

(2019) 10 DEL CK 0063

In the Delhi High Court

Case No : Criminal Leave Petition No. 443 Of 2019

State (Nct Of Delhi)

APPELLANT

Vs

Ranjeet @ Ganja @ Sombar Roy

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 506
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 6
Code Of Criminal Procedure, 1973 — Section 164, 378, 386

Citation : (2019) 264 DLT 269 : (2019) 4 JCC 3835

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

Bench : Division Bench

Advocate : Rajat Katyal, Amit Kumar, Meenakshi Dutta, Pranav Buwaniwala

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present criminal leave petition has been filed on behalf of the State challenging the judgment and order of acquittal dated 09th May, 2019 passed by Additional Sessions Judge (North-West), Special Court (POCSO), Rohini District Courts, Delhi in FIR No.552/2014 registered with Police Station South Rohini.

2. The Trial Court in the impugned judgment while acquitting the respondent-accused under Sections 366/506 IPC and Section 6 of POCSO Act has held as under:-

"7. As far as date of birth of victim is concerned, the prosecution has failed to prove the age of victim. The documents obtained by the IO from the school were only exhibited by the IO PW-13 but were not proved by summoning the original record or by examining any witness from the concerned school. Further, a perusal of these documents shows that no proof of the date of birth of victim was filed by the parents of victim at the time of admission. There is no MCD birth certificate nor any affidavit of the parents in support of date of birth of the

victim. The prosecution could not prove that victim was minor at the time of the alleged incident.

8. Coming to the main incident, victim admittedly did not raise any alarm at any stage since she left Delhi and till she came back to Delhi. Victim specifically stated in her cross examination "Ranjeet battery riksha chala raha tha aur mein free hokar peechhey bethi thi." This reflects that victim voluntarily left with the accused of her own. Victim did not raise any alarm even at the house of PW-7 who was the friend of the accused. PW-7 nowhere stated that victim ever stated to him at any stage that she has been forcibly brought to Punjab. Further from Punjab victim went to West Bengal in train and even at West Bengal she did not raise any alarm. The MLC of victim does not show any sign of injury. It is claimed that victim was only 15 years of age and accused was about 23 years old. It is claimed by the victim that she was raped on 17.07.2014 and then on 20.07.2014 but the medical examination does not corroborate her statement. Further the FSL result does not corroborate the prosecution story as semen was not detected on any sample of the victim. The victim even did not report about any sexual assault at the time of her recovery to the police at West Bengal. She explained that her mausi at West Bengal who called the police asked her not to tell anything to the Bengal Police. The explanation given by the victim in this regard is not plausible. Further, the mother of the victim in her cross examination stated that she had no knowledge about the victim and the accused prior to police informing her that victim had gone with the accused. The FIR however is against her claim as the name of the accused is specifically recorded in the FIR as the person who had kidnapped the victim. The prosecution could not prove the victim was minor at the time of her alleged kidnapping and her conduct shows that she voluntarily left with the accused.

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10. The facts as evident from the testimony of the victim leads to the inevitable conclusion that it is case of consent and victim voluntarily accompanied the accused. There is no material on record to point out towards kidnapping. Victim is unreliable and inconsistent and conviction cannot be based on her sole testimony which is not corroborated by any material on record. Prosecution has failed to prove any of the offences beyond reasonable doubt. Accused is accordingly acquitted...."

(emphasis supplied)

3. Mr. Rajat Katyal, learned APP for State states that the Trial Court failed to appreciate that the prosecutrix, in the present case, was aged about fifteen years at the time of the incident and that the Investigating Officer (PW-13) had deposed that the age proof of prosecutrix was taken from the school records [Ex.PW-13/A to Ex.PW-13/C] and as per the said documents, the date of birth of prosecutrix was 07th August, 1999. He further states that the mother of the prosecutrix (PW-11) had deposed that the prosecutrix was aged about fifteen

years and she was not cross examined on this point.

4. He submits that as the prosecutrix was a minor, her consent, if any, to accompany the respondent-accused and to have physical relations with him was of no consequence.

5. Learned APP for the State, in the alternative, contends that the prosecutrix had properly explained the reasons for not raising an alarm as the respondent-accused had threatened to kill her brother, if she were to disclose the incident. He emphasises that the Trial Court completely ignored the cogent evidence of the prosecutrix and wrongly concluded that her statement was not reliable.

6. Having heard learned APP for the State, this Court is of the view that it is essential to first outline the relevant facts.

7. In the present case, a complaint dated 16th July, 2014 was lodged with police station South Rohini by Smt.'M' stating that her minor daughter-prosecutrix 'N' aged about fifteen years had left home for her tuition classes at 4.00 p.m. as usual, but had not returned till 7.00 p.m. and she apprehended that the respondent-accused who was earlier their neighbour had kidnapped her minor daughter. In pursuance to the said complaint, a case was registered under Section 363 IPC initially.

8. During the course of investigation, the parents of the prosecutrix came to know that the prosecutrix and respondent-accused had gone to West Bengal and the local police had apprehended them. The Delhi police team reached West Bengal and subsequently recovered the prosecutrix from Mahila Awas.

9. Thereafter, the prosecutrix was brought to Delhi and was medically examined and her statement was recorded under Section 164 Cr.P.C. wherein she alleged that respondent-accused had kidnapped and raped her. On 09th September, 2014, the respondent-accused was arrested and medically examined and the Investigating Officer collected the proof of date of birth of the prosecutrix. After completion of investigation, charge sheet was filed against the respondent-accused.

10. A perusal of the impugned judgment reveals that the prosecution could not prove that the prosecutrix was a minor at the time of the alleged incident. The documents regarding age proof of the prosecutrix obtained from her school were exhibited by the Investigating Officer (PW-13) and not by any witness from the concerned school. Further, as per the judgment of the Trial Court, no proof of date of birth was filed by the parents of the prosecutrix. Since the documents regarding age proof of the prosecutrix were not duly exhibited/proved by the prosecution, this Court is in agreement with the finding of the Trial Court that the prosecutrix cannot be said to be a minor on the date of the incident.

11. Further, the testimony of the mother of the prosecutrix (PW-11) cannot be relied upon without any corroborating evidence regarding the age of the prosecutrix. In any event, the testimony of the mother of the prosecutrix

(PW-11) is contradictory and unreliable inasmuch as, in her cross-examination she stated that she had no knowledge about the prosecutrix and the respondent-accused going together prior to the police informing her about the same. However, the FIR goes against her claim as the name of the respondent-accused was specifically recorded as the person who had kidnapped the prosecutrix.

12. A perusal of the statement of the prosecutrix also shows that her statement is unreliable and a conviction cannot be based on her sole testimony. The relevant portion of the testimony of the prosecutrix (PW-10) is reproduced hereinbelow:

"....Maine battery rickshaw mein baithne se leker, bus mein Punjab jaane thatha uske baad rail se Bengal jaane k pure safar mein koi shor ya halla nhin machaya volt. Ranjeet ne mujhe darraa rakha tha. Mein delhi mein hi paida hui thi aur yahi pali badhi hoon. Mujhe delhi ki bahut saari jagahoon ke barrein mein pta hai. Ye kehna shi hai ki mangol puri se jab hum kahin bhi jaate hai toh chorahoon per police rehti hai. Mujhe ghatna ke din bhi raaste mein police wale dikhe they per maine phir bhi shor nhin machaya. Volt. Mujhe bahut darraa rakha tha. Battery rickshaw mein mere aur Ranjeet k allawa koi aur sawaari nhin thi. Ranjeet battery rickshaw chala rha tha aur mein free hokar piche baithi thi. Jab Bangal mein mujhe aur Ranjeet ko court mein pesh kiya gya tab bhi meine wahan mujhe darra dhamka kar Delhi se laane wali baat aur mere sath rape karne ki baat Ranjeet k khillaf maine nhin bataayi thi. Ye kehna sahi hai ki Bangal mein mujhe aur Ranjeet ko gaon walo ne Bangal police ki hawale kar diya tha. Meri mausi Rajena Bibi wahi Bangal mein aap pass k gaon mein rehti hai, wo bhi wahan pahunch gyi thi. Volt. Unhi ke shor machane par police ne humein arrest kiya tha. Maine apne sath hui saari vaardaat ke baare mein apni mausi ko Bangal mein bta diya tha, par wo mujhe boli ki Bangal police ko kuch mat bta aur ye sab baatein Delhi jakar bataana. Jab delhi police Bangal pahunchi thi toh maine apne sath hui vaardaat ke baare mein unhe Bangal mein nhin bataaya tha. Volt. Train mein jab mujhese puch taach ho rhi thi tab bataaya tha. Police ne mera bayaan Delhi aakar thane mein likha tha."

13. As noted in the Trial Court judgment, the prosecutrix did not raise any alarm at any stage from the time she left Delhi till she came back. Consequently, it cannot be ruled out that the prosecutrix voluntarily accompanied the respondent-accused.

14. The FSL report also does not corroborate the prosecution story as semen was not detected on any of the samples of the prosecutrix. Further, the MLC of the prosecutrix does not show any sign of injury.

15. Consequently, the statement of the prosecutrix that she was raped on 17th July, 2014 and then on 20th July, 2014, is not corroborated by the forensic and medical evidence. Further, in the present case, the prosecution has failed to prove the age of the prosecutrix and there is no medical evidence to support the prosecution's case.

16. It is 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. Further, 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. In similar circumstances, in *State v. Kaishar Ali* [CRL.L.P. 188/2018, decided on 30th August, 2019], we have held as under:-

"13. The Apex Court in *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 SCC 450 has held as under:-

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached-one that leads to acquittal, the other to conviction-the High Courts/appellate courts must rule in favour of the accused.

71. Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

(emphasis supplied)

14. One of us, (Manmohan, J) in *Niraj vs. Ramesh Pratap Singh*, 2012, SCC OnLine Del 3813 has held as under:-

"6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in *Chandrappa & Ors. Vs. State of Karnataka*, (2007) 4 SCC 415 while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal,

there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. The Supreme Court in a subsequent judgment in *Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr.*, (2009) 10 SCC 206 has held as under:-

"40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

(emphasis supplied)

17. For the foregoing reasons, this Court does not find any reason to interfere with the impugned judgment.

18. Accordingly, the present leave petition, being bereft of merit, is dismissed.