

Sharad Chandra @ Sharat Chandra Vs State Of Rajasthan

Court: Rajasthan High Court

Date of Decision: Dec. 21, 2018

Acts Referred: Code Of Criminal Procedure, 1973 â€” Section 164, 389

Indian Penal Code, 1860 â€” Section 34, 109, 120, 120B, 342, 354A, 370(4), 376, 376(2)(f), 376D, 506, 509

Juvenile Justice (Care And Protection Of Children) Act, 2015 â€” Section 23, 26

Protection Of Children from Sexual Offences Act, 2012 â€” Section 5(f), 5(g), 6, 7, 8, 17

Hon'ble Judges: Vijay Bishnoi, J

Bench: Single Bench

Advocate: Vineet Jain, Nishant Bora, Arjun Singh Rathore, P.C. Solanki

Final Decision: Disposed Off

Judgement

This application under Section 389 Cr.P.C. has been preferred on behalf of the applicant-appellant seeking suspension of sentence awarded to him by

Special Judge, POCSO Act Cases Jodhpur (hereinafter to be referred as *the trial court*) vide its judgment dated 25.04.2018 passed in Sessions

Case No.116/2016 (152/2013), whereby the trial court has convicted the applicant-appellant for the offences punishable under Sections 370(4) read

with Section 120-B and 376D IPC, however, sentenced him as under:

Under Section 370(4)/120-B IPC:

10 years *rigorous imprisonment* and to pay a fine of Rs.50,000/-, in default of payment of fine, further to undergo one year *rigorous*

imprisonment

Under Section 376D IPC:

20 years *rigorous imprisonment* and to pay a fine of Rs.50,000/-, in default of payment of fine, further to undergo 2 years *rigorous*

imprisonment.

As per the prosecution story, the prosecutrix, a 12th Standard student, who was studying and residing in Asharam Gurukul, Chhindwara, Madhya

Pradesh fell ill in first week of August, 2013. The co-accused Sanchita alias Shilpi, who was working as Warden of the hostel, where the prosecutrix

was residing, came to know about the illness of the prosecutrix and thereafter told her that she is under the influence of evil spirits. On 07.08.2013, co-

accused Sanchita alias Shilpi informed the family members of the prosecutrix that she is not feeling well, so they should take her to Gurukul at

Chhindwara, upon which the parents of the prosecutrix reached Chhindwara on 08.08.2013 and thereafter on 09.08.2013, visited the Girls Hostel,

Gurukul, Chhindwara, where the prosecutrix was residing and met the co-accused Shilpi and the applicant-appellant, where they told her parents that

the prosecutrix is under the influence of evil spirits and they also informed about her condition to Asharam Bapu, so they should meet him wherever he

is. On 09.08.2013 itself, the prosecutrix left the hostel for Shahjahanpur, U.P. with her parents, where they contacted another co-accused - Shiva, who

informed them that Asharam would be in Delhi on 12.08.2013, then the prosecutrix along with her parents reached Delhi on 13.08.2013, then they

came to know that Asharam is in Jodhpur and when they again called Shiva, he asked them to come to Jodhpur. Thereafter, the prosecutrix along with

her family members reached Jodhpur at Manai village, where Asharam was staying in a farm house. The prosecutrix along with her parents stayed

there and met with Asharam. On 15.08.2013, the prosecutrix was sexually assaulted by Asharam in a Kutia of farm house. Thereafter, the

prosecutrix and the family members left Jodhpur and reached Shahjapur, where the prosecutrix narrated entire incident of sexual assault by Asharam

to her family members on 19.08.2013. Then the prosecutrix and her family members went to Delhi, where a zero number FIR was lodged at Police

Station, Kamla Market, New Delhi and statements of the prosecutrix were recorded under Section 164 CrpC and thereafter, FIR No.122/2013 was

registered at Police Station, Mahila West, Jodhpur on 21.08.2013.

After investigation, the police filed charge-sheet against the applicant-appellant for the offences punishable under Sections 342, 354-A, 370(4), 376(2)

(f), 376D, 506, 509/34, 109/120-B IPC and Sections 23 and 26 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be

referred as "the Juvenile Justice Act" and Sections 5(f)/6, 5(g)/6, 7/8 read with Section 17 of Protection of Children from Sexual Offences Act,

2012 (hereinafter to be referred as "the POCSO Act").

The trial court framed charges against the applicant-appellant for the offences punishable under Sections 342/34, 354A/34, 370(4), 376(2)(f) read with

Section 120-B/109, 376D, 506/34, 509/34 read with Section 109/120 IPC and Section 23 of the Juvenile Justice Act and Section 5(f)/6 read with

Section 17, 5(g)/6, 7/8 of the POCSO Act.

After recording of the prosecution evidence as well as the defence evidence, the trial court has convicted and sentenced the applicant-appellant as

aforesaid.

Learned counsel for the applicant-appellant have submitted that the trial court has grossly erred in convicting and sentencing the applicant-appellant

for the offences punishable under Sections 376D IPC and Sections 5(g)/6 and 17 of POCSO Act.

It is argued that the applicant-appellant was appointed as Director of Asharam Gurukul Hostel, Chhindwara, Madhya Pradesh in January 2013 only

vide Ex.P/64 and prior to that, he was not connected with the activities of Gurukul in any manner. It is further argued that no direct evidence is

available on record to suggest that the applicant-appellant sent the prosecutrix to the Ashram at Jodhpur where accused "Asharam was staying or

he was aware that if the prosecutrix would go to Asharam's place, she would be sexually assaulted by him.

Learned counsel for the applicant-appellant have further argued that there is no direct evidence available on record to suggest that the applicant-

appellant hatched a criminal conspiracy with accused - Asharam and sent the prosecutrix to the place, where Asharam was staying, so that he could

sexually assault her. Learned counsel for the applicant-appellant have submitted that the trial court in the impugned judgment has also concluded that

there is no direct evidence available on record to suggest that the applicant-appellant had directed the prosecutrix and her parents to go to the place

where accused - Asharam was staying while knowing that the prosecutrix would be sexually assaulted there.

Learned counsel for the applicant-appellant have submitted that the challenge of the applicant-appellant to his conviction under Section 376 IPC and

Sections 5(g)/6 read with Section 17 POCSO Act and his sentence under Section 376D IPC is based on strong grounds.

Learned counsel for the applicant-appellant have further submitted that the trial court has inferred that when the prosecutrix and her parents met to

Asharam at Jodhpur and narrated about the illness of the prosecutrix, he had identified the prosecutrix by saying "BHOOT WALI LADKI" from

Chhindwara and this fact is sufficient to prove that the applicant-appellant and Asharam were in league to commit the offence. It is argued that the

prosecutrix and her parents made a significant improvement in their statements recorded before the court and deliberately stated that accused "Asharam

Asharam had identified the prosecutrix as "BHOOT WALI LADKI" from Chhindwara, though such fact was not revealed either by the

prosecutrix or her parents during the course of investigation.

Learned counsel for the applicant-appellant have further argued that the trial court in Para 458 of the impugned judgment came to the conclusion that

no direct evidence of the above mentioned facts is available on record, however, without there being any evidence available on record, on the basis of

surmises and conjectures, the trial court held the applicant-appellant guilty of hatching a criminal conspiracy with accused "Asharam.

Learned counsel for the applicant-appellant have invited attention of the Court towards the statements of the prosecutrix-PW.5 as well as of her

father Karamveer Singh-PW.21 and argued that from the evidence of the said witnesses, only it can be gathered that the applicant-appellant had

suggested PW.12 to contact accused-Asharam and nothing else.

Learned counsel for the applicant-appellant have argued that the applicant-appellant was appointed as Director of the Gurukul Ashram Hostel,

Chhindwara in January 2013 only, whereas the said hostel was running prior to the appointment of the applicant-appellant and, therefore, it cannot be

said that the applicant-appellant is involved in recruiting, transporting, harboring, transferring or receiving any girl of the hostel for the purpose of her

exploitation and as such the trial court has grossly erred in convicting and sentencing the applicant-appellant for the offences punishable under Section

370(4)/120 IPC.

It is also submitted that the applicant-appellant was only a Director of the hostel and was not in direct contact with inmates of the hostel, whereas co-

accused Sanchita @ Shilpi being the Warden of the hostel was in direct contact with the inmates of the hostel. It is further submitted that as per the

prosecutrix and her parents, it was co-accused " Sanchita @ Shilpi, who contacted the parents of the prosecutrix and informed them about her

illness and on her asking, the parents of the prosecutrix reached Chhindwara on 09.08.2013. It is argued by the learned counsel for the applicant-

appellant that there is no evidence available on record to suggest that prior to 09.08.2013, the applicant-appellant ever called the parents of the

prosecutrix or was in contact with them in any manner. Learned counsel for the applicant-appellant have also submitted that from the evidence of the

parents of the prosecutrix, it is clear that the father of the prosecutrix met the applicant-appellant only on 09.08.2013 at Chhindwara and thereafter,

they were not at all in contact of the applicant-appellant in any manner.

It is further submitted that as per the prosecution story, the applicant-appellant was in contact with accused " Asharam on a mobile phone, which

was in possession of co-accused Prakash, however, the trial court has already acquitted the accused - Prakash while concluding that the prosecution

has failed to prove that the mobile phone was in possession of Prakash and through the said mobile phone, accused-Asharam was in contact with

other accused-persons viz. applicant-appellant and Sanchita @ Shilpi.

Learned counsel have, therefore, argued that challenge of the conviction and sentence of the applicant-appellant under Section 370(4)/120 IPC is also

on strong grounds.

Learned counsel have also submitted that the applicant-appellant was granted bail during the course of trial by this Court and there is no allegation to

the effect that he misused the condition of the bail in any manner. It is, therefore, prayed that taking into consideration the facts and circumstances of

the case, the sentence awarded to the applicant-appellant by the trial court vide impugned judgment may be suspended.

Per contra, Mr Arjun Singh - learned Public Prosecutor and counsel appearing for the complainant have vehemently opposed the application for

suspension of sentence and argued that from the statements of PW.5 "prosecutrix, PW.12 Sunita Singh and PW.21 Karmveer Singh, parents of the

prosecutrix, it is clear that the applicant "appellant along with co-accused- Sanchita @ Shilpi convinced the prosecutrix and her parents by falsely

creating an impression that the prosecutrix is under the influence of evil spirits and then induced them to approach accused-Asharam, where the

prosecutrix, a minor girl, was sexually assaulted by him.

It is also argued that by producing cogent and reliable evidence, the prosecution has successfully proved that at the time of incident, the prosecutrix

was minor and she was subjected to sexual assault by accused-Asharam with the aid of applicant-appellant and co-accused Sanchita @ Shilpi.

Learned counsel appearing for the complainant has also argued that for the purpose of proving guilt of a co-accused for the offence punishable under

Section 376D IPC, his/her presence at the place of offence is not necessary at all. It is submitted that sufficient evidence is available on record to

suggest that the applicant-appellant had sent the prosecutrix and her parents to Asharam having full knowledge that she might be subjected to sexual

assault by him. It is contended that grant of bail by the High Court, during the course of trial, cannot be a ground for suspending the sentence awarded

to a convict.

On behalf of the State as well as on behalf of the complainant, it is prayed that the application preferred on behalf of the applicant-appellant for

suspension of his sentence is liable to be dismissed.

Heard learned counsel for the parties and carefully scrutinized the record of the case.

The trial court convicted the applicant-appellant for the offences punishable under Section 376D IPC, Section 5(g)/6 and 17 of the POCSO Act and

sentenced him for twenty years "rigorous imprisonment for the offence punishable under Section 376D IPC. He has also been convicted for the

offence punishable under Section 370(4) read with Section 120-B IPC and sentenced for ten years "rigorous imprisonment.

It is not in dispute that at the time of incident of sexual assault upon the prosecutrix by accused-Asharam at Jodhpur, the applicant-appellant was not

present at Jodhpur.

On behalf of the applicant-appellant, it is claimed that he was appointed as Director of the Asharam Gurukul Hostel, Chhindwara in January, 2013 vide

Ex.P/64 and prior to that he was not related to the activities of Gurukul Hostel, Chhindwara in any manner and the prosecution has not placed any

evidence to prove otherwise. The prosecution has also not produced any evidence of this effect that prior to 09.08.2013, the applicant-appellant was,

in any manner, in contact of the prosecutrix or her parents. It is also not the case of the prosecution that after 09.08.2013, when the prosecutrix and

her parents left the Asharam Gurukul Hostel, Chhindwara, they were in contact of the applicant-appellant by whatsoever means.

As per the prosecution, the applicant-appellant was in regular contact with accused-Asha Ram through mobile phone possessed by accused Prakash,

however, the trial court acquitted the accused-Prakash while concluding that the prosecution has failed to establish their link with the commission of

crime on the basis of mobile phone possessed by him. The trial court in Para 412 of the impugned judgment has given finding that the prosecution has

succeeded in proving that Mobile Phone Nos.9373976316 and 9310229635 are of applicant-appellant but at the same time, the trial court in its

judgment has specifically held that the prosecution has failed to prove the link between the above referred mobile numbers with Mobile

No.9321933400, which was allegedly in possession of Prakash and used by accused-Asharam for making contact with other persons.

The trial court in Para 458 of the impugned judgment has also observed that there is no direct evidence available on record, which suggests that the

applicant-appellant sent the prosecutrix to Asharam, so that he could sexually assault her but has held that on the basis of ocular and circumstantial

evidence, it can be inferred that the applicant-appellant had sent the prosecutrix to Asharam, so that he could assault her sexually. However, the

ocular and circumstantial evidence, on which the trial court has placed reliance require consideration in detail.

Taking into consideration the above facts and circumstances of the case, this Court feels that the challenge of the applicant-appellant to his conviction

for the offence punishable under Section 376D IPC, Section 5(g) and 17 of the POCSO Act and under Section 370(4)/120 IPC is based on strong

grounds.

Having regard to the facts and circumstances of the case and the fact that the applicant-appellant was granted bail during trial and it is not reported

that he misused the conditions of the bail, I consider it just and proper to suspend the substantive sentence awarded to him.

Accordingly, this application for suspension of sentence filed under Sec.389 Cr.P.C. is allowed and it is ordered that the substantive sentence passed

by the trial court vide judgment dated 25.04.2018 passed in Sessions Case No.116/2016 (152/2013) against applicant-appellant Sharad Chandra @

Sharat Chandra S/o Jayant Rao shall remain suspended till final disposal of S.B.Cr. Appeal No.665/2018, provided he executes a personal bond in the

sum of Rs.2,00,000/- (Rupees two lac) with two sureties of Rs.1,00,000/- (Rupees one lac) each to the satisfaction of the learned trial Judge for his

appearance in this Court on 21.01.2019 and whenever ordered to do so, till the disposal of the aforesaid appeal on the conditions indicated below:-

1. That he will appear before the trial Court in the month of January of every year till the appeal is decided.
2. That if the applicant-appellant changes the place of residence, he will give in writing his changed address to the trial Court as well as to the counsel

in the High Court.

3. Similarly, if the sureties change their address, they will give in writing their changed address to the trial Court.

4. That the amount of fine awarded by the trial court shall be deposited by the applicant-appellant in the trial court by 21.01.2019.

The trial Court shall keep the record of attendance of the applicant-appellant in a separate file. Such file be registered as Criminal Misc. Case related

to original case in which the applicant-appellant was tried and convicted. A copy of this order shall also be placed in that file for ready reference.

Criminal Misc. file shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial court. In case the

applicant-appellant does not appear before the trial court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

The trial court is directed to disburse the fine amount, so deposited by the applicant-appellant, to the complainant.