

\$-

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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL. A. No. 115 of 2017**

Between:-

STATE (NCT OF DELHI)

.....APPELLANT

*(Through: Mr. Pradeep Gahlot, Additional Public Prosecutor
for the State)*

AND

**SAGAR
S/O SH. SANJAY SINGH
R/O N-17CI 299, F-BLOCK,
JJ COLONY, WAZIRPUR,
DELHI**

.....RESPONDENT

(Through: Ms. Kritika Vats, Advocate)

%

Pronounced on : 18.01.2023

J U D G M E N T

1. The instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, "Cr.P.C.") is directed against the order dated 22.05.2015 passed in Sessions Case No.118/2013 by the learned Additional Sessions Judge - 01, North-West, Rohini Courts, New Delhi, acquitting the accused/respondent in a case arising out of FIR No. 137/2013 under Section 354/354/354B/451 of the Indian Penal Code, 1860 (hereinafter referred to as, "IPC") registered at Police Station Bharat Nagar, New Delhi.

2. Learned counsel appearing for the appellant/State states that the impugned order passed by the Learned Additional Session Judge (hereinafter referred to as, 'learned ASJ') is perverse, palpably wrong, manifestly erroneous, and is based upon misreading evidence and is demonstrably not sustainable in the eyes of law. Further, it is against the basic provision of law. He further submits that the order of learned ASJ is based on conjectures and surmises and thus cannot stand the scrutiny of law and hence, deserves to be quashed.

3. Learned counsel appearing on behalf of the respondent, on the other hand, opposed the prayer and submits that the learned trial court has rightly concluded that the prosecution has failed to prove its case beyond reasonable doubt. According to him, the reasoning given by the learned trial court for the acquittal of the respondent is based on the sound legal principle that the accused cannot be convicted unless the prosecution proves the case beyond any reasonable doubt. In the instant case, he submits that the respondent has been falsely implicated in the case and there is no reason to believe the prosecution story.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The case of the prosecution is that on 15.05.2013, child victim 'K', aged about 16 years, approached Police Station Bharat Nagar and got her statement recorded. On 25.04.2013, at about 9:15 AM, she was alone inside her house, when the accused, who is her brother-in-law (*Jija*) came there and started molesting her. He tore her clothes and held her by her hand. On her shouting, her younger brother Sunil came to her rescue, thereafter, the accused ran away. On the basis of the aforesaid statement of the child victim 'K', the instant FIR was registered. The matter was entrusted to the Investigating Officer

(hereinafter referred to as, "IO"), namely, ASI Om Pal Singh. Thereafter, IO went to the spot along with the child victim 'K', prepared the site plan and took into possession the clothes of the child victim 'K', worn by her on the date of the incident. Subsequently, the IO collected the photographs of the child victim 'K', showing injuries on her body and also collected her age proof from her school. Thereafter, the accused was arrested on 20.05.2013. On 25.06.2013, the statement of the child victim 'K' under Section 164 of the Cr.P.C. got recorded. After the completion of the investigation, the chargesheet was filed. After hearing arguments on the point of charge, *vide* order dated 24.09.2013, charges under Section 451 of the IPC, read with Section 7 of Prevention of Children from Sexual Offences Act, 2012, punishable under Section 8, 11 (ii) & 12 of the Act alternatively under Sections 354/354-A/354-B of the IPC were framed against the accused.

6. Respondent/accused pleaded not guilty and claimed trial. The prosecution has examined nine witnesses to prove its case. After the closure of the prosecution evidence, the statement of the respondent/accused under Section 313 of the Cr.P.C. was recorded. The list of prosecution witnesses is as under: -

SR.NO.	NAME	ROLE OF THE WITNESS
PW-1	HC. VEER SINGH	HEAD CONSTABLE
PW-2	MS. SHEFALI BARNAL TANDON	LD. MM
PW-3	DR. MOHIT TIWARI	DOCTOR
PW-4	SI PUNEET GREWAL	DOCTOR
PW-5	CT. NARPAT	CONSTABLE
PW-6	CT. SANJEEV	CONSTABLE
PW-7	KOMAL	VICTIM
PW-8	SUNIL	BROTHER OF VICTIM
PW-9	ASI OM PAL SINGH	ASSISTANT SUB- INSPECTOR

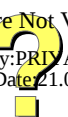
7. Learned ASJ after taking into consideration the entire material available on record, acquitted the respondents/accused.

8. PW-9 who was the IO of the case stated in his deposition that on 25.04.2013, on entrustment of DD No. 14-A Ex. PW-9/A regarding a quarrel at jhuggi No. F-323, opposite Kanhaiya Nagar Metro Station, Wazirpur, J.J. Colony, he along with PW-4 PSI Puneet went to the spot and found a big crowd of public persons present there and one boy, namely, accused Sagar, amongst the crowd was shouting loudly towards the child victim, "*jaise mein teri behein ko lekar gaya hu, waise tujhe bhi lekar jaunga*". He further stated that the child victim had refused to give her statement as she was nervous, perplexed and continuously weeping and, thereafter, on the directions of the SHO, he booked accused Sagar in a *Kalandra* under Sections 107/151 of the Cr.P.C., a copy of which was proved as Ex. PW-9/B. He further deposed the medical examination of the child victim as well as of the accused at BJRM Hospital. He further deposed that on 15.05.2013, the child victim herself appeared before the SHO and informed him that she wanted to give her statement regarding the incident of 25.04.2013. As per the directions of SHO, she recorded her statement Ex. PW-7/A. On the basis of her statement, he made his endorsement Ex. PW-9/C and got the FIR of the present case registered through the Duty Officer. He further deposed about the preparation of the site plan Ex. PW-7/D at the instance of the child victim, the seizure of the torn T-shirt Ex. P-1 of child victim *vide* seizure memo Ex. PW-7/C. He also states the facts regarding recording of the statement of Sh. Sunil the younger brother of the child victim and deposition the case property with MHCM. He further deposed that on 17.05.2013, he seized four photographs, *i.e.*, Ex. PW-7/D-1 to Ex. PW-7/D-4, produced by victim *vide* seizure memo Ex. PW-7/E. The witness further deposed about the

arrest of accused Sagar on 20.05.2013, *vide* arrest memo Ex. PW-6/A, the personal search of the accused, *vide* personal search memo Ex. PW-6/B and about getting the accused medically examined *vide* MLC Ex. PW-9/D.

9. The witness further deposed about getting the statement Ex. PW-2/B under Section 164 of the Cr.P.C. of child victim recorded on 25.06.2013 *vide* his application Ex. PW-2/A and about collecting the copy thereof *vide* his application Ex. PW-2/D. He further deposed about collecting the age proof of the child victim from her school on 12.07.2013 and placing the same on the judicial file and about adding of relevant provisions of the Act, as per the directions of SHO. Later, during his cross-examination, he stated since none in the family of victim child came forward with any statement on 25.04.2013, he did not record the statement of any other public person. He further stated that except for the preparation of *Kalandra* on that day, he did not carry out any other proceedings. During further cross-examination, the witness termed it correct that the child victim was not counselled either by any NGO or by any lady Police Officer.

10. From the perusal of PW-9 and child victim's deposition two different views of the incident can be seen. One is given by the IO and the other by the child victim. The account of the IO is duly supported by documentary evidence i.e., Ex. PW-9/B (*Kalandra* under Sections 107/151 of the Cr.P.C.) as well as mark P, which is the final order passed by learned S.E.M/NW dated 16.09.2013 in the aforesaid *Kalandra*. As such, no credence can be given to the version given by the child victim with regard to the aforesaid incident. However, the alleged incident took place on 25.04.2013 and the same was reported to the police on the same day but the child victim 'K' did not give her statement to the police. Thereafter, the victim all of the sudden went to



the Police Station on 15.05.2013 and got her statement Ex.PW-7/A recorded, alleging sexual assault upon her by the accused. She even produced photographs showing her torn clothes and injuries. The reason, which has been given by the child victim for not approaching the police, for her statement from 25.04.2013 till 15.05.2013, is that she was representing to the police several times, but her statement was not recorded by the police, this statement is not acceptable under the facts of the present case. Therefore, inordinate and unexplained delay in FIR is not supported by any cogent evidence.

11. A careful pursual of MLC which was prepared under the supervision of PW-3, Dr. Mohit Tiwari which depicts that injuries upon the child victim could be possible due to itching or allergy. Further, deposition of DW-1 Smt. Rajni, who is the wife of accused Sagar and is the elder sister of the child victim, states that she had love marriage with the accused on 13.09.2012 and her parents were against her marriage. She further deposed that the accused was present with her at her residence on the alleged date of the incident, *i.e.*, on 25.04.2013 and had not gone to the house of the child victim. DW-1 further deposed that on 17.05.2013, she was beaten black and blue by her parents and her brother, when she returned to her residence after her marriage. In this regard, MLC mark DW-1/A was prepared in BJRM hospital and she had also lodged six complaints from 22.09.2012 to 03.06.2013 to the local police against her parents. She further deposed that a joint writ petition was filed by her and the accused being WP (Crl.) No. 961/2013, titled, "*Mrs. Rajni & Anr. V/s Commissioner of Police & Anr.*", seeking police protection and said writ petition was disposed of by this court on 07.06.2013 and a certified copy of the said order was provided as Ex. DW-1/C (running into four pages). DW-1 further deposed that initially, in the present

matter, police had prepared a *Kalandra* under Section 107/151 of the Cr.P.C., wherein, the child victim had refused to give statement to the police and the certified copy of the order dated 16.09.2013 was proved as Ex. DW-1/D.

12. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*¹ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the trial court is 'perverse', it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

13. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision it has been held that if the 'possible view' of the trial court is not agreeable for the High Court, even then such 'possible view' recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably

¹ 2008 9SCC475

² (2007)4 SCC415

³ (2017) 5 SCC 715

formed, regardless of whether the High Court agrees with the same or not, the verdict of the trial court cannot be interdicted and the High Court cannot be supplanted over the view of the trial court.

14. In the present case, PW-3 Dr. Mohit Tiwari has admitted in his evidence that the injury upon the person of the child victim could be possible due to itching or allergy. The child victim remained incommunicado to the police from 25.04.2013 till 15.05.2013. On the date of the incident i.e., 25.04.2013, before reaching the IO of the case at her residence, the child victim went to Verma Photo Studio and got clicked her photographs, but strangely handed over those photographs to the police on 17.05.2013 and not prior thereto. The said documents are stated to be not admissible even otherwise for want of the compliance of provisions of Section 65-B of the Indian Evidence Act, 1872. Further, the FIR in the matter was recorded on 15.05.2013, and the statement of the child victim under Section 164 of the Cr.P.C. was got recorded on 25.06.2013.

15. Having considered the material available on record and the testimony of DW-1, it pellucidly shows that there was enmity between the accused and the family of the victim. Since the prosecution has miserably failed to prove its case beyond a reasonable doubt, therefore, this court is not inclined to take a different view other than the view which has already been taken by the court below. Accordingly, the present appeal is dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 18, 2023

ur