

(2023) 08 DEL CK 0172

In the Delhi High Court

Case No : Criminal Leave Petition No. 147 Of 2022

State Of Nct Of Delhi

APPELLANT

Vs

Amarpal

RESPONDENT

Date of Decision : 18-08-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164, 378(III)

Indian Penal Code, 1860 — Section 376

Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2023) 08 DEL CK 0172

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Manjeet Arya, Asim Ali

Final Decision : Dismissed

Judgement

1. An application under Section 378 (III) of the Code of Criminal Procedure, 1973 for grant of Leave to Appeal against the Order dated 21.12.2019 vide which the respondent/accused has been acquitted for the offence punishable under Section 376 IPC read with Section 6 of POCSO Act, 2012 in FIR No.484/2013, Police Station R.K. Puram, Delhi.

2. The case of the prosecution was that on 12.12.2013 on the complaint of the victim that she had been sexually abused, FIR was recorded and investigations were conducted. During the course of the investigations statements of the witnesses were recorded and the medical examination of the prosecutrix was got done.

3. On completion of investigation, charge sheet under Section 376 IPC and Section 6 POCSO Act was filed.

4. Charges under Section 376 and Section 6 POCSO Act were framed against the respondent/ accused, to which he pleaded not guilty.

5. The prosecution in support of its case examined 21 witnesses. The most

material of which is statement of PW2 father of the victim, PW3 victim and PW5 friend of the victim. Considering the inconsistencies and the contradictions in the testimony of the three material witnesses, the respondent was acquitted vide judgment dated 21.12.2019.

6. Aggrieved, the present application for grant of Leave to Appeal against the acquittal has been filed.

7. The main grounds agitated are that undue weightage has been given to the minor contradictions and variations in the statement of the victim. It is not necessary in a case of sexual assault to seek corroboration of the evidence of the victim from other evidences and her testimony can be the sole basis of conviction. The MLC also noted a small pressure lesion on left outer quadrant of breast. The fact that prosecutrix was only 17 years and 11 months old has also been over looked. The corroborative evidence by way of the FSL Report which found that the blood found on the carpet matched the DNA of the victim has been ignored. The testimony of the witnesses and the documentary evidence clearly nailed the accused who ought to have been convicted. Learned ASJ has failed to appreciate the testimony of the victim and the documentary evidence in the right perspective. Hence, Leave is sought to appeal against the judgement of acquittal.

8. Submissions heard.

9. To appreciate the contentions made on behalf of the prosecution it would be pertinent to consider the testimony of the victim which was held to be full of contradictions and not reliable.

10. The first narration of the incident was made by the victim/ prosecutrix on 12.12.2013 while she was admitted in the hospital for her treatment. She stated that she was pursuing English Speaking Course and had applied for admission in a Computer Course. On that day her school friend Kajal, her erstwhile school friend from Sarvodaya Co-Ed School, Vasant Vihar, gave her a call from her mobile phone No.9812346559 at about 12 noon and told her that she was inclined to pursue the Computer Course and she wanted to get information about it from the prosecutrix. She called the prosecutrix to Sector-1, R.K. Puram where she met her at the Bus Stand, Sector-1, R.K. Puram, from where they took a bus and came to the First Floor of a house in South Extension where Kajal had told that her parents are residing. However, when they reached the house, none was present in the house but Kajal assured her that her parents would come back in some time. They started talking but in the mean while one boy aged about 25-26 years having a height of 5'6" came and started talking. After some time, Kajal left the room on the pretext of getting something to eat and locked the door from outside. The prosecutrix kept on telling her to open the door, but it was not opened. Thereafter, that boy held her hair and raped her twice. She quickly dressed up. In a hurry, she was unable to trace her phone but picked up the mobile phone of the accused which was lying on the bed and called her friend

Gaurav on his mobile phone and asked him to meet her. The door of the room was opened at 06:00 P.M. She left Kajal there and with difficulty came out and went to Church Road, R.K. Puram where she met Gaurav to whom she disclosed the entire incident. While she was going with Gaurav to the house of Kajal, she felt dizzy. Gaurav then called the police and they went to Safdarjung Hospital where in her confusion she told the Doctor that the incident had happened in Sector-1, R.K. Puram instead of Part-I, South Extension.

11. The prosecutrix in her statement under Section 164 Cr.P.C stated that she knew the respondent/ accused Amar Pal for the last about ten days who had been calling her regularly to become friends. However, she did not want to become friends with him and ignored him for two days. On one occasion, she scolded him as well despite which he persisted in making phone call. One day she had a conversation and told him that she was looking for a part time job. He called her to Munirka on 11.12.2013, where she met him and he gave her 100% guarantee to get the job. He then called her to South Extension on 12.12.2013 to meet his boss and to give an advance for the job that was being offered. She at about 03:00 P.M reached South Extension from where he took her to one flat in Sewa Nagar. She waited for some time but the boss did not come. When she told him that she would return, he forcibly held her inside and locked the door and went to buy coke. She raised an alarm. 2-3 boys came, but left without helping her. Her phone got switched off, therefore she could not call the police. The respondent came back and made her drink the coke and gave her beatings. Thereafter, he raped her twice. With great difficulty she was able to come out. He threatened her not to tell about the incident to any person. However, while she was in the room somebody had knocked at the door and the respondent had gone to see who had come and in the mean while she made a phone call to her friend Gaurav from his mobile phone. He forcibly got her into a bus and left. She got off at Sector-1, R.K. Puram, where she met her friend Gaurav to whom she disclosed the entire incident. They both then went to the hospital and reported the matter.

12. The prosecutrix in the Court in her testimony as PW3 deposed on similar line as her statement under Section 164 Cr.P.C.

13. The learned ASJ referred to the contradictory statements made by the prosecutrix in her complaint and statement under Section 164 Cr.P.C. The Crime Scene Report Ex.PW10/D reported that the Forensic Team had visited the house at A-441, Sewa Nagar, Kotla Mubarakpur from where the specimen blood etc. was lifted. However, the prosecutrix had pointed out the house where the alleged offence took place which was Quarter No.A-445 as is also so reflected in the Site Plan Ex.PW21/G.

14. The learned ASJ noted that the scene of crime is different from A-441, from where the samples were lifted and thus not much credence could be given to the FSL Report. It was concluded that a doubt was created as to whether the CFSL Team had picked the samples from the scene of crime which is A-445 or some

other place i.e. A-441. The prosecutrix incidentally had not given the house number in any of her statements. The FSL Report was thus rendered ineffective.

15. Learned ASJ observed further that the other corroborative piece of evidence was MLC Ex.PA, wherein there was no scar, bruise, abrasion noticed except one small pressure lesion on left outer quadrant of breast. It was, however, observed that the victim was actively bleeding and her pad was fully soaked with blood. Blood stains were present over her lower limbs. Her jeans was also soaked in blood. The learned ASJ observed that the presence of the "pad" was not explained. As per the MLC, LMP of the victim was 20.11.2013. No explanation is forthcoming as to why she was using a pad. These circumstance also created a doubt about the testimony of the prosecutrix. Thus, considering that since the testimony of the witness was not of stellar quality and was also not corroborated by the supporting evidence, benefit of doubt was given and the accused was acquitted.

16. We find that the prosecutrix had been changing her stand in statements made to the police and in the Court. There is inherent inconsistency in her narration of the incident at different times. Furthermore, it is not supported by the independent scientific and corroborative evidence thereby creating a doubt. We find no merit in the present Leave to Appeal, which is here by dismissed.