

(2019) 04 DEL CK 0034

In the Delhi High Court

Case No : Criminal Revision Petition No. 17 Of 2017

State (Gnct Of Delhi)

APPELLANT

Vs

X

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 354, 376, 376(2)(f)

Citation : (2019) 259 DLT 101 : (2019) 4 AD(Delhi) 273

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Meenakshi Dahiya, Kanchan Dewan

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

SINCE THE RESPONDENT/ACCUSED IN THE PRESENT CASE IS THE FATHER OF THE VICTIM, IN ORDER TO CONCEAL THE IDENTITY OF THE VICTIM, THE NAME OF ACCUSED/RESPONDENT, THE DATE OF BIRTH OF THE VICTIM AND SOME OFFENSIVE MATERIAL HAS BEEN REDACTED IN THIS JUDGMENT. THE REGISTRY IS DIRECTED TO REDACT THE NAME OF THE RESPONDENT/ACCUSED FROM THE CAUSE TITLE.

Crl.M.A.249/2017 (Delay of 8 days in filing the revision petition)

1. Subject petition has been filed with a delay of 8 days. It is contended that the matter had to be considered for elucidating opinion on filing of the appeal by the Addl. Public Prosecutor, Chief Prosecutor, Director of Prosecution (DOP), Principal Secretary (Law and Justice) and upto the Law Minister on account of which delay of 8 days occurred in filing the present revision petition.

2. On perusal of the record, I am satisfied that the petitioner has sufficiently explained the delay in filing the petition.

3. For the aforesaid reason, the delay of 8 days in filing the revision petition is

condoned.

4. Application is allowed.

CRL.REV.P. 17/2017

1. State impugns order dated 15.09.2016 whereby the Trial Court has discharged the respondent from the offences under Sections 354, 376(2) (f) of the IPC.

2. The prosecutrix is the daughter of the accused. As per the FIR the accused is blind and is living separately from his wife. The prosecutrix in her statement submits that she has no memory as to when the sexual assaults started. She was born on 27.03.1998 and her father was the caretaker of her and her brother. There are several instances narrated by her starting from the period 2004-2005 till 2011 when he is alleged to have sexually assaulted her.

3. The Trial Court by the impugned order has discharged the accused primarily inter-alia holding as under:-

" It is natural position that a blind person cannot give bath to any person and even if he gives bath, he cannot put his penis between the thighs of any person. Even if, he had done this act, there was various opportunities to prosecutrix to raise alarm or discuss the fact to any close relative or friend or mother. Even in the present case, divorced mother of prosecutrix was also alive, she could have discussed with her but same was not done. Moreover, in the cities like Delhi there is facility of 100 number for calling police. She could have made the phone to police, it appears from her contents of complaint that prosecutrix is well educated and her father is blind. There was lot of opportunities for, prosecutrix to make the complaint against her father at that time.

Complaint further reveals that on 22.06.2016, father of prosecutrix asked her to go somewhere with him and she refused and she went to her mother's home to stay with her and he called her mother and said whatever the matter between her mother and him. They sort it out.

From this fact and complaint dated 26.06.2016, it appears that it was the matter of fighting between prosecutrix and her father. On that pretext, present matter was lodged for offence u/s 376 IPC.

From the MLC it is revealed that last sexual assault was happened when prosecutrix was aged of 13 to 14 years and MLC also does not suggest any fresh injury on person of prosecutrix at the time of medical examination, hence, submissions of Ld. Addl. PP for the State that matter is covered under POCSO is not tenable. Further, submissions of IO has also not supported the version of Ld. Addl. PP for the State. Hence, offence under POCSO Act is not made out against the accused.

At this stage, when it has come on record that police on 100 number available in

Delhi frequently and way of writing of complaint shows that complainant is very much intelligent and knowing consequences and could have disclosed about the incident, if anything, had happened with her to her mother or to any close relative but same was not done. All the allegations are general in nature without mentioning specific dates. Hence, in these circumstances, prima facie there is no sufficient material on record to proceed further with this case. Accordingly, accused Tulsi Das Mahto is discharged from the offences punishable under section 354/376(2)(f) IPC."

4. The Trial Court inter-alia has held that the allegations were made against a blind person and it was not possible for him to commit the acts as alleged by the prosecutrix. Further the Trial Court has held that there is facility of 100 number for seeking police assistance and prosecutrix has not made any call to the police or even discussed about the acts with any person for several years. On that premise Trial Court has held that prima facie there is insufficient material on record to proceed further with the case.

5. It would be necessary to extract the allegations made by the prosecutrix based on which the FIR has been registered. She in her statement has inter alia stated as under:-

".....My parents are divorced. They started living separately in 2004. I have no memory of when the sexual assault started. In 2004-2005 we used to live in dhakha Parmanand. My father was caretaker of me and my brother. While giving me baths in the bathroom he used to insert his finger in my vagina and also used to put his penis between my thighs. If ejaculated he used to clean his semen off my vulva. In 2006 he admitted me and my brother in a hostel. And my mother say he did it to bring other women home for sex and other things. In my childhood he used to put his penis in my mouth. He used to lick my vulva too and used to ask me to suck his penis. In 2006 or 2007 he started putting his penis in my vagina. He did it when we used to come home from hostel for holidays. He used to do it when father and I were alone in the House. In 2010 I came home for holidays. I used to sleep next to him. In my sleep he used to touch my private parts and penetrate his penis in my vagina. Which was painful, and I used cry silently. This happened more than once in that year. Due to lack of Sex-ed, I begin to think that I would become pregnant and I went through a lot of stress and mental trauma. In 2011 went to a different hostel and started getting sex education and came to know that what happened with me was rape and sexual assault. But I never told anyone about this. When I came home for holidays In 2011; he engaged in sexual act with me, in my sleep. He penetrated his penis in my vagina which was very painful. I woke up and told him that it is hurting me. Then he stopped. From then I started sleeping in a separate bed. I started covering my Breasts. When he hugged me and kissed me on my face, I never spoke to anyone about this because he was dominating and always, told me during that period of sexual-assault not to tell anyone about this. I was also afraid of telling anyone because he was my father and the only one to earn in the

family. In 2012 and 2013 he tried to touch me but I kept my distance. I also kept my behaviour normal with him and everyone. From then I made it my habit to cover my breast and being alert when he was around. I kept it a secret because I did not know how the people around me are going to react. All this used to come in my mind every now and then. I used to feel depressed by thinking what can be done now. On 22 June 2016, My father asked me to go somewhere with him I refused. This turned into a fight. I went to my mother's home to stay with her. He called my mother on her phone and said whatever the matter is. It is between me, my mother and him. We can sort it out. After sometime he called again. I asked my mother to put it on speaker. He said what is the proof that I have done it. He also said that I want to run away with someone that is why I'm saying all this. Next day (23-6-2016) He went somewhere without telling anyone and left his phone at home. On 25-June, 2016 we came to know that he is in Bihar at his sister's home, I disclosed what happened with me to my mother and Brother on 22 June. I have shared this with a close friend of mine. His name is Divya Prakash. He asked me that I want to do now and told me what options I had. I asked him to help me. So he talked to somebody, who suggest to go to NGO. I went to NGO with my Brother and my Friend."

6. The medical examination of the prosecutrix also indicated "hymen torn". The prosecutrix has given detailed description of the manner in which respondent used to sexually assault her.

7. The reasoning given by the Trial Court, that the allegations are general in nature without mentioning specific dates and are not substantiated as she had not called the police on 100 number or informed any of the close relatives, is clearly not sustainable.

8. Perusal of the impugned order shows that the reasoning of the Trial Court is completely perverse and Trial Court does not seem to be alive to realities.

9. The relation between the prosecutrix and the accused is that of daughter and father and the allegations of sexual assault go back to several years. The prosecutrix in her complaint to the police and her 164 CrPC statement has stated that she does not even recollect when the sexual assault started. Her narration of incidents go back to a period when she was only 6 years of age and the sexual assault continued till she was 13 - 14 years of age. Complaint is made to the police when she attained the age of 18 years.

10. A child who is subjected to sexual abuse and assault from a tender age of 6 and which assault continues till she is 14 years of age, would not even be aware that she is being abused or any offence is happening. The prosecutrix in her statement has stated that she was not aware of the abuse and became aware only when she grew up.

11. Further, merely because there is delay in lodging a complaint would be no ground for the Court to discharge an accused, especially when there is other evidence to corroborate the allegations. Medical evidence also supports the

allegations. Trial court has erred in not appreciating that the accused is the father of the prosecutrix and was in a dominating position and keeping in the view the relationship, it would not be abnormal for the prosecutrix not to make a complaint against her own father. The reasoning given by the Trial Court is completely perverse and contrary to record.

12. On perusal of the record, I am satisfied that the allegations raise grave suspicion against the respondent of having committed the offence of Section 354, 376(2)(f).

13. In view of the above, the petition is allowed, impugned order dated 15.09.2016 discharging the respondent of the offence under Section 354, 376(2)(f) IPC is set aside. The matter is remitted to the Trial Court to frame appropriate charge inter alia under Section 354, 376 IPC against the respondent.

14. List before the Trial Court for appropriate orders on 15.04.2019. Respondent shall appear in person before the Trial Court on the said date.

15. It is clarified that this court has not expressed any opinion on the merits of the matter.

16. Order dasti under signatures of the Court Master.