
(2020) 01 CAL CK 0177
In the Calcutta High Court
Case No : Criminal Revision (CRR) No. 029 Of 2019

Mukesh Halder

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 33, 33(5)
Indian Penal Code, 1860 — Section 363, 376, 341, 504

Citation : (2020) 01 CAL CK 0177

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : D. Ilango, A.S. Zinu

Final Decision : Disposed Of

Judgement

Subhasis Dasgupta, J

The impugned order dated 2nd July, 2019 passed by learned Special Judge, POCSO Court at Port Blair in connection with Special Case No. 40 of 2016 closing the cross-examination of PW-1/victim is the subject of challenge in this revisional application.

This Court has extensively heard both parties pertaining to the matter under reference.

Admittedly, the petitioner accused/ revisionist has been put up for trial for the alleged commission of offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) read with Sections 363, 376, 341 and 504 of the Indian Penal Code. In this case the victim was subjected to a penetrative sexual assault at the instance of petitioner accused. The victim PW-1 after the incident was highly traumatized and she even left this place permanently for pursuing her study in the mainland. She is highly apprehensive of the episode, while remembering the incident. In course of adducing evidence before the Court on 2nd July, 2019, she made statement declining to pursue the

case remembering the fateful day of incident. After making such statement, the victim started weeping, which could not be controlled even by making consolation and also doing necessary persuasion by the trial Judge.

The recording of evidence of PW-1/victim was thus interrupted and the victim came down to her scheduled room for regaining her normalcy. The Trial Judge vividly recorded the demeanor of the victim in accordance with the law pointing out the situation as to what prompted the trial Judge to make him visit to the scheduled place of victim soon in consonance with the statutory mandate provided under Section 33 of the POCSO Act.

It was at this stage the petitioner/accused proceeded to file an application before the Trial Court for moving a revisional application before appropriate Court being dissatisfied with the manner of conducting trial by the learned Trial Judge, Special Court describing the deliberate persuasion of learned Trial Judge to victim in the midst of trial is against the spirit of trial.

Learned Advocate for the petitioner submits that learned Trial Judge has improperly exercised his authority by visiting the victim's room after causing interruption to the trial, and persuaded the victim girl to make statement pertaining to the offence complained of now under trial, which the Trial Court ought not to have done.

Learned Advocate for the petitioner further contends that the Trial Judge has shown his over activism to conduct the trial in a manner favourable to the purpose of prosecution causing serious prejudice to the defence.

Learned Advocate for the petitioner adverting to the order impugned submits that the learned Trial Judge has closed the cross-examination of PW-1 victim thereby shutting up his right of cross-examination without caring for the available defence permissible to accused/petitioner, guaranteed not only under the Constitution, but also under the POCSO Act to challenge the veracity of the statement of victim adduced in-chief.

Learned Advocate for the State opposite party represented through the learned special public prosecutor Port Blair controverting the submissions raised by the petitioner submits that the Trial Court has rightly exercised its authority after adhering to the provisions contained in Section 33 of the POCSO Act and there is nothing to be interfered with.

Upon perusal of the impugned order, it is crystal clear that there has been interruption, or break in course of collecting evidence of PW-1/victim. The evidence, given by PW-1, adduced during chief, is very expressive to reveal that the victim was highly traumatized, and she showed her abhorrence, detestation even to remember the incident. She permanently left this island and shifted to mainland for pursuing her studies.

It is at this juncture the victim girl/PW-1 made the statement expressing her disinclination to proceed with this case what was supported by shedding her

tears in open court, revealed from her demeanor, being noted in her evidence itself. It leaves a strong sense of abhorrence, an utter dislike to call back her memory even without incurring a serious mental pain, which the victim/PW-1 was not prepared to accept. Learned Judge Special Court thought himself prudent not to assume the role of silent spectator to the situation. The Trial Court thus proceeded to make exercise of its authority provided under section 33 of the POCSO Act in order to ensure/present a child friendly atmosphere, as contemplated under section 33, and proceeded to offer the same even after causing break to the process, intended for collection of evidence of victim-prosecutrix. The graphical description of the victim mentioned in the evidence of PW-1 including the noted demeanor of victim obviously prompted the Trial Judge to make a temporary interruption in the process of collection of evidence and the Trial Judge in exercise of his authority proceeded to intervene into the situation and persuaded the victim girl to become settled and comfortable quickly by presenting a child friendly atmosphere as far as practicable, even by calling her family member, who was present there at the moment.

Somehow the conducive atmosphere of Trial Court was interfered with, or rather disturbed under a mistaken conception on the part of defence, while aiming for cross-examination of the victim-prosecutrix. The authenticity of statement/evidence, given in-chief, could have been suitably tested/verified by the process of permissible cross-examination and it is the cross-examination alone, which can set the issue at rest.

The Trial Judge under a compelling circumstances proceeded to make exercise of his authority as provided under section 33 (5) of the POCSO Act to close the cross-examination of the PW-1 after recording an order to that effect that the cross-examination of the PW-1 be deemed to have been declined and PW-1 thereafter was discharged accordingly.

The only question requiring address by this court is whether the Trial Judge was justified in such circumstances to close the cross-examination of PW-1/victim or not.

The right of cross-examination of defence available under the law has to be seen in terms of the provisions not only contained the POCSO Act, but also under the Constitution. The right to defend the case should not be taken away by necessary implication or by any other deeming provision, what was not even contemplated in Section 33(5) of the POCSO Act.

The word "repeatedly" appearing in section 33(5) in an unambiguous terms reveals that the Special Court shall ensure that the child be not called upon "repeatedly" to testify in the Court. The word "repeatedly" should be reasonably and most judiciously interpreted in such a manner so that avowed object of this Act is achieved without causing any prejudice to any of the parties to the trial. The restrictive application of word "repeatedly" appearing in Section 33 (5) Act may not fulfill the object of purposive legislation.

There is nothing mentioned in the order impugned that the victim was called upon on repeated occasions without which it cannot be straightway inferred that the victim was subjected to repeated cross-examination. It will be not unjust in such a situation, if the right of cross-examination of petitioner as regards victim/PW-1 is re-enforced.

True it is, that the victim girl/prosecutrix was unhappy with the instant prosecution even after remembering the incident, as she was highly traumatized apart from her abhorrence, but that cannot be a ground to shut the cross-examination permissible under the provisions of law.

The impugned order of such cannot go un-interfered with.

The impugned order No.24 dated 02nd July, 2019 is thus set aside.

The learned Special Judge, POCSO Act, at Port Blair in connection with Special Case No.40 of 2016 is directed to allow the cross-examination of the victim - PW-1 on a date to be specifically fixed for the purpose within three months from the date of communication of this order. The Court makes it clear that if the cross-examination of PW-1 in any event is not concluded on the day so scheduled by the Trial Court, the same may be continued on the next date peremptorily.

Learned advocate for the petitioner is requested to cooperate with the learned Judge of the Special Court in conducting the Trial, and the Court hopes that the cross-examination of the victim girl will be concluded on the date, so scheduled by the Court, within a period so stipulated, without forwarding it to the next date following keeping in mind the unwanted harassment of victim for the purpose.

With this observations and directions, the revisional application stands disposed of. The petitioner is directed to communicate this order to the learned court below.

Urgent certified copy of this order if applied for, be supplied to the learned counsel appearing for the respective parties upon compliance of usual formalities.