



2024:DHC:8601



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

% Reserved on : 06.08.2024
Pronounced on : 06.11.2024

+ **CRL.A. 13/2024, CRL.M.A. 676/2024 and CRL.M.A. 677/2024**

PAppellant

Through: Mr. Kapil Kumar, Advocate

versus

STATE GOVT. OF N.C.T. OF DELHIRespondent

Through: Mr. Sanjeev Sabharwal, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of acquittal dated 11.09.2023 passed by learned ASJ (FTSC) (POCSO) -02, Tis Hazari Court, Delhi in the Sessions Case No. 264/2022 arising out of FIR No. 1048/2021 registered under Sections 354/323 IPC at P.S. Nihal Vihar, Delhi.

Vide impugned judgement, the accused was acquitted of the charges for commission of offence under Sections 354/323 IPC and Sections 8/21 POCSO Act, framed vide order dated 03.05.2024.

2. The facts, in a nutshell, are that the marriage between the complainant i.e. the mother of the victim and the accused was solemnized on 13.04.2009 as per Sikh religion. Two children were born out of the wedlock, a daughter i.e. the victim (aged about 7 years at the time of incident) and a son. It is alleged that the incident resulting into the present FIR pertains to 21.06.2021



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when at about 1 am, the victim ‘P’ shouted and complained that the accused was repeatedly trying to pull down her underclothing. Consequently, the complainant who was awakened by the commotion confronted the accused. The complainant further alleged that her mother in law, who was sleeping in the same room, trivialised the incident and told the complainant not to protest against the same, even threatening her by saying that reporting the same would tarnish the honour of the family and her daughter. Subsequently the complainant along with the victim came to the police station Nihal Vihar on 14.08.2021 where the said allegations were narrated resulting into the registration of the FIR. Victim “P” was medically examined in the presence of her mother. During investigation, the birth certificate of the victim was obtained and the same was verified from MCD office and her date of birth was found to be 07.09.2013. Vide order dated 13.05.2022, charges were framed against the accused under Sections 354/323 of IPC and Section 10 of POCSO Act. It is noted that vide the same order, the mother in law *Shashi Arora* was discharged of the offence under Section 21 of the POCSO Act.

3. In trial, a total of 7 witnesses were cited by the prosecution to prove its case. The victim “P” in the present case was examined as PW1. The complainant in the present case i.e. the mother of the victim was examined as PW2. The other witnesses were formal in nature, who deposed relating to various aspects of investigation.

On the other hand, the accused, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and had been falsely implicated in the case. He further stated that the complainant had filed a false complaint as a pressure tactic to seek separation between her and the accused, who were already having a matrimonial dispute. He stated that his



daughter “P” had been misused and tutored by his wife i.e. the complainant to make false allegations.

4. Learned Counsel for the appellant has assailed the impugned judgement on the ground that the same has been passed on the basis of surmises and conjectures, without taking into consideration the entirety of the evidence and material which have been placed on record. The Trial Court has failed to appreciate the scope and ambit of Sec. 29 POCSO Act . The Trial Court has ignored the fact that the victim “P” has been consistent as to the narration of the incident in all her statements and depositions. It is further contended that though the accused took the plea of alibi, however he could not substantiate the same. Lastly, it is contended that the Trial Court erred in observing that the delay of 52/53 days had a material bearing on the genuineness of the complaint.

5. Learned APP for the State while supporting the present appeal states that the allegations in the present matter are grave and ought to be construed strictly. It is added that there is no reason for the Court to believe that the victim “P” has been tutored considering the fact that she has been consistent in her statements before the court.

6. I have heard the counsels for the parties and have perused the documents which have been placed on record.

7. A perusal of the record would show that the incident occurred at 1:00 AM on 21.06.2021 where the accused is alleged to have lowered the underclothing of the victim “P”. It is stated that noticing the same, the accused was subsequently confronted by the complainant i.e. the mother of the victim. At this juncture, the Court deems it apposite to allude to the cross-examination of the complainant. A reading of the same would show



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that the complainant had also stated about an incident which took place on 23.06.2021 wherein the accused had allegedly beaten the complainant with the handle of the scooter-cycle. Consequently the complainant decided to leave the house of the accused and also made a complaint with the police authority on 24.06.2021 alleging that the accused had taken away her son. As per the complainant, she had given a complaint on 23.06.2024 however, neither was such a complaint ever produced along with the chargesheet nor was it ever placed on record.

Moreover, it is further noted that it is an admitted case of the complainant i.e. the mother, that she had also filed a complaint with the CAW cell against her husband after she had left the matrimonial home on 24.06.2021. The said factum is also corroborated in the cross-examination of the investigating officer i.e. PW7 wherein she acknowledged that during investigation, it was found that the complainant prior to filing of present complaint had also filed a complaint at CAW alleging demand of dowry and cruelty. The Trial Court also observed that in the said complaint, no allegation with respect to the present incident was ever made to the authorities. It is only after a lapse of 52 days that on 14.08.2021, the complainant made a complaint about the alleged incident of sexual assault on her daughter for the first time. While the court acknowledges the need for leverage in cases of delay in reporting of sexual offences, it is in these facts that the Trial Court observed significant delay in the reporting of the alleged incident and the possibility of false accusations.

8. At this stage, it is deemed apposite to refer to the testimony of the child victim in this present case PW1 wherein she has deposed that her father, the accused used to beat her besides her mother after consuming



liquor, however no such inference can be made out from the MLC which has been placed on record, exhibited as EX. PW3/A. Even in the facts narrated by the prosecutrix to the doctor no such mention of any incident pertaining to beatings at the hand of the father is present. It is in light of these unsubstantiated allegations that the Trial Court came to the conclusion that there existed no ground to convict the accused. On a reading of the evidence and material placed on record, this Court finds no ground to interfere with the order of acquittal passed by the Sessions Court.

9. Further, a decision of acquittal, strengthens the presumption of innocence in the favour of the accused. At the same time, the appellate court, while considering an appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The appellate court should be slow in reversing an order of acquittal passed by the trial court.[ref: Jafarudheen & Ors. v. State of Kerala, reported as (2022) 8 SCC 440)] The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. v. State of Himachal Pradesh reported as (2020) 10 SCC 166 in the following terms: -

“ 14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189])

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Arulvelu [Arulvelu v. State, (2009) 10 SCC 206]



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and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636].”

10. In light of the afore-noted principle, this Court finds no reason to allow the present the appeal and the same is accordingly dismissed alongwith pending applications.

MANOJ KUMAR OHRI, J

NOVEMBER 06, 2024

js/ga