where she used to reside with her children.

18. Learned counsel for the appellant also contended that the MLC of the victim did not corroborate her testimony as neither any injury on account of sexual act nor any injury on account of physical beatings has been mentioned. In this regard, it is relevant to note that the offence was lastly committed on 13.08.13; whereas the present FIR came to be registered on 15.08.13. The MLC was conducted on the same day. As per the prosecution case, on 13.08.13 the appellant after removing the underwear of the victim with the toe of his foot was trying to insert his toe in her anus and vagina. As such, although mother of the victim had refused the internal examination of the victim, however, since no penetration was alleged there could not have been any injury on account of sexual assault. In so far as the physical injury on account of beating is concerned, the mother of the victim had stated in the cross-examination

that the victim did not sustain any visible injury on 13.08.13. The child victim when confronted answered as under:

“Q. If you ever received any injury when accused used to do “galat kaam”?”

A. I did not receive any injury, however, I used to pain severely.”

A perusal of the MLC would show that a small abrasion on the right leg of the victim was noted in her MLC. As the FIR was registered two days after the last incident and the exhibits were collected thereafter, no blood or semen could be found on the same in the FSL examination. Even otherwise, there were no allegations of either any injury or penetration/ejaculation.

19. Learned Counsel for the appellant also contended that on 26.06.13, i.e., the first date, when the mother had witnessed the incident, the appellant was not at his house but was rather at the site at village in Bisrakh of Rudra Company. So far as this contention is concerned, it is relevant to note that the said stand was taken for the first time by the appellant at the time of recording of his statement under Section 313 Cr.P.C. Neither such suggestion was given to the child victim nor to her mother during their cross-examination. This belated stand of the appellant was clearly afterthought.

20. Lastly, it was contended that the appellant was falsely implicated by the child victim at the instance of her mother on account of frequent quarrels between them. He has referred to the suggestions given to the victim, her mother as well as to the witness Satbiri. It is relevant that when the victim was given the aforesaid suggestion, she denied that on the date of lodging the complaint there was any quarrel between her

mother and appellant because of which the appellant was falsely implicated at the instance of her mother.

21. A perusal of the testimony of the child victim would show that the appellant, despite being her step father, repeatedly sexually exploited her over a long period of time. She has given graphic details of the incidents. This Court has no doubt that the testimony of the prosecutrix supported in material points by the testimony of her mother is both credible and trustworthy.

22. In Bhardwada Bhoginbhai Hirjibhai Vs. State of Gujarat reported as **(1983) 3 SCC 217**, it was held as under:-

“11. ... On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world. Obeisance to which has perhaps become a habit presumably on account of the colonial hangover. We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the ‘probabilities factors’ does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having

levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities factor' is found to be out of tune."

23. The prosecution has successfully proved the charges under Section 376 IPC and Section 6 of the POCSO Act against the appellant. However, in terms of statement of the child victim that has come on record, the appellant is also liable to be convicted for offence punishable under Section 377/511 IPC and Section 6/18 POCSO Act. In terms of Section 222 Cr.P.C., the offence under Section 377/511 IPC being a minor offence as compared to offence under Section 377 IPC and even if no charge was framed for the same, the appellant can be convicted for the same.

24. As a consequence of the above analysis, the appeal is dismissed. Resultantly, the conviction of the appellant for the offence punishable under Section 376 and Section 6 of the POCSO Act, 2012 is upheld. The trial court while awarding the sentence, took note of Section 42 of the POCSO Act, and sentenced the appellant to undergo RI for 10 and fine of Rs. 2000/- under Section 6 of the POCSO Act only. The sentence awarded to the appellant under Section 6 of the POCSO Act is upheld. As the appellant is also liable to be convicted for the offence of attempt, he is also convicted for an offence punishable under Section 6/18 POCSO and is sentenced to undergo RI for five years along with fine of Rs.500/- in default whereof to undergo SI for 15 days. The sentences are directed to run concurrently.

25. The appellant was granted regular bail vide order dated 18.01.2019 by this Court, however, as per the nominal roll dated

11.11.2019, it is reported that the appellant did not furnish surety despite reduction of the surety amount and is still in jail.

26. In Laxmi Vs. Union of India and Ors. reported as **(2014) 4 SCC 427**, the Supreme Court while emphasizing the need for rehabilitation of the victims or their dependents held as under:-

“12. Section 357A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

13. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared “Victim Compensation Scheme” (for short “the Scheme”). As regards the victims of acid attacks, the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs.25,000/- in such scheme, the State of Rajasthan has provided for Rs.2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs. 3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.

14. We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs.3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs.2 lakhs shall be paid as expeditiously as may be possible and

positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.

15. The Chief Secretaries of the States and Administrators of the Union Territories shall take necessary steps in getting this order translated into vernacular and publicise the same appropriately for the information of public at large. List the matter on 3-12-2013.”

27. In exercise of powers conferred under Section 357A of CrPC, 1973, the Lieutenant Governor of NCT of Delhi in coordination with the Central Government approved the Delhi Victim Compensation Scheme, 2015 for providing funds for the purpose of compensation to the victim or her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The State, through Delhi State Legal Services Authority, is directed to provide compensation to the victim in accordance with the aforesaid Scheme within a period of two months from the date of passing of this judgment.

28. A certified copy of this judgment be supplied to the appellant free of costs through the concerned Jail Superintendent and a copy of the same shall also be communicated to the trial court as well as to the Member Secretary, Delhi State Legal Services Authority for information and compliance.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 13, 2019
‘dc’