

(2019) 01 DEL CK 0070

In the Delhi High Court

Case No : Criminal Revision Petition No. 991, 992 Of 2018, Criminal Miscellaneous (Bail) 1774, 1775 Of 2018

X & Y (A Minor)

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 377
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2019) CrLJ 2156

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Salman Khurshid, Sulaiman Khan, Sanchita Ain, Azra Rehman, Sakshi Kotiyal, Anshu Kapur, Kusum Dhalla

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. The present revision petitions have been filed by Children in Conflict of Law. The memo of parties discloses the name of the petitioners. Registry is directed to conceal the names of the petitioners from the cause list as well as the record of this case so that the names and identities are not disclosed.

2. Both the revision petitions impugn judgment dated 10.10.2018 of the appellate court whereby the appellate court has rejected the appeals filed by the petitioners against the judgment of the Juvenile Justice Board dated 16.08.2018 holding the petitioner in CrL. Rev. P. 991/2018 guilty of the offence punishable under Section 377 IPC and petitioner in CrL. Rev. P. 992/2018 guilty of the offence punishable under Section 307/34 IPC.

3. Petitioners have been sent to protective custody for their proper rehabilitation for a period of six months.

4. The case of the prosecution is that the victim was employed in the Bakery

owned by the father of the petitioners. On 15.10.2014, during morning hours, the petitioner in CrI. Rev. P. 991/2018 forcibly sodomised the victim and when the victim complained to the brothers of the said petitioner all of them including the petitioner in CrI. Rev. P. 992/2018 inserted an iron rod into the anal opening of the victim and also threatened to kill him.

5. Initially the victim did not disclose the incident to anyone. A DD entry was made alleging that an accident had taken place on account of which victim had sustained injuries. The victim was initially taken to a local doctor who gave first aid. However, since the bleeding did not stop, the victim was taken to Lok Nayak Jai Prakash Narayan Hospital (in short LNJP Hospital). When the doctor at LNJP Hospital conducted an examination, the doctor suspected foul play and accordingly treated it as a MLC case and informed the police.

6. As per the prosecution when the police reached the spot, the police was given a statement that an accident had taken place and no foul play was alleged.

7. Medical examination and surgery of the victim was conducted in the hospital. It is the case of the prosecution that on 03.12.2014 after approximately 58 days after the incident, the mother of the victim complained that victim had been sexually assaulted and thereafter injury was caused by inserting an iron rod. FIR was registered, investigation conducted and the final report was filed.

8. Since the petitioners were juvenile, the trial was separated from the other accused and they were tried by the Juvenile Justice Board. It is informed that the proceedings qua other accused is still pending and trial is underway.

9. During trial 7 (seven) witnesses who claimed to be eye-witnesses gave their deposition before the Juvenile Justice Board. All of them contended that the victim while working in the Bakery had taken a break for breakfast and when he was keeping money at Machaan/Taand/Parchaati (mezzanine) which was at a height of about 6 ft. fell down on the handle of a machine which is used for baking and the said handle entered in the anus of the victim and he sustained injuries. The victim was taken to a nearby clinic of PW8 and when bleeding did not stop, the victim was taken in the car of the father of the petitioners to LNJP hospital.

10. The victim was examined as PW-10, he categorically deposed that the petitioner in CrI. Rev. P. 991/2018 took him to the Machaan/Taand/Parchaati (mezzanine) forcibly took off the pant and did unnatural sex with him. Thereafter, he came down from the mezzanine and informed the elder brother of the petitioner but the elder brother also abused him and threatened that this fact should not be disclosed to anyone. Thereafter, the petitioner in CrI. Rev. P. 992/2018 along with others caught hold of him, forcibly took him on the Machaan and the elder brother inserted an iron rod into the anus of the victim.

11. Attending doctor at LNJP Hospital was also examined as a prosecution witness to prove the MLC as also the nature of injury. He deposed that intra

operative findings were "perineal lacerated wound at 6'O Clock position with 4x2 cm. involving anal sphincture". He also deposed that there was a laceration in posterior rectal wall involving 10 cm. of rectal. Doctor deposed that injury was possible through an elongated hard object but exact cause of injury could not be given which could be given by forensic expert.

12. Juvenile Justice Board disbelieved the testimony of PW1 to PW8 on the ground of numerous contradictions and inconsistencies in their testimony. The Board observed held as under:

"34. However, the testimony of PW-1 to PW-8 does not inspire the confidence of Board due to numerous contradiction and inconsistency in their testimonies. Each one of them i.e. PW-1 to PW-7 have given different version with respect to the presence of CCL 'Y' and 'X' at the spot. As per PW-1, both the CCLs were present at the bakery at the time of incident and CCL 'X' even fainted after seeing the bad condition of victim. However, as per PW-2, CCLs were upstairs at the time of incident as they were having school exam. As per PW-3, the CCLs were not even present at the spot at the time of incident as they were in their school for examination. As per PW-4, both the CCLs were getting ready for their school at the time of incident. PW-5 has deposed that CCLs were not present at the spot at the time of incident. As per PW-6 and PW-7, CCL 'Y' had gone to dress himself for the school while CCL 'X' was on the counter of the shop. Thus, there is no corroboration in the testimony of witnesses PW-1 to PW-7.

35. Further, each one of the witness i.e PW-1 to PW-7 except PW-3 and PW-5 had deposed that they had taken the victim to one local doctor i.e. Dr. Noori. However, PW-8 i.e Adil had deposed that he is running a clinic in the name of Noori Clinic and he is practicing in the said clinic and he had examined the victim. Thus, if we believe the testimony of PW-8, then there is no Dr. Noori in the vicinity but a Noori Clinic which makes the version of PW-1 to PW-7 even more doubtful. It is important to note that the witnesses PW1 to PW7 are either working in the bakery run by father of CCLs or are working/ residing in neighbouring area. The bare testimony of PW1 to PW7 appears to be tutored and inclines the Board to hold that PW-1 to PW-7 are not disclosing the true facts for reason best known to them."

(names of CCLs concealed)

13. With regard to the deposition of the victim, Juvenile Justice Board has observed as under:

"37. The victim has categorically deposed in his examination and in his statement recorded u/s 164 Cr.PC qua the brutal manner in which he was attacked by the CCLs. The Board is unable to find any inconsistency in the examination and cross-examination of victim PW-10 worthy of throwing a doubt on his testimony.

38. *****

39. In the present case, the sole testimony of victim inspires confidence of the Board. Nothing adverse has been culled out in the cross-examination of victim W-10 which can throw a doubt upon his version. The statement of PW-10 coupled with his statement recorded u/s 164 Cr.PC i.e Ex.PW-10/A and corroborated by the MLC Ex.PW-14/A is sufficient to prove the case against CCLs. Rather if we peruse the MLC, it can be seen that the concerned doctor had on his own suspected foul play in the injuries sustained by the victim. The concerned doctor had ruled out the history of falling from height as the injury was only in the anal area and not over the entire body. In case the victim had fallen from a height onto the handle of the oven and then on to the floor, it is but natural that he must have sustained some bruises or abrasion over the remaining body parts as well in addition to the anal area. However, this is not the scenario in the present case. PW-14 Dr. Vikrant has explained in detail the nature of injuries and severity thereof sustained by the victim."

14. With regard to the contention of the petitioners that there was delay in registering the FIR, Juvenile Justice Board was of the view that delay has sufficiently been explained. Juvenile Justice Board has relied on the judgment of the Supreme Court in 'Bathula Nagamalleswara Rao & Ors. Vs. State Rep. By Public Prosecutor, 2008(2) CRIMES 188 (SC) wherein the Supreme Court has held that delay in lodging the FIR, if justifiably explained, will not be fatal to the prosecution case.

15. In the present case, with regard to the delay, Juvenile Justice Board has held as under:

".....In the present case, the victim is minor child of tender age who had undergone immense mental and physical trauma. The victim has undergone intensive medical treatment. It is also to be noted that victim was working as a labour in the bakery run by father of CCLs and there are allegations of continuous threats to the victim and his family members. Thus, it is but natural that victim must have been under so much stress due to his physical, medical and mental condition that he had no choice but to remain quite about the incident.

It is argued by Ld. Defence Counsel that the delay in registration of FIR is because of the reason that family members of victim wanted to extort money from the CCLs. However, no previous enmity has been reported between the victim and CCLs. The defence has not led any evidence to prove that family of victim tried to extort money from the family of CCLs. No evidence has been led as to how much money was demanded, the manner in which it was demanded and when it was demanded by mother or uncle of the victim from the family of CCLs. In *Gurbachan Singh V. Satpal Singh*, AIR 1990 SC 209, it was held by Hon'ble Apex Court that prosecution is not required to meet any and every hypothesis put forward by the accused. Under the facts and circumstances of the present case, we do not find any cogent and convincing reason for doubting the correctness and truthfulness of the FIR which was promptly lodged by the

mother of the victim as soon as she came to know about the true facts."

16. The Juvenile Justice Board was satisfied that the prosecution has proved the case beyond reasonable doubt and accordingly convicted the petitioners.

17. The appeals filed by the petitioners have been rejected by the appellate court impugning order dated 10.10.2018. The appellate court has held as under: -

"7. A bare reading of the cross-examination of victim/PW10 makes it clear that admittedly CCL 'X' (a) 'Z' had taken the victim boy to the 'Machaan' (a sort of mezzanine within the bakery) on the pretext of showing him something. Thus, the presence of this CCL/appellant as well as the victim boy there at the spot on the fateful day & time are clearly admitted even on behalf of the defence side. The testimony of 10 also categorically deciphers the role of other brothers (Including other CCL/appellant namely 'Y') and there is not even a single suggestion in his entire cross examination either regarding their role as deposed by PW10/victim or even about their presence there at the spot immediately after the alleged incident of sodomy. The PW10 has categorically deposed that it was CCL 'Z' (son of the bakery owner) who took him to the Machaan, took off his trouser and forcibly did unnatural intercourse with him. He has also categorically deposed that thereafter CCL 'Y' caught hold of him and one Rashid penetrated iron rod into his anus. His statement u/s. 164 Cr.P.C is corroborative of his testimony as above and the same has been proved on record as Ex.PW10/A. In the name of rebutting all these aspects of deposition, it was merely suggested that the CCLs were falsely implicated on account of hatred and personal enmity. However, as a matter of fact, it could not be brought on record even to the prima facie extent as to how and for what reasons there was hatred or personal enmity between the parties. It is also worth mentioning here that during the cross examination of PW9 (mother of the victim) and PW11 (uncle of the victim), it was tried to give a new twist to the defence that the motive behind the initiation of the present proceedings was to extort money. However, nothing such could be brought on record even to the slightest extent. It was not even indicated during the entire defence as to who had (allegedly) demanded money and from whom.

8. As far as the delay in lodging FIR is concerned, it finds sufficient explanation thereof in the testimony of PW9 and PW11 i.e mother and uncle respectively of the victim. It is also worth mentioning here that in the context of our society, some sort of social stigma is attached with the incidents of like nature and generally the delay occurs in deciding whether or not matter be reported to the Police. In the given context, the Master-Servant relationship between the bakery owner and the victim child could also be another cause of not reporting the matter to the police at the very first instance. Even the mother of the victim child has deposed in her cross examination that she had never been to Delhi prior to the incident in question. She had appended her thumb impression on her testimony which shows that she is an illiterate lady. Thus, the socio-economic as well as educational status/standard of the victim and his family, could be another cause of delay in setting the machinery into motion. Thus, the delay cannot be

said to be fatal in the given context.

9. As far as the defence version/ground of the appeal (to the effect that the victim child unfortunately fell down on the handle of ovan in the bakery) is concerned, it does not appear even to be a plausible explanation of the injuries received on the private part of the body i.e even the PW14 i.e Dr. Vikrant Akulwar (examined on 25.11.16) who had examined the victim child had suspected a foul play as has been duly deposed by him. He has deposed even to the extent of saying that the patient was having acute retention of urine and was suffering faecal inconstitence which means loss of ability to hold stool. As per his MLC there was laceration in posterior rectal wall involving 10 cm of rectal which injury was possible through an elongated hard object.

10. As far as the findings of the JJB-V are concerned, these are well reasoned. It has duly been substantiated therein as to why the testimony of PW1 to PW8 was found and observed to be unworthy of reliance. Ld. JJB has justifiably relied upon the testimony of victim/PW10, mother of the victim child PW9 and uncle of the victim child examined as PW11 as well as the corroborative medical evidence in support thereof. Inserting some hard object into the anus of a child is a heinous act. The Ld. JJB has duly observed in para No.39 of the impugned judgment that the concerned doctor had ruled out the history of falling from the height as the injury was only in the anal area and nowhere; else. Had the victim child fallen on the handle of some ovan or on some pipe-like object it was not at all possible to sustain the injuries in the anal area only. It has also duly been explained in para No.41 of the impugned judgment as to why the defence pretext of the extortion of money was not found to be a reliable defence pretext. On perusal of the record as also the testimony of the witnesses, I am of the view that there was no infirmity in the order of the Juvenile Justice Board as upheld by the appellate court in returning the finding of guilt, in so far as the petitioners are concerned. The deposition of the victim is very categorical and the victim in great detail has explained as to how the subject offence was committed by the petitioners. The deposition has been considered by the Juvenile Justice Board as well as the appellate court in right perspective and rightly reliance has been placed on the same. The view of the Juvenile Justice Board that statements of PW-1 to PW-8 inspire confidence and does not, in my view, suffer from any infirmity."

(names of CCLs concealed)

18. Perusal of the record shows that the Trial Court has rightly disbelieved the testimony of PW-1 to PW-8. Much reliance cannot be placed on their testimony. They are either related to the owner or are neighbours of the owner of the bakery. Though that per se is not a ground to disbelieve any witness but the manner in which they have deposed and their very testimony casts doubts on their veracity. This coupled with the testimony of the victim which is very explicit, shows that the trial court and the appellate court has rightly rejected the same.

19. Further, the delay in making a complaint has been sufficiently explained by

the victim. The victim was employed in the factory of the father of the petitioners and being a young boy of 15 years, who has suffered trauma, it was not unreasonable for him to have hidden this fact from others out of fear and shame.

20. Juvenile Justice Board has rightly placed reliance on the judgment of the Supreme Court in Bathula Nagamalleswara Rao (supra).

21. Further the MLC which enumerates the nature of injury sustained by the victim shows that there was an internal injury to the the posterior rectal wall of the anal of approximately 10 cm.

22. The story of the defence that injury was sustained by falling on the handle of the door of the equipment is not plausible as no such injury could have been sustained by the victim by mere falling on the handle. The MLC shows that the injury was approximately 10 cm on the posterior rectal wall which implies that the object had penetrated the anus by about 10 cms. Perusal of the photographs on record shows that there is insufficient space between the handle and the door for the door handle to penetrate 10 cms in the anus.

23. Further, it has also been observed by the Juvenile Justice Board that such an injury is not possible as there was no other injury on any other part of the body of the victim. The Board was rightly of the view that if there was substance in version of the defence then the victim would have suffered injury not only to the anus but also other parts on the body of the victim and since no other injury was present, the Board has rightly disbelieved the version of the petitioners.

24. Keeping in view the facts and circumstances as noticed above, I find no infirmity in the view taken by the Juvenile Justice Board as well as taken by the appellate court. I find no merit in the petitions. The petitions are accordingly dismissed.

25. It is clarified that this Court has neither examined the evidence nor returned any finding with regard to the ongoing trial before the sessions court of the other accused persons who are not juveniles. Sessions Court would be at liberty to decide the case based on evidence which come before the Sessions Court without being influenced by anything stated herein.

26. Order Dasti under signatures of the Court Master.