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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 22.02.2024

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CRL.L.P. 133/2023**STATE**

..... Petitioner

Through: Mr. Tarang Srivastava, APP
with SI Arvind Kumar, PS
Sangam Vihar.
Mr. Umesh Kumar, Proxy
Counsel for complainant.

versus

JAI SINGH

..... Respondent

Through: Mr. Anuj Jain, Advocate.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The present appeal has been filed by the State under Section 378 (3) Cr.P.C challenging the order dated 24.12.2020 whereby, the respondent has been acquitted of all the charges.
2. FIR was registered on the basis of statement made by 'R' on 19.03.2013, wherein she divulged that her father-in-law i.e. Respondent Jai Singh had sexually abused her as well as her four minor daughters. On the basis of her such statement, FIR was registered. During investigation, the medical examination of 'R' and her minor daughters was carried out and their statements under Section 164 Cr.P.C were also got recorded.
3. The respondent was booked for commission of offences under



Section 376/354 IPC and also under Section 4 and 6 of Protection of Children from Sexual Offences Act (POCSO Act).

4. The respondent was charged under the aforesaid sections vide order dated 28.09.2013. He pleaded not guilty and claimed trial. Prosecution was directed to adduce evidence and examined 10 witnesses including 'R' as PW-1 and her four minor daughters i.e. M,S,B and BK as PW-2 to PW-5 respectively.

5. Accused, in his statement under Section 313 Cr.P.C, claimed that no wrongful act in any manner was committed by him. He stated that the 'R' and her husband used to often quarrel with him for transferring his property due to which a Panchayat/meeting was held in 2013 which was attended by some respectable persons of the locality and his family members. The accused stated that the house located at Sangam Vihar was constructed by him out of his retirement money but 'R' left no stone unturned to grab his entire property. It is also the claim of the accused that while he was living at Pushp Vihar, the entire household expenses were being borne by him and managed by his wife. He started residing with his younger son at the second floor of the house at Sangam Vihar. Since he was residing with his younger son and the younger son & wife were taking care of his needs, he used to give all his pension amount to his younger son. The Complainant and her husband wanted to grab the pension amount and the entire house of Sangam Vihar due to which they used to abuse him and quarrel with him. According to him, the Complainant involved her minor daughters and got him implicated in a false case with ulterior motive of forcing



him out of the house, to grab the entire property. The accused, thus, pleaded innocence and desired to lead evidence in his defence. He examined 5 witnesses in his defence.

6. Learned Trial Court, after examining the evidence led before it held that prosecution could not prove the foundational facts and resultantly, acquitted the accused. Learned Trial Court also held that there were major improvements and contradictions in the testimony of the material witnesses and therefore, there was need to look for corroboration from other material. It also took note of the fact that admittedly, there used to be quarrel in the family and the defence version was also to the effect that a false case had been registered which was offshoot of such domestic quarrel and that he had been falsely implicated so that he could be pressurized to transfer his property in favour of 'R'.

7. Learned APP for the State contends that it is a fit case for grant of leave as not only 'R' but all her four minor daughters have supported the case of the prosecution and their credit-worthiness could not be impeached by the defence. It is argued that the minor daughters were of tender age and the narration of the incident by them was natural and convincing and they were exploited by the respondent for a considerable period of time and keeping in mind their relationship with the accused, who was their grandfather, and their tender age, the Court should have rather ignored the contradictions and variations which, even otherwise, did not go to the root of the matter.

8. Notice of the appeal was issued to the respondent and pursuant to



that, respondent appeared. Learned counsel for the respondent contended that the learned Trial Court has carried out the appraisal of the evidence in meticulous manner that the instant petition deserves to be dismissed.

9. We have carefully gone through the Trial Court record, the testimony of the prosecution witnesses including the victims and the stand taken by the accused before the learned Trial Court. It is obvious that following reasons weighed with the learned Trial Court while acquitting the accused:-

a) The testimony of all the victims was replete with contradictions and improvements and there were major deviations between their statements recorded under Section 164 Cr.P.C and the deposition made by them before the Court.

b) There were material contradictions even with respect to the date of the incident which was material and substantial one and which went to the root of the matter.

c) The prosecution could not make it clear as to when the first such incident had taken place and why the matter was not reported to the police immediately. Though, 'R' had claimed that she had lodged a complaint about the second incident with police Chowki of Saket which was eventually withdrawn by her but such record was neither collected during the investigation nor proved during the trial.

d) There were family disputes related to property and therefore, the false implication, in absence of any corroboration from other material, could not be ruled out.

10. We are conscious of the fact that both the sides are closely related to each another. We are mindful of the fact that the daughters of 'R' are minor but at the same time we feel that the learned Trial Court has appreciated the evidence in the right perspective and was fully justified in seeking corroboration from the other material, particularly, in view of the



unexplained delay in lodging FIR, contradictions and discrepancies amongst the testimony of these victims.

11. If victim 'R' is to be believed then there was an attempt to rape her somewhere in the year 2004 and the accused repeated act of similar kind of sexual assault somewhere in the year 2008. As regards the above incident of 2008, she claimed to have made a complaint to Saket Police Chowki which was later withdrawn by her.

12. Learned Trial Court noticed major deviation between her statement which resulted in registration of FIR and the one made by her during trial.

13. In her statement made to the police, which has been proved as Ex. PW1/A, she claimed that the accused had tried to rape her and had pressed her chest and touched her vaginal area and repeated the same thing at the time of the commission of second incident. In witness box, however, she did not mention anything about touching of her vaginal area by the accused. In her testimony before the Court, she claimed that she was sleeping in her room with her eldest daughter who was aged 7-8 months that time and that her husband was sleeping in the room of his mother and thereafter, she noticed that her both the breasts had been pressed by the accused.

14. As noted already, in her complaint, she had claimed that the first incident had occurred 09 years before filing of complaint and thus by inference such incident must have taken place somewhere in the year 2004. However, in her deposition before the Court, she categorically claimed that when the first incident had taken place her eldest daughter was 7-8 months



old. Her daughter was born in the year 2000 and therefore, if her deposition before the Court is to be believed, the first incident must have taken place in the year 2000 or so.

15. Naturally, the aforesaid contradiction seems to be a very material one and has enough of potential to go to the root of the matter and it is indeed very difficult to brush aside such type of contradiction as a minor or trivial one. The difference of time-gap of around four years seems fatal in the present context.

16. Regarding the second incident of sexual assault, the learned Trial Court, and rightly so, noted substantial differences in the narration. According to her, at the second time also, the accused had repeated the same act of molestation but when she deposed before the Court, she claimed that the accused had caught hold of her but she resisted such act on which the accused told her she would have to concede to the same if she wanted to stay in his house. No such fact, whereas, is found be mentioned in her Complaint Ex. PW1/A.

17. Importantly, for the reasons best known to the police, no attempt was made to collect the documentary proof of lodging of report with the police Chowki of Saket with respect to the alleged second incident.

18. Learned Trial Court also noted major improvements in the testimony of 'R' with regard to the incidents allegedly committed against her daughters. Reference be made to para 31 to 33:

“31. Major improvements are noted in the testimony of the Complainant 'R' with regard to the incidents that allegedly were committed against 'B' and



'BK'. The Complainant deposed in the Court that 'B' and 'BK' were 5 years old when the accused asked them to sleep with him. 'R' refused but was convinced by her husband to send 'B' and 'BK' for sleeping in the room of their grandfather. The Complainant noticed in the morning that 'B' and 'BK' were emitting foul smell from their mouth. She ignored at the first time and again noticed foul smell from their mouth the next morning. She asked, at which 'B' and 'BK' started crying and disclosed that accused used to insert his finger in their vagina and also used to put his penis in their mouth. However, in the complaint the Complainant had disclosed that 'B' and 'BK' had refused to go to sleep in the room of the accused and when she asked them why they were not willing to go, 'B' and 'BK' disclosed about the sexual assault. These improvements are noteworthy and cannot be brushed aside. The improvements certainly are reason enough for this Court to look for corroboration.

32. The contradictions and improvements in the testimony of PW1 are not only with respect to the incidents narrated in the complaint Ex. PW1/ A. The Complainant 'R' Le. PW1, also improved upon her testimony on various other aspects. She stated in the complaint Ex. PW1/ A that when 'B' and 'BK' had disclosed to her about the acts of sexual assault, she informed her husband who tried to resolve the matter by talking to the accused. The accused then gave in writing that he would never misbehave and molest his granddaughters. However, 'R' deposed before the Court that a Panchayat was called by her husband after he came to know about the acts of molestation committed by his father, and in that Panchayat the accused gave in writing that he would never misbehave and molest his granddaughters. Complainant also deposed that the said writing was recorded by accused. The Complainant did not disclose about Anand in her first complaint and thus prosecution did not get a chance to examine Anand in this regard. Such a conduct of the Complainant is inexplicable and raises a doubt on her creditworthiness.

33. The Complainant also deposed in the Court that even after the Panchayat was held, the accused repeated wrong acts with 'B' and 'BK'. Her brothers-in-law pressurized her not to report the matter to the police for about 1-1/2 months and when she did not budge, they had beaten her up, torn her clothes and pressed her breasts. Her husband called the police after this incident and her complaint Ex. PW1/ A was recorded. These facts deposed by the complainant in the Court are not part of the complaint Ex. PW1/ A. Such improvements made by the Complainant while deposing in the Court raise a serious doubt on her story."

19. It will be worthwhile to mention that during her deposition, 'R' claimed that she had even made a complaint with respect to the first



incident and when she was asked to produce copy of such complaint, she deposed that she was in no position to produce the same because the same had been torn by her brother-in-law i.e. Surrender. Surprisingly, she never, at any earlier point of time, claimed that she had made any complaint regarding the first incident and, therefore, there was no reason or occasion for the police to have verified such fact from anywhere. In later part of her testimony, she however, took a somersault and claimed that no complaint was ever filed by her before the police prior to the complainant Ex. PW1/A. Such contradictory statements have indeed made her version suspectful.

20. Admittedly, she never saw the accused committing any wrong act upon her minor daughters. She also admitted that there used to be quarrel in her family. It also needs to be noted, right here, complainant and her entire family were residing with the accused and his wife in a government accommodation in Push Vihar till the accused retired and thereafter, the family shifted to Sangam Vihar which was a three-storeyed house. The complainant and her family started residing at the ground floor, one of the brothers-in-law started residing at the first floor and others at the second floor. Accused was also residing at the second floor portion of the house at Sangam Vihar. The repeated occurrences of such type of sexual assault when so many members of joint family reside at one place do not seem to be digestible.

21. Learned Trial Court also took note of the testimony of the child victims and came to the conclusion that their testimony was also full of contradictions and improvements. Reference be made to para 37 to 43:-



“37. The testimony of four child victims is also full of contradictions and improvements. PW2 'M' deposed before the Court that the accused used to make her hold his penis and even used to try to force his penis into her mouth but she always resisted successfully. She deposed that the accused once had even inserted finger in her vagina. There is substantial improvement in this part of the testimony of PW2 as she did not disclose before the Ld. Magistrate that the accused used to make her hold his penis or used to try to force his penis into her mouth. PW2 disclosed to the Magistrate that only once had her grandfather inserted his finger into her vagina. PW2 specifically deposed before the Court that no wrongful act was done against her by her grandfather after they had shifted to the house at Sangam Vihar. This deposition of PW2 is contrary to her statement recorded U/Sec. 164 Cr.P.C. which is Ex. PW2/A. PW2 had disclosed in the said statement that after they had shifted to Sangam Vihar, the accused called her on the second floor of the house under the pretext of reheating the tea for him, and as soon as she went in front of him the accused started pressing his penis vigorously. Ld. SPP for the State had put leading questions to PW2 after seeking permission of the Court and during leading questions PW2 stated that the incident at Sangam Vihar narrated by her to the Ld. Magistrate had occurred. Such contradiction in the testimony of PW2 in the same breath is starking and cannot be ignored. In fact, the conduct of PW2 in first emphatically denying about the occurrence of any incident in the house at Sangam Vihar and then suddenly accepting everything when she was led by the prosecution, is strange and inexplicable. Such a conduct raises serious doubts on the story of prosecution.

38. Not only there are contradictions in the testimony of PW2 when compared with her statement Ex.PW21 A, the contradictions also exist in the testimony of PW2 and PW3. While PW3 deposed that her grandfather had made obscene gestures against her in the presence of PW2, after calling them at the second floor of the house at Sangam Vihar, PW2 deposed that her grandfather did not commit any sexual assault/molestation against her at Sangam Vihar. PW2 did not depose about the obscene gestures allegedly made by the accused against PW3, though PW3 claimed that PW2 also was with her at that time. In fact, there is no reference about this conduct of the accused either in the complaint Ex.PW1! A or in any of the four statements of child Victims recorded U/Sec. 164 Cr.P.C. PW3, for the first time in the Court, disclosed that when they had shifted to the house at Sangam Vihar, she and her sister 'M' (PW2) went to the second floor of the house for preparing tea for their aunt. The accused was present there, and he by using his thumb and index finger made a ring type shape and inserted index finger of his other hand in that ring type shape, suggesting sexual intercourse. The accused also made gestures by



nodding his head suggesting that PW3 should come to the bed, and smiled. This part of the testimony of PW3 is a clear improvement and PW3 did not explain why she did not disclose about this fact on earlier occasions. PW3 made further improvement in her testimony by saying that once she had seen the accused laying over her sister 'M' i.e. PW2 and he was pushed by 'M'. This fact also was not disclosed by PW3 to the Ld. Magistrate. Such improvements appear to be afterthoughts and shake the veracity of the child witnesses.

39. PW2 admitted in her cross-examination that when the family was residing at Pushp Vihar, their mother used to stay at home. She also admitted that her grandfather and younger uncle used to bear the household expenses as her father was unemployed. PW2 however denied that wrong allegations were levelled by them against their grandfather i.e. the accused at the instance of their mother because accused used to hand over all his pension money to his younger son. PW2 admitted that her grandfather used to return from his workplace by 6:00PM to 7:00PM when they were residing at Pushp Vihar.

40. PW3 'S' not only made improvements in her testimony, as discussed above, she also contradicted herself while deposing in the Court. She deposed that her grandfather made her touch his penis about which she had informed her grandmother but she was scolded. The second incident, as per PW3, occurred at the night when she was studying in 6th or 7th standard. She deposed that the accused made her touch his penis for the second time after which she slapped him and gave him in writing that she would complain to the police but the accused tore the paper off and smiled. This narration of the second incident by PW3 is quite different from the narration before the Ld. Magistrate which is recorded in Ex.PW3/ A. PW3 deposed before the Magistrate that the second incident occurred when she was watching TV with her sisters. Her grandfather came there out of nowhere and lied down over her. She ran away to another room and gave a writing to her grandfather which was read over by him loudly in the presence of her sisters and was then torn off. Such contradiction in narrating the incident is material and does raise a doubt on the veracity of PW3. This doubt is strengthened by the fact that when PW3 was led by the Ld. SPP for the State after seeking permission of the Court, she changed her statement in the same breath and deposed that the second incident occurred when she was watching TV with her sisters in the afternoon.

41. PW3 was cross examined on behalf of the accused. She deposed during cross examination that the first incident occurred in the afternoon and everyone was at home. She deposed that she could not say if it was a holiday on the day when the first incident occurred. She further deposed that the second incident also occurred in the afternoon and accused had not gone to work on that day. She deposed that none of the family members except she and her sisters were at home when the



second incident occurred. PW3 admitted that her grandfather used to work when they were residing at Pushp Vihar where the second incident allegedly occurred, and he used to be out for his work from 8:00AM to 06:00PM / 07:00PM. She admitted that there used to be quarrels in the family but denied that quarrel used to occur on issues related to household expenses. She admitted that her grandfather i.e. the accused used to hand over his entire pension to her younger uncle.

42. The other two child witnesses 'B' and 'BK', who are PW4 and PW5 respectively, also deposed about the incidents of sexual assaults and their testimony too is full of improvements. PW 4 deposed that the accused had penetrated penis in her vagina more than once, and also had put penis in her mouth. 'B' (PW4) deposed that the accused had put penis in her mouth a day before making of the complaint and also on the same night when complaint was made. She deposed that this incident was seen by her mother. PW 4 did not disclose about the incidents of sexual assault committed against her a day before making of the complaint or on the same night when the complaint was made. There is no reference of the said incidents in the complaint Ex. PW@/A either. PW1, who is mother of PW 4, categorically deposed that she never saw the accused committing any wrong acts against her daughters. Such improvements and contradictions are noticeable, and are sufficient to discard the testimony of child witnesses. PW 4 was questioned during cross-examination as to how she felt when the accused had inserted his penis and she deposed that she felt burning sensation. PW 4 however denied having raised an alarm. Such a conduct of a 5 years old child is unnatural. It seems unnatural that such a small child would not cry or shout on feeling of pain/burning sensation.

43. PW5 'BK' deposed that the accused had inserted his penis into her vagina at least five times and she used to feel pain. PW5 did not depose anything about insertion of finger in her vagina by the accused or putting of penis in her mouth. She deposed that the accused used to kiss her, which allegation is missing in the statement of PW5 recorded U/Sec. 164 Cr.P.C. 'BK' admitted in her cross examination that when they moved to Sangam Vihar her grandfather had stopped giving household expenses to her family."

22. As already noticed above, the accused had examined five witnesses in his defence and they deposed that there used to be quarrel in the family and Panchayat had also been called in the year 2013. Prosecution wanted to project that in such Panchayat, the accused had made a confession but there



is nothing on record which may indicate that accused had ever made any confession before Panchayat about his indulging in sexual assault.

23. There is no explanation as to why 'R' reported the matter to the police after such a huge delay of around 9 years. She chose to keep mum even when her daughters were allegedly sexually abused. It has also not been made clear as to why her husband has not entered into witness box as prosecution witness. Being husband of 'R', he would certainly be in the thick of things and must have learnt about the alleged sexual assault upon his wife and daughters and it is not made clear as to why he also remained tight-lipped and did not report the matter to the police.

24. Undoubtedly, as a general rule of law, any accused is presumed to be innocent until proven guilty but such rule is subject to Section 29 of POCSO Act which shifts the burden. However, despite the above shifting of the burden, the prosecution is always duty bound to prove the foundational facts and the primary onus is always on the prosecution.

25. In the present case, there is no explanation, much less a plausible one, as to why the matter was not reported to the police immediately. There are material and substantial improvements and contradictions which go to the root of the matter and which cannot be brushed aside in a casual manner. There is no corroboration from other material and keeping in mind that there were property disputes amongst the family members, it would have been unsafe to rely upon the testimony of 'R' and her daughters, particularly in view of the improvements and contradictions appearing on record.



26. We are, therefore, of the view that the learned Trial Court has analyzed and appreciated the evidence in accordance with the settled proposition of law and we do not find any compelling reason to grant leave to appeal.

27. Leave is accordingly, declined.

28. Resultantly, the petition is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

FEBRUARY 22, 2024/SW