

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

CRL.A.1261/2015

Reserved on : 10.01.2020

Date of Decision : 23.01.2020

IN THE MATTER OF:

+ **CRL.A. 1261/2015**

SUDARSHAN MISHRA Appellant

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC).

Versus

STATE Respondent

Through: Ms. Manjeet Arya, APP for State
with SI Rajbir Singh & Inspector
Jaspal Singh, P.S. Mangol Puri.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By way of the present appeal, the appellant has assailed the judgment of conviction dated 23.03.2015 and order on sentence dated 25.03.2015 by which the appellant has been convicted and sentenced in FIR No. 521/2013 registered under Sections 376(2)(f)/506/511 IPC and 6/18/8 of POCSO Act, P.S. Mangol Puri, Delhi.

2. The appellant was sentenced as under:-

(i) For the offence u/s 10 of POCSO Act, the convict Sudarshan Mishra is sentenced to Rigorous Imprisonment for a period of 5 years alongwith fine of Rs. 10,000/- in default of payment of fine, further SI for a period of 3 months;

(ii) For the offence u/s 6 r/w Section 18 of POCSO Act, the convict Sudarshan Mishra is sentenced to Rigorous

imprisonment for a period of 7 years alongwith fine of Rs.20,000/-, in default of payment of fine, further SI for a period of 6 months.

(iii) For the offence u/s 506 IPC, the convict Sudarshan Mishra is sentenced to Rigorous Imprisonment for a period of 2 years.

3. The brief facts as noted by the trial court are as under:-

“The facts of the case, as borne out from the record are that on 29.08.2013, at about 2.40 PM child victim K, alongwith her mother went to PS Mangolpuri with the complaint of repeated sexual harassment and sexual assault, committed against her by her own father, who is accused in this case. Considering the sensitivity of the matter, SHO, PS Mangolpuri summoned Smt.Radha Bhardwaj, Member of an NGO dealing in the welfare of children and asked her to counsel the child victim and her mother. After her counselling, the child victim made her statement to 10 SI Khusboo Yadav, wherein she stated that at that time, she was residing at house No.F-2/287, Mangolpuri, Delhi belonging to her maternal grandfather, however, about 10 days prior to the said date, she had been residing with the accused, her mother and two brothers in House No.G-29, Mangolpuri, Delhi. She was a student of class 8th. Her father after getting drunk used to sexually assault her by fondling with her private parts and after doing so, used to criminally intimidate her not to tell about the same to her mother, else he would liquidate her. Out of fear, she did not tell about all this to her mother. On 25.07.2013, her father came to her bed, de-robed her and started fondling with her private parts, when she tried to scream, he smothered her with a pillow and tried to insert his penis into her vagina. She bit his hand as a consequence whereof, her father left her. A week thereafter once again her father tried to commit similar act upon her, but in the meantime, her mother reached home and his father set aside himself. At that time, she told all the previous attempts of her father of sexual assault to her mother. Her mother tried to make her father understand not to repeat such acts, but

in vain. Thereafter, she was taken to the PS by her mother.

4. After completing investigation, the charge-sheet was filed and on 10.02.2014, the trial court framed charges under Section 10 and 6 read with Section 18 of POCSO Act as well as under Section 506 IPC. The appellant pleaded not guilty and claimed trial.

5. The prosecution in support of his case, examined 13 witnesses. The material witnesses who were examined were the child victim, her mother and maternal grandfather.

6. I have heard Mr. Harsh Prabhakar, learned counsel for the appellant as well as Ms. Manjeet Arya, learned APP for the State and have also gone through the trial court records.

7. The child victim was examined as PW-3. She testified that she was residing with her parents alongwith her two minor siblings. At the relevant time she was a student of 9th standard. She stated that the appellant (who is the father of the child victim), under the influence of alcohol used to touch her breast and private parts. He also used to threaten her to not to disclose of his acts to anyone. On 25.07.2013, the appellant came to her bed and started molesting her. He removed her clothes. She tried to call her mother but the appellant put a pillow on her face. She further stated that thereafter, *“Papa ne apni pishab ki jagah meri pishab karne ki jagah me dalne ki kaushish karne lage toh maine dant se unhe katt liya”*. The appellant went away by threatening her to not to disclose to anyone else he would kill her and her mother. After about one week, the appellant put her on the bed and removed her pant and lied on her. At that time, her mother who had gone to market, came back and saw the incident. She told her mother about the past incidents

as well. The appellant was confronted by the mother but he refused to admit his guilt. The next day, she was sent to her maternal grandmother's house. She proved her statement recorded by the I.O. & the learned M.M as Ex.PW-3/A and Ex.PW-3/B respectively. In the cross-examination, she was asked about the size of the room, to which she replied that it was a small room with a kitchen and common bathroom. She denied the suggestion that she had testified at the instance of her mother.

8. The mother of the child victim was examined as PW-4. She testified that she has two sons and one daughter (child victim). She stated that though earlier she was working, but at the time of the incident, she was not employed. One day, she had gone to purchase vegetables and when she came back she saw that the appellant was lying on her daughter on the bed. He had removed her pant and had put his hand on her mouth. On seeing her, he went out. The child victim told her about the previous sexual assaults committed by the appellant in the night of 25.07.2013. She also told her about the tooth bite as well as the threats given by the appellant to her. On the next day, she sent her daughter to her mother's house. The appellant gave beatings to her. On the day after Janmastami, she called her father and told him about the acts of the appellant and later went to the police station along with her daughter to lodge the present FIR. In her cross-examination, she stated that the premises comprised of one kitchen, bathroom and a small room. She admitted that she had not witnessed any misbehaviour of the appellant prior to 25.07.2013. She also stated that earlier the child victim had not disclosed about any trouble by the appellant. She denied the suggestion that the FIR was lodged at the instance of her father, as she wanted to teach a lesson to the appellant. She denied the suggestion that she was having an affair with

one Indal, a vegetable vendor. She also stated that she refused the internal medical examination of the victim as no rape was committed and refused keeping in mind the future prospects of her daughter.

9. The maternal grandfather of the child victim was examined as PW-6. He testified that 8 to 10 days prior to Janmastami, her daughter informed him about the sexual assault committed by the appellant on the child victim. Thereafter, the child victim had stayed at his house. In cross-examination, he denied the suggestion that her daughter had an affair with a neighbour on account of which there were frequent quarrels between his daughter and the appellant.

10. Ms. Parveen Tandon, the Principal of the Primary School attended by the child victim was examined as PW-1. She produced the documents on record relating to the date of birth of the child victim which were exhibited as Ex.PW-1/A to Ex.PW-1/C. As per the school records, the date of the birth of the child victim was 01.01.2000. The witness was not cross-examined.

11. Dr. Sarika (PW-9) proved the MLC of the child victim as Ex.PW-4/A. Dr. Sunny (PW-10) proved the MLC of the appellant. Dr. Shankar Gupta (PW-12) proved the opinion on the MLC of the appellant that there was nothing to suggest that he was not capable of performing sexual intercourse.

12. Learned M.M. who recorded the statement of the child victim under Section 164 Cr.P.C. was examined as PW-11. Ms. Radha Bhardwaj, the Counsellor from the NGO was examined as PW-5.

13. Learned counsel for the appellant contended that the testimony of the child victim is not reliable, as there have been not only material

inconsistencies between various statements, but also marked improvements which include mentioning name of grandfather in the subsequent statements. It was further contended that though the child victim has used the word '*palang*' (bed) in her testimony however, in cross-examination, the child victim admitted that it was a small room where there was no bed and everyone used to sleep on the floor on a bedding or a *chatai* (mat). It was further contended that whereas in the *Rukka/tehrir* it was mentioned that the appellant was committing the sexual assault for the last one month, however in her subsequent statement, it was stated that the same was committed for about two months prior to lodging of the FIR. Lastly, it was contended that the *tehrir* as well as the report of the CWC mentioned that a statement was also given to the NGO however, the same was never produced on record.

14. The appellant has not disputed the age of the child victim, who was about 13 years of age at the relevant time. Her date of birth was duly proved by Ms. Parveen Tandon, Principal of the Primary School.

15. The appellant in his statement recorded under Section 313 Cr.P.C took the defence that he was falsely implicated by the mother of the child victim in connivance with her father to grab the appellant's ancestral property in his native village in Bihar.

16. The testimony of the child victim with respect to the incident dated 25.07.2013 as well as the subsequent incident is consistent qua her earlier statement given to the police as well as her statement recorded under Section 164 Cr.P.C.

17. In Dattu Ramrao Sakhare v. State of Maharashtra reported as (1997) 5 SCC 341, the Supreme Court held that conviction on the sole

evidence of the child witness is permissible, if the witness is found competent and the testimony is trustworthy. Similarly, in State of Rajasthan v Om Prakash reported as (2002) 5 SCC 745 while reversing the decision the High Court and upholding the conviction of the appellant held:-

“13. The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is a well-settled proposition. In State of Punjab v. Gurmit Singh reported as (1996) 2 SCC 384, referring to State of Maharashtra v. Chandraprakash Kewalchand Jain reported as (1990) 1 SCC 550 this Court held that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person’s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. It has also been observed in the said decision by Dr Justice A.S. Anand (as His Lordship then was), speaking for the Court that the inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act 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. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.

14. In State of H.P. v. Gian Chand reported as (2001) 6 SCC 71 Justice Lahoti speaking for the Bench observed that the court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on

though there may be other witnesses available who could have been examined but were not examined”.

18. Similarly, in State of H.P. v. Sanjay Kumar reported as (2017) 2 SCC 51, while relying on the testimony of a child witness to restore the conviction, the following observations were made:-

“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P). Notwithstanding this legal position, in

the instant case, we even find enough corroborative material as well, which is discussed hereinabove”.

19. Recently, this Court in Mahinder & Another v. State (NCT of Delhi) reported as **(2019) SCC OnLine Del 9548** held as follow:-

“20 It is well settled that in a case of rape, the finding of guilt can be recorded even on the basis of uncorroborated testimony of the prosecutrix provided it is cogent and Court in Vijay@Chinee v. State of Madhya Pradesh reported as (2010) 8 SCC 191 and Rajinder @ Raju v. State of H.P. reported as (2009) 16 SCC 69”.

20. So far as the contention of the learned counsel for the appellant for non production of statement made to the NGO is concerned, it is relevant to note that no suggestion/question to that effect was either put to the IO or to Ms. Radha Bhardwaj, the NGO Counsellor during their cross-examination. The next contention of learned counsel for the appellant that the use of the word ‘*palang*’ in the child victim’s testimony makes it unbelievable, is without any merit. The child victim is about 13 years of age and merely the use of word ‘*palang*’ instead of bedding does not make the entire statement unbelievable. For the same reason, I do not find any merit in the contention that the child victim had stated that the sexual assault was committed by the appellant two months prior to the lodging of the FIR whereas the *tehrir*/CWC report mentioned the above period as one month.

21. Lastly, learned counsel for the appellant contended that the appellant has been falsely implicated in this case on account of the grudge bore by the mother of the child victim. In this regard, he has placed reliance on the decision in the case of Atender Yadav v. State Govt. of NCT of Delhi reported as **2013 SCC OnLine Del 4322**, where it was observed that the child witness can be easily swayed away and is

prone to tutoring by either of the parents particularly when there is a serious hostility between the husband and wife. A perusal of the decision in the captioned case would show that the testimony of the child witness was disbelieved as there were material contradictions in the statement of the mother of the child against him. In her examination-in-chief, she had stated that the daughter was 9 years old who had told her that after the accused had sexual intercourse with her, she had started having periods. However, in the cross-examination, she contradicted her above statement and also as per the MLC, the prosecutrix was menstruating prior to the incident of sexual intercourse. Even the statement of the prosecutrix was found to be false with respect to her school attendance record. It was further observed that the MLC of the prosecutrix did not support her statement. For the aforesaid reasons, the decision in the captioned case is not applicable in the facts and circumstances of the present case.

22. The testimony of a child witness has to be evaluated carefully as the same is susceptible to tutoring [Ref: State of Madhya Pradesh v. Ramesh reported as **(2011) 4 SCC 786** and Ranjeet Kumar Ram v. State of Bihar reported as **2015 SCC OnLine SC 500**]. In the present case, although suggestions have been given that on account of dispute with the mother, the appellant has been falsely implicated but perusal of the various statements of the child victim show that her narration of events in all her statements with respect to the incident dated 25.07.2013 is clear, cogent and consistent. In all her statements, she stated that the appellant had removed her pant and attempted to put his penis in her private part. The second incident occurred while the mother of the child victim had gone to the market, when the appellant made the child victim lie and after removing her pant lay upon her. The mother of the child victim

returned in the meantime and saw the appellant lying on the child victim. The child victim has also explained the reason of not disclosing the incident of 25.07.2013 to her mother till the second incident occurred as she was threatened by the appellant. On a whole, I am of the opinion that the child victim was a competent witness and her testimony is cogent, consistent and reliable. She has consistently stated about both the incidents. There is no inconsistency or improvement with respect to the incident.

23. The Appellant's conviction and sentence is upheld. Consequently, the appeal, devoid of merits, is dismissed.

24. As per the nominal roll, the appellant has already been released on completion of his sentence on 27.07.2019. However, he is stated to have been re-admitted to jail on 31.10.2019 in another FIR.

25. Section 357A provides for victim compensation scheme and reads as follows:

"1. Every State Government in co-ordination with the Central Government shall prepare 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.

2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to

be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.”

26. In the case of Ankush Shivaji Gaikwad v State of Maharashtra reported as **(2013) 6 SCC 770**, the Supreme Court re-emphasized that Section 357A, confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case.

27. In exercise of the powers conferred under Section 357A of CrPC, 1973, the government of NCT of Delhi in compliance with the directions given by Supreme Court in W.P (C) No. 565/2012 titled Nipun Saxena vs Union of India, approved the Delhi Victim Compensation Scheme, 2018 for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss of life or injury as a result of the crime.

28. The victim is directed to approach Delhi State Legal Services Authority who shall consider the case in accordance with the aforesaid Scheme and provide compensation to the victim, preferably within a period of two months from the date of passing of this judgment.

29. A copy of this judgment be communicated to the trial court as well as to the Member Secretary, Delhi State Legal Services Authority for information and compliance. A copy of this order be also provided to the appellant through Jail Superintendent at no cost.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 23, 2020
p'ma

