



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

% **Reserved on: July 12, 2023**

Pronounced on: September 11, 2023

+ **CRL.L.P. 680/2019**

STATE

..... Petitioner

Through: Mr. Tarang Srivastava, Additional
Public Prosecutor

Versus

SUNIL & ORS.

.....Respondents

Through: Advocate (appearance not given) with
respondent Nos.1 & 3 (respondent
No.2 since deceased)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition seeking leave to appeal under Section 378 Cr.P.C. has been filed against the impugned judgment dated 07.08.2019 passed by learned trial Court in FIR No.994/2014, registered at police station Aman Vihar, Delhi for the offences Sections 363/376/366/368/506/34 IPC and Sections 4/21 of the Prevention of Children from Sexual Offences Act, 2012 (henceforth referred to as the "POCSO Act"), whereby respondents-accused have been acquitted by the learned trial court giving benefit of doubt.

2. During the pendency of the present appeal, this Court was informed



that respondent No.2- Saroj has passed away. On the directions of this Court, petitioner-State verified the factum of death of respondent No.2 and vide status report dated 01.08.2023, Death Certificate of respondent No.2 has been placed on record, wherein it is recorded that she passed away on 05.05.2021. In this view of the fact, vide order dated 02.03.2023, the present appeal against respondent No.2 stood abated and the present petition was heard qua respondents No.1 & 3 only.

3. The facts giving rise to the present petition are that on 13.09.2014, brother of the victim girl registered a complaint regarding missing of his sister aged 12 years since 04.09.2014. The complainant apprehended that one Mohan Chauhan had kidnapped her. On his complaint, FIR in question was registered. On 01.10.2014, the victim girl was brought to the Police Station Sultanpuri, Delhi where she reported that some wrong act had been committed upon her. The victim girl was taken for medical examination where she narrated that she was sexually assaulted by one Sunil repeatedly from 04.09.2014 till 30.09.2014.

4. The statement of victim under Section 161 Cr.P.C. was recorded by the police wherein she stated that she was scolded by her brother and sister-in-law on 04.09.2014. She left the house and reached railway line Sultanpuri where respondent No.1 accused Sunil met her and took her to the nearby park and established physical relations with her. Thereafter, he brought her to his house where his parents and two brothers were also living and she stayed there for a month. The victim alleged that respondent No.1 established physical relations with her everyday and threatened to kill her in case she tried to escape. However, on 01.10.2014 she was brought to the



police station Sultanpuri, where her statement was recorded wherein she stated that a day previous thereto, she had gathered courage to escape and met some police persons on the way, who brought her to the police station.

5. On the complaint of the victim, respondent No.1- accused was arrested and medically examined. Statement of victim under Section 164 Cr.P.C. was recorded wherein victim alleged that respondent No.1- Sunil kept her in his house for a month and forcibly made physically relations with her.

6. After completion of investigation, charge sheet was filed in the trial court. The charges for the offence punishable under Section 21 of the POCSO Act, was framed against respondents/accused No. 2 & 3, i.e. Saroj and Jagdish, who are the parents of respondent/accused No.1-Sunil. Charge for the offence punishable u/s 363/366/368/506 IPC and 6 POCSO Act and in the alternative Section 376(2)(n) IPC, were framed against the accused respondent No.1.

7. In support of its case, the prosecution has examined as many as fourteen witnesses. Statement of accused under Section 313 Cr.P.C. was recorded wherein they pleaded not guilty and examined four witnesses in their defence. The learned court of Sessions, considering the testimony of the witnesses and on the basis of the material placed before the court held that the prosecution had failed to prove the guilt of accused beyond reasonable doubt. Hence, all the accused were acquitted by giving benefit of doubt. It is against the aforesaid acquittal, the present petition seeking leave to appeal against the impugned judgment has been filed by the appellant-State.



8. While seeking leave to appeal, learned Additional Public Prosecutor appearing on behalf of petitioner-State submitted that the impugned judgment dated 07.08.2019 passed by the learned trial court is bad in law, as the accused persons have been acquitted despite ample material on record to establish the offences they have been charged with.

9. Learned Additional Public Prosecutor for State next submitted that the testimony of the prosecutrix has been consistent before the learned Magistrate as well as learned trial court, which required no corroboration and the DNA report amply proves the guilt of respondents/accused. Therefore, the material placed before the court is sufficient to prove the guilt of respondents-accused and the present petition seeking leave to appeal against the impugned judgment deserves to be allowed.

10. To the contrary, learned counsel for respondent Nos.1 to 3 submitted that the impugned judgment passed by the learned trial Court is well merited and calls for no interference by this Court.

11. Upon hearing learned counsel for parties and on perusal of impugned judgment, testimony of witnesses recorded before the learned trial Court and the other material placed on record, we find that on the complaint of brother of the victim the FIR in question was registered and according to him the victim was 12 years of age at the time of alleged incident. To prove the age of the victim, though certificate issued by the school was brought on record, but no witness was examined to prove this certificate. Also, in the certificate the victim's date of birth is mentioned as 03.07.2002, and also it is mentioned that no documentary proof of the age of the victim was submitted at the time of her admission. Further, the victim in her statement recorded



under Section 164 Cr.P.C. stated that she was 17 years of age and during her examination before the trial court, she told that she was 19 years of age. The prosecution has not placed any document on record to bring forth the correct age of the prosecutrix nor examined any witness in support thereof.

12. Further, the victim has deposed that accused-Sunil had made relations thrice with her in the DC Park and also stated that there were public persons in the park, but she neither raised any alarm nor any public person noticed it, which is highly unbelievable. Also, the prosecutrix in her cross-examination has very categorically admitted to have followed whatever accused-Sunil asked her to do.

13. The prosecutrix in her cross-examination has also admitted that the house had two main doors and the windows and ventilators equivalent to her height, yet she did not trigger any voice nor stated to have made efforts to escape from there, instead she seems to have willingly continued to live in the house of accused for 27 days.

14. Even though the DNA examination report (Ex. PW3/A) has been proved by Ms. Shashi Bal, Senior Scientific Officer, FSL Rohini, which established that the respondent-accused had established relations with prosecutrix, however, from the facts and circumstances of this case, it cannot be said that prosecutrix was forced by respondent No.1-accused to make relations with him.

15. The complaint (PW-8), brother of prosecutrix, in his evidence stated before the trial court that he suspected that one Mohit Chauhan had kidnapped his sister. This witness in his complaint dated 13.09.2014 (EX. PW8/A) had stated that *even on earlier two occasions also the prosecutrix*



had left the house and returned in two days. The complainant was not aware that the prosecutrix had been with accused-Sunil for all the days she was not traceable. The behaviour of prosecutrix speaks a volume about her conduct.

16. The respondents-accused examined four witnesses in their support, DW-1 is the maternal grandmother; DW-2 is the sister (*dharm ki behn*); DW-3 is the maternal grandfather of respondent No.1-Sunil; and DW-4 is the sister-in-law (*devrani*) of respondent No.2-Saroj, who all have stated that the prosecutrix had visited them in the native village of Sunil claiming to be his wife.

17. There is no doubt to the legal position that testimony of prosecutrix alone is sufficient to bring home the guilt of an accused for committing offence under Section 376 of the IPC, however, before arriving at a just decision, the Court has also to consider the overall facts and circumstances of the case. In the present case, the prosecution has failed to bring on record the exact age of the prosecutrix or that the respondent No.1-accused had forcibly made relations with her.

18. It is important to note that in the FIR in question, the age of the prosecutrix is mentioned as 12 years; as per certificate issued by the school her date of birth is 03.07.2002, however, no witness has been examined by the prosecution to prove the same. Admittedly, the age mentioned by the prosecution is based upon no document. Further, the prosecutrix in her statement recorded under Section 164 Cr.P.C. stated that she was 17 years old and before the trial court during her examination she stated that she was 19 years of age. In the present case false accusation against respondents cannot be ruled out.



19. In the light of above, this Court is of the opinion that the learned trial court has rightly held that the prosecution has failed to prove guilt of the accused beyond reasonable doubts.

20. Finding no error in the impugned judgment dated 07.08.2019, the present petition seeking leave to appeal is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 11, 2023

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