

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 26.10.2018.

Date of decision : 27.11.2018

CRL.APPEAL 524/2017

CHATTU LAL

..... Appellant

Through: Ms. Aishwarya Rao, Advocate.
(DHCLSC)

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for
State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Chattu Lal vide this present appeal under Section 374(2) of the Cr.P.C., 1973 assails the impugned judgment of conviction and order on sentence dated 12.07.2016 and 26.07.2016 respectively by the Court of the Learned ASJ-01, Rohini Courts, Delhi in SC No.57962/16 in relation to FIR No.226/13, PS Bhalswa Dairy, whereby the appellant herein was convicted for the offence punishable under Section 6 of the POCSO Act, 2012 and under Section 376(2)(i)(l) of the Indian Penal Code, 1850 and who vide order on sentence dated 26.07.2016 was sentenced to Rigorous Imprisonment for a period of 15 years and a fine of Rs.5,000/- under Section 6 of the POCSO Act, 2012 and in default of payment of the fine to undergo 30

days of Simple Imprisonment. It was further ordered that in view of the sentence awarded to the convict (i.e. appellant herein) under Section 6 of the POCSO Act, 2012, no separate sentence was being awarded under Section 376(2)(i)(l) of the Indian Penal Code, 1860 to the convict with the benefit of Section 428 of the Cr.P.C., 1973 having already been granted.

2. Vide the said impugned order on sentence, a sum of Rs.3 lakhs was awarded as compensation to the victim qua which the learned Secretary, D.L.S.A, North District was directed to ensure that the amount was given to the parents of the victim within a month of the said order so that it was disbursed in a manner for the welfare and rehabilitation of the victim.

3. Notice of the appeal was issued to the State.

4. The appellant was produced pursuant to the production warrants from the Mandoli Jail. The nominal roll in terms of order dated 07.07.2018 received from the Superintendent, Central Jail-12, Mandoli Jail, Delhi indicates that as on the date 20.08.2018, the appellant had undergone five years and six days of incarceration from the period 15.08.2013 onwards and that a period of nine years and five months and eighteen days still remained to be served, with the appellant having earned a remission of six months of six days.

5. The impugned judgment indicates that the appellant has been found guilty of commission of penetrative sexual assault on the victim a girl (a special child) aged about 12 years. As per the allegations levelled in the FIR registered on the complaint of the mother of the victim on 14.08.2013 at about 11.00 AM, the victim (S) indicated to

her mother that she required a bath on which the complainant had given a bath to the victim and changed her clothes and thereafter both her daughters started playing and after some time the complainant noticed that the victim was not present in the house and she came to search for the victim and saw the victim weeping in front of the shop of the accused/convict (i.e. the appellant herein) and her legs and clothes were smeared with blood and the victim was bleeding and the accused/convict (i.e. the appellant herein) was sweeping the floor of his shop.

6. As per the prosecution version put forth through the FIR, the victim pointed out towards the accused/ convict (i.e. the appellant herein) upon which the complainant understood that the accused had committed rape on the victim and tried to escape but the members of the public apprehended him.

7. The accused/convict i.e. the appellant herein having been arrested and charge-sheeted in the instant case with the charge of allegations having been framed qua the offence punishable under Section 6 of the POCSO Act, 2012 and in the alternative under Section 376(2)(i)(1) of the Indian Penal Code, 1860 framed on 06.01.2014 to which the accused/convict (i.e. the appellant herein) pleaded not guilty, the prosecution examined 19 witnesses in support of the prosecution version.

8. The accused/ convict (i.e. appellant herein) examined DW-1 Surender in support of his plea of innocence to contend that Surender had come to the shop of the accused to purchase a bulb holder on 14.08.2013 at about 11.00 AM and he stayed there at the shop of the

accused for about 1- 1 ½ hours and nothing had happened in his presence.

9. Through the evidence led by the State as detailed in the impugned judgment, the testimonies of the witnesses examined were held to have brought forth to the effect:-

“5. PW-1 Geeta is neighbor of complainant. She testified that on listening the cries of the complainant, she came outside her house and came to know that victim was ravished by the accused who was apprehended by the public persons.

6. PW-2 father of the victim deposed that on the date of incident, he received a call from his wife that the accused committed rape upon the victim. He deposed that thereafter victim was taken to the hospital for her medical examination. He deposed that date of birth of victim is 12.06.2001 and proved her disability certificate as Ex.PW2/A.

7. PW-3 complainant deposed on the lines of her complaint. She proved her statement given to police as Ex.PW3/A and the birth certificate of her daughter/victim as Ex.PW3/1.

8. PW-4 K.D. Sharma, Official from Sub-Registrar office, Birth & Death also proved the date of birth of the victim as 12.06.2001 as per record as Ex.PW3/1 & PW4/A.

9. PW-5 HC Ram Avtar proved the FIR in question as

Ex.PW5/A, his endorsement on rukka as Ex.PW5/B and a certificate u/s 65 B of Indian Evidence Act as Ex.PW5/C.

10. PW-6 ASI Narender Kumar proved the DD No.18A which was recorded in respect of sexual assault of mentally and physically weak girl as Ex.PW6/A.

11. PW-7 Randhir Gupta deposed that he rented out the shop in question to the accused.

12. PW-8 Dr. Neeraj Chaudhary, Medical Officer, BJRM Hospital proved the medical examination of the victim as per MLC Ex.PW8/A and that of the accused as per MLC Ex.PW8/B.

13. PW-9 Indresh Kumar Mishra, Sr. Scientific Officer (Biology), FSL Rohini, Delhi examined the crime scene and proved his report as Ex.PW9/A.

14. PW-10 HC Sandeep Kumar proved the deposit of exhibits/ samples with the malkhana & FSL as Ex.PW10/A to C.

15. PW-11 SI Nand Kishore, In-charge Mobile Crime Team inspected the spot and proved his report as Ex.PW11/A.

16. PW-12 Dr. Manisha Jha, Clinical Psychologist, IHBAS, Delhi proved the social and quotient age of the victim as per her report Ex.PW12/A.

17. PW-13 Dr. Manoj Kumar, Assistant Professor of Psychiatry, IHBAS, Delhi proved the IQ level report of

the victim as Ex.PW13/A and disability certificate issued in respect of the victim as Ex.PW13/B.

18. PW-14 Dr. Shweta Sinha also proved the medical examination of the victim as per MLC Ex.PW8/A.

19. PW-15 Ct. Sandeep proved the deposit of the case property with the FSL.

20. PW-16 Ct. Parvinder Crime team photographer proved the photographs of the crime scene as Ex.PW16/1 to Ex.PW16/15 and its negatives as Ex.PW16/16.

21. PW17 ASI Sushil Kumar reached at the spot after the incident and came to know that incident was in respect of sexual assault on one minor girl.

22. PW-18 HC Chaman Singh proved the arrest, personal search and disclosure statement of the accused as Ex.PW18/B to Ex. PW18/D and also seizure of the exhibits of the accused after his medical examination as Ex.PW18/A.

23. PW19 SI Sangeeta is Investigating Officer. She recorded the statement of complainant and prepared the rukka on the basis of it as Ex.PW19/A. She arrested the accused, prepared the site plan as Ex.PW19/B, seized the clothes of the accused as per seizure memo Ex.PW19/C. She also seized the sexual assault kit and undergarments of the victim as per Ex.PW19/D and some clothes from the shop as per memo Ex.PW19/E.

She got recorded the statement of the complainant u/s 164 Cr.P.C. She collected the crime team report and photographs as well as FSL result as Ex.F-1. She also proved the clothes recovered from the shop of the accused as per Ex.P-1 to P-6.”

10. Through the statement under Section 313 of the Cr.P.C., the accused/appellant claimed that he was not present at the shop at the time of the incident and had been called there by the nephew of his landlord and the mother of the victim had called him at the spot and had started telling him that he had committed sexual assault whereupon he, the accused/convict himself had called the police at about 01.45 pm. The accused/ convict i.e. the appellant herein further contended that he is a person with a single arm (his other arm is amputated) and with this disability it was not possible to do the alleged act. The accused/convict also contended that there were no blood stains found on the capri of the victim which was seized by the Investigating Officer nor was there any medical or forensic evidence brought forth to indicate the involvement of the accused in the commission of crime and that the place of occurrence is stated to be a small shop in which the occurrence of such an incident as alleged was not possible.

11. The learned Trial Court held that the testimony of PW-4 Sh. K.D. Sharma, the Official from the Sub-Registrar Office, Births & Death brought forth the date of birth of the victim as being 12.06.2001 and that the said age of the victim was in fact not refuted by the

convict which thus established that on the date of the incident 14.08.2018, the victim was about 12 years of age and was a child in terms of the POCSO Act, 2012.

12. Ex.PW19/G indicates that vide proceedings dated 28.10.2013, it was observed by the learned MM-05 that the statement under Section 164 of the Cr.P.C. of the victim aged about 12 years could not be recorded, she being deaf and dumb and that her IQ level was very low and that her statement could not be recorded even with the aid of an interpreter and the victim was examined at IHBAS, Delhi and her case was found to be of a severe retardation. The learned Magistrate also observed vide the said proceedings Ex.PW19/G that he had tried to talk with the victim and she had not been able to give any answer to any question put by him to her.

13. The testimony of PW-12, Dr. Manisha Jha who examined the victim in respect of her IQ vide her report Ex.PW12/A had found the social age of the victim to be about 2 years and 7 months and social quotient being 22 which thus indicates that the victim had severe level of retardation in social and adoptive functioning. Ex.PW12/A thus brought forth that the victim was suffering from mental retardation and as per the disability certificate Ex.PW13/B and report Ex.PW13/A prepared by Dr. Manoj Kumar examined as PW-13, it was established that the victim was suffering from mental retardation and was physically challenged.

14. The MLC of the victim Ex.PW8/A brought forth the relevant indications on the victim as under:-

“Bleeding profusely from vagina.

Hymen torn with bleeding edges seen.

A 3 cm long perineal tear extending from fourchette mid-line posteriorly with 1.5 cm depth. 1.5 cm short of anus.

Bleeding P/V present, clots in vagina present.

Her legs stained with blood.

Undergarments inner clothing stained with blood.

Impression- sexual assault with second degree perineal tear.”

15. The learned Trial Court held to the effect that in view of the MLC Ex.PW8/A and the testimony of the mother of the victim who saw the victim in the shop of the accused/convict with blood smeared clothes it stood conclusively established that there was a sexual assault on the victim and that the medical evidence is duly supported by the version of the mother of victim. The place of the occurrence was held to be inside the shop of the accused vide the impugned judgment in view of the testimony of the complainant who found her missing daughter standing inside the shop of the accused with blood smeared clothes and the photographs of the place of the occurrence Ex.PW16/5 & Ex.PW16/6 showed that the floor of the inner portion of the shop was wet and that the same also brought forth the complicity of the accused/convict i.e. the appellant herein inasmuch as the complainant who had herself seen her daughter inside the shop of the accused and had also seen the accused washing blood stains on the floor of the shop. The learned Trial Court also observed to the effect that the evidence on record brought forth that:-

“(a) Victim was around 12 years at the time of incident.

- (b) Victim was a differently able child.*
- (c) Medical evidence proves sexual assault on victim.*
- (d) Place of occurrence was the shop of the accused.*
- (e) Testimony of complainant in respect of incident is reliable & trustworthy.*
- (f) Accused could not establish his defence.”*

16. The impugned judgment held that the testimony of the complainant i.e. the mother of the victim was trustworthy and reliable and that the allegations levelled against the appellant herein of the commission of the sexual assault on the minor mentally retarded victim (S) stood corroborated from the medical evidence adduced in the instant case.

17. The appellant through the present appeal contended that there was no material on the record tenable in the eyes of law to convict him and that the prosecution had failed to establish its version against him beyond a reasonable doubt and that he ought to have been acquitted by the learned Trial Court inasmuch as no independent witnesses were examined by the prosecution to corroborate the testimony of the prosecution witnesses. It was also contended on behalf of the appellant that the testimony of PW- 1 Geeta was based on hearsay evidence and thus not reliable and that the child was an easy prey for tutoring. It was also submitted on behalf of the appellant that the appellant through his statement under Section 313 of the Cr.P.C. had stated that he himself called the police which itself indicated that he was not guilty or else there was no occasion for him to call the police himself.

18. The appellant further contended that the learned Trial Court ought not to have ignored the testimony of DW-1 who had deposed that on 14.08.2013 at about 11.00 a.m. he went to the shop of the appellant to purchase a bulb holder and stayed at the shop for about 1-1 ½ hour but nothing took place in his presence. It was further submitted on behalf of the appellant that the evidence on record led by the prosecution did not bring forth an unbroken chain of events, leading to the commission of the offence beyond a reasonable doubt.

19. Arguments were addressed on behalf of the appellant by the learned counsel from the Delhi High Court Legal Services Committee, Ms. Aishwarya Rao, Advocate and on behalf of the State by the learned Additional Public Prosecutor, Ms. Kusum Dhalla.

20. The appellant contended that it having not been established beyond a reasonable doubt that he had committed the offence in question, he was entitled to be acquitted which was refuted on behalf of the State in view of the testimonies of the prosecution witnesses on the record.

21. On a consideration of the submissions made on behalf of either side and the Trial Court Record and the testimony of the prosecution witnesses examined, it is held that the evidence produced by the State in the form of the testimony of the complainant PW-3 i.e. the mother of the minor victim (S), the identification of the accused/convict by the mother of the victim on the basis of the pointing out of the accused by the victim at the time when the mother of the victim found her in the shop of the accused with her legs & clothes were smeared with blood and the victim was bleeding and the accused/convict i.e. the

appellant herein was found washing the blood scattered on the floor of the room coupled with the medical evidence adduced vide the MLC Ex.PW8/A and the testimony of PW-14 Dr. Shweta Sinha who identified the observations on the said MLC Ex.PW8/A to be of Dr. Kanika Sachdeva with her signatures thereof, details of which MLC have already been reproduced hereinabove, coupled with the crime team report Ex.PW1/A which indicates corroborates of the testimony of the mother of the victim that the shop of the accused had been washed and cleaned by water on the date 14.08.2013 when the examination was conducted between 4.50 p.m. to 5.45 p.m., coupled with the factum that the clothes of the victim were smeared with blood, the factum of the incident of commission of rape on the mentally retarded minor child with severe retardation as committed by the accused/convict i.e. the appellant herein stands conclusively established through the Trial Court Record.

22. There is nothing on the record in support of the plea of innocence of the appellant that he was falsely implicated due to any dispute with the father of the victim in relation to a monetary transaction. The testimony of DW-1 produced by the accused/convict i.e. the appellant herein has also rightly been rejected by the learned Trial Court inasmuch as he himself stated that he did not remember what the day of the week it was and that he had a very short memory and that he could not tell his own date of birth, date of his marriage and that thus as rightly observed by the learned Trial Court his testimony dated 27.04.2016 which brought forth the date of the incident as being 14.08.2013 apparently was not trustworthy.

23. There being thus no infirmity in the impugned verdict of the learned Trial Court, the conviction of the accused/convict i.e. the appellant herein in terms of Section 5(m) of the POCSO Act, 2012 inasmuch as he has committed penetrative sexual assault on a child below the age of 12 years which thus falls within the ambit of aggravated penetrative assault in terms of Section 6 of the said enactment and thus, the conviction of the appellant falls appropriately under Section 6 of the POCSO Act, 2012 which provides as follows:-

“6. Punishment for aggravated penetrative sexual assault.—Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

24. The order on sentence qua the same, sentencing the appellant to Rigorous Imprisonment for a period of 15 years and a fine of Rs.5,000/- under Section 6 of the POCSO Act, 2012 and in default of payment of the fine to undergo 30 days of Simple Imprisonment is upheld as the appellant merits no leniency.

25. In view of conviction under Section 6 of the POCSO Act, 2012 read with Section 376(2)(i)(1) of the Indian Penal Code, 1860, inasmuch as Section 376(2)(i)(1) of the Indian Penal Code, 1860, provides as follows:-

“376. Punishment for rape.---(1) Whoever, except in the cases provided for in sub-section (2), commits rape,

shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,--

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

(f) -----

(g) -----

(h) -----

(i) commits rape, on a woman when she is under sixteen years of age; or

(j) -----

(k) -----

(l) commits rape on a woman suffering from mental or physical disability; or

(m) -----

(n) -----,

the learned Trial Court has rightly confined the sentence to the offence punishable under Section 6 of the POCSO Act, 2012.

26. Qua the compensation of Rs. 3 lakhs ordered by the learned Trial Court to be paid by the D.L.S.A., the report of the D.L.S.A. is

directed to be submitted to this Court within a period of one month of this judgment.

27. However, in terms of the verdict of Supreme Court in *Phul Singh Vs. State of Haryana* in *Criminal Appeal No. 506/1979 decided on 10.09.1979* and directions laid down by us in *Sanjay vs. State 2017 III AD (Delhi) 24*, dated 20.02.2017 so that the “*carceral period reforms the convict*” it is essential that the following directives detailed hereunder are given qua the remaining sentence of imprisonment so that the sentence acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation.

28. The concerned Superintendent at the Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible:

- **appropriate correctional courses through meditational therapy;**
- **educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;**
- **shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent,**
- **ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti – social groups, agencies of moral hazards (like gambling dens, drinking places and**

brothels) and with demoralised and deprived persons;

- **adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;**
- **conducting of Psychometric tests to measure the reformation taking place and;**
- **that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.**

29. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent of the jail concerned to this Court where the appellant is lodged till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

30. The appeal and the prayer seeking reduction of sentence are both declined.

31. Copy of this judgment be also sent to the Principal Secretary, Delhi State Legal Services Authority, through a Special Messenger for the said compliance and be also sent to the Superintendent, Mandoli Jail, Tihar Jail, for being handed over and explained to the appellant, the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions.

32. The Trial Court Record be returned with the certified copy of this judgment.

ANU MALHOTRA, J

NOVEMBER 27th, 2018/NC/MK