

(2019) 11 DEL CK 0590

In the Delhi High Court

Case No : Criminal Leave Petition No. 615 Of 2019

State (Govt. Of Nct Of Delhi)

APPELLANT

Vs

Akram

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Evidence Act, 1872 — Section 113B

Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 29, 30

Indian Penal Code, 1860 — Section 304B

Citation : (2019) 11 DEL CK 0590

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Aashaa Tiwari

Final Decision : Dismissed

Judgement

Manmohan, J

CRL. M.A. 40551/2019

Keeping in view the averments in the application, the delay in filing the criminal leave petition is condoned.

Accordingly, the application stands disposed of.

CRL. M.A. 40552/2019 (for exemption)

Allowed, subject to just exceptions.

CRL.L.P. 615/2019

1. Present criminal leave petition has been filed on behalf of the State challenging the judgment/order of acquittal dated 04th June, 2019 passed by Additional Session Judge-06, West, Tis Hazari Courts, Delhi, in State Case UID No.56015/16, New SC No.147/17 and Old SC No.135/13 titled State vs. Akram arising out of FIR No. 63/13 registered with Police Station Mundka. The Trial

Court in its impugned judgment has held as under:-

"33. Thus, the prosecution has failed to prove its case either through the direct evidence of PW8, the prosecutrix, who was the sterling witness of the prosecution or through PW2 & PW3, the grandmother (Nani) & father of the prosecutrix who have also not deposed any incriminating evidence against the accused rather they were declared hostile on behalf of the prosecution and thus, nothing could come on record to state that the accused has committed a wrong act regarding the allegations of sexual assault with the prosecutrix, at any point of time and the testimonies of alleged eye witnesses PW4 & PW7 are not found trustworthy & reliable due to material contradictions in their testimonies.

Also the medical evidence or FSL result & scientific evidence has not suggested anything that any wrong act has been committed with the prosecutrix and thus, it also does not support the prosecution case.

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35. So far as the assumption u/s 29/30 of POCSO Act is concerned, the ? assumptions? cannot take place of ?proof? and are basically in the form of assumptions raised u/s 304B IPC within law to be read with assumption of section 113B Evidence Act but for the assumptions, it is a settled principle of law as settled by Hon?ble Apex Court in catena of judgments that despite assumption raised in favour of the prosecution, in law the prosecution cannot escape its duty of proving the ?guilt? of the accused beyond reasonable doubts as in criminal law, it cannot be the preponderance of probability by which the guilt of the accused is to be proved, but it is system of ?standard proof? for proving the case of the prosecution beyond reasonable doubts for holding accused guilty for a criminal offence and if there is any doubt in the prosecution story, then the doubt has to go to the favour of the accused and he is entitled for such benefit of doubt, if the prosecution story is doubtful."

2. Ms. Aashaa Tiwari, learned APP for the State contends that the Trial Court has failed to appreciate that Naresh (PW-4) and Vinod Kumar (PW-7) are the eyewitnesses who had fully supported the prosecution's case and had caught the accused while attempting to commit a wrong act with the minor-prosecutrix. She further states that Rajan Mishra (PW-3)-father of the prosecutrix had corroborated the testimony of the aforesaid two eyewitnesses by deposing that he had asked the respondent-accused to drop the prosecutrix - a minor girl aged about five years to his mother-in-law's house i.e. maternal grandmother of the prosecutrix.

3. Having perused the paper book, this Court is in agreement with the finding of the Trial Court that the complainant / eyewitness Naresh (PW-4) is neither trustworthy nor a reliable witness as he had concealed his relationship with the prosecutrix in his complaint. It was only when the prosecutrix was cross-examined did she reveal that the complainant was her maternal uncle. The relevant portion of the testimonies of Naresh (PW-4), the complainant, as well as

that of the prosecutrix are reproduced hereinbelow:-

A. Testimony of Naresh (PW-4):-

"We heard cries of a child from the bushes behind Vaishno Devi Mandir, Nirwal Tikri Road, Delhi and when we went there, we saw that behind the bushes one person, whose name now, I came to know as Akram S/o Sh. Nannu, who is working in Vishal Tent House, Tikri Border, had removed his pant as well as the pyjama of one girl, whose name I came to know now as Ms. K D/o RM and"

B. Testimony of the prosecutrix:-

"XXX by Ms. Reenu Sharma, Ld. Counsel for the accused

Q. Kya aap kisi Naresh naam ke aadmi ko jaante ho?

A Woh mere Mama hai. Voltd. woh meri mummy ke sage bhai nahi hai. Woh meri nani ke ghar me rehte hai."

(emphasis supplied)

4. It is pertinent to mention that Naresh (PW-4) had not deposed in his examination-in-chief that the accused was trying to do any forced wrongful act with the prosecutrix with wrong intention. It was only in his cross-examination by the State that he had nodded in 'yes' regarding the said allegation.

5. There is also a material contradiction in the deposition of the two eyewitnesses inasmuch as Naresh (PW-4) in his complaint stated that he saw the prosecutrix lying down on the ground/earth, whereas Vinod Kumar (PW-7), the other eyewitness, had deposed that he had seen the accused holding the prosecutrix in his lap.

6. Further, the prosecutrix, with whom the alleged occurrence had taken place, had denied any such incident. She had also not identified the accused. The relevant portion of the testimony of the prosecutrix is reproduced hereinbelow:-

"At this stage, the accused Akram who is sitting in a separate enclosure is shown to the witness through the curtain in such a manner that the witness can see the accused but there is no interface between the accused and the prosecutrix. After the witness has seen the accused Akram she is further examined.

Q Yeh kaun hai?

Q. Aapke saath kya hua tha, bata sakti ho?

A. I do not remember/know anything about the case."

(emphasis supplied)

7. The maternal grandmother and the father of the prosecutrix had also not supported the case of the prosecution and had not deposed against the respondent-accused. This would be apparent from their following testimonies:-

A. Testimony of Lali (PW-2) maternal grandmother of the prosecutrix:-

"It is wrong to say that I received a telephone call from my son in law and he told me that Akram had not brought the prosecutrix to his house on which I told him that he had left with the prosecutrix (confronted with statement mark PW2/DA wherein it is so recorded). It is wrong to say that when I made enquiry someone told me that accused Akram took the prosecutrix to the bushes and removed her clothes and his clothes...."

B. Testimony of Rajan Mishra (PW-3) father of the prosecutrix:-

"It is correct that the incident is of 17.3.13. It is correct that when the accused did not return with the prosecutrix for a long time I made a telephone call to my mother in law and she told me that the accused had come with the prosecutrix and had left with her. It is wrong to say that when I was leaving for my in laws house, a person came and told me that accused took the prosecutrix to the bushes behind Vaishno Mandir and removed her clothes....."

(emphasis supplied)

8. Moreover, neither the medical evidence nor the FSL report supports the case of the prosecution inasmuch as the MLC Ex.PW5/A shows no internal or external injuries or sign of bleeding or hymen rupture and the FSL report Ex.PW6/C shows no semen was detected on the underwear of the minor.

9. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. [See: Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450].

10. In view of the fact that the prosecution case is not corroborated either by medical evidence or by the so-called eyewitnesses as well as the fact that prosecutrix has also failed to depose against the accused, no interference is called for. Consequently, the present leave petition, being bereft of merit, is dismissed.