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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 428/2016

STATE (GNCT OF DELHI)

..... Petitioner

Represented by: Mr. Hirein Sharma, APP with
W/ASI Parvati.

versus

PARDEEP KUMAR

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

10.02.2017

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CrI.M.A. 12582/2016

For the reasons stated in the application delay of 42 days in filing the petition is condoned.

Application is disposed of.

CRL.L.P. 428/2016

1. State seeks leave to appeal against the judgment dated 3rd March, 2016 passed by the learned Additional Sessions Judge acquitting the respondent for offences punishable under Section 354/354D/363 IPC and Section 10 of The Protection of Children from Sexual Offences Act (in short the POCSO Act).

2. FIR in the above-noted case was recorded on the statement of the child victim 'S' aged 10 years who stated that on 13th April, 2015 when at about 1.30 PM she was playing in the gali the respondent who was residing

in her neighbourhood came to her and stated that “*Apne Papa se baat kara de*”. When she refused the respondent tried to take her to Public Shochalaya by holding her hand. She somehow managed to get herself free. The respondent followed her and again caught hold of her, when her aunt came there and got her freed. The respondent fled away from the spot and when her father came she told the entire facts to him.

3. Thus, as per the prosecution case the two witnesses of the incident were the child victim who was examined as PW-4 and her aunt PW-7. The relevant portion of the statement of the child victim PW-4 in her examination-in-chief is:

“Q. Beta batao kya hua tha?”

Ans. Ek din main school se aa kar gali main khel rahi thi. Ye dopahar ki baat hain, wo ladka, jo hamare ghar ki dusri gali main rehta hain, aaya aur mujh se bola ki tumhare papa ka number kya hain mujhe baat karni hain. Maine use nahi bataya, per wo mujh se puchhe jaa raha tha.

Q. Beta fir kya hua?”

Ans. Fir us ne mera hath pakda aur mujhe sochalya main le gaya per main hath chhuda kar waha se bhag kar aa gai.

Q. Sochalya kitni door hain?”

Ans. Jahan hum khel rahe the us ke paas main he hain.

Q. Beta fir kya hua?”

Ans. Wo ladka mere peechhe peechhe gali main aa gaya tha aur fir se mera hath pakad kar le jaane laga per itne main meri khala Sitara wahan aa gai aur unhone mujhe bacha liya. Unhone us ladke ko chata wata bhi mara tha.

Q. Beta fir kya hua?”

Ans. Wo ladka wahan se bhag gaya tha.

Q. Beta fir kya hua?”

Ans. Uske baad main apne ghar gai aur apne papa ko sab baat bata di.

Q. Fir aapke papa ne kya kiya?

Ans. Fir papa ne police ko bula liya.

Q. Beta police ne kya kiya?

Ans. Police ne mujh se sab baat puchhi kar likh li thi.

Q. Police ne aur kya kiya tha?

Ans. Maine police ko wo sochalya bhi deekha diya tha jahan wo ladka mujhe le kar gaya tha.”

4. PW-4 was cross-examined by the learned amicus curiae who in cross-examination deposed:

“Q. Us samay aur kitne bachhe khel rahe the?

Ans. Bahut saare bachhe khel rahe the.

Q. Kya wo saare bachhe aapke pados main he rehte hain?

Ans. Haan, sab hi aas-paas rehte hain.

Q. Kya ye kehna sahi hain ke aap ball se khel rahe the aur aapki ball khelte khelte us ladke ko lag gai thi?

Ans. Nahi, ye galat hain, hum pehlo-duggo khel rahe the jisme ball ka koi kaam nahi hai.

Q. Kya ye kehna sahi hai ki aapki bal accused Pardeep ko lag gait thi aur usne aapko daanta tha jis karan aap rone lagi?

Ans. Haan, ye kehna sahi hain.

Q. Kya us time pados ke sab log ikathe ho gaye the?

Ans. Mujhe yaad nahi hain.

Q. Beta ye baat to sahi hain ki accused Pardeep aapke papa ko sheekayat karne ke liye aapse unka number maang raha tha?

Ans. Mujhe nahi pata.

Q. Beta kya accused Pardeep jab aapko sochalya main le jaa raha tha to kya us samay wahan per raaste main koi aur bhi

aapko mila?

Ans. Nahi.

Ye kehna galat hain ke accused mujhe sochalya le kar nahi gaya tha aur papa ne ye jhootha case karwaya hain kyonki accused ne mujhe daanta tha. Ye kehna galat hain ke mere sath accused ne kuch nahi kiya aur main galat bayan de rahi hu.”

5. PW-7 the aunt of the witness who also claimed to be an eye-witness deposed that on 13th April, 2015 at about 1.30 PM she was standing outside her house when she saw respondent holding hand of the child victim and taking her along with him. She scolded him and got the child victim released. People of the neighbourhood gathered there and the respondent ran away from the spot. When the father of the child victim came, she narrated the entire incident and he called the Police where after her statement was recorded.

6. The defence of the respondent was that since the child victim was playing with her friends with a ball which hit the respondent he got annoyed. He caught hold of the hand of the child victim and dragged her to her house to make complaint to her father which was misunderstood as an act of sexual assault and due to the animosity with H.C. Brijjpal PW-6 the Beat Constable of the area and his friendly relations with the father of the child victim, the respondent was implicated.

7. As per Section 30 of the POCSO a presumption is raised of the culpable mental state for an offence punishable under the POCSO Act. However, the said presumption is a rebuttable presumption and to rebut the presumption it is not necessary for the accused to lead defence evidence. In case his defence is probalised by the prosecution case he is entitled to the

benefit of doubt.

8. As noted above, in the cross-examination PW-4 admitted that lot of children were playing at the place of incident and that the ball of PW-4 hit the respondent and he scolded the child victim on which she started crying. Though the alleged incident took place when number of children were playing, however no other child was cited as a witness.

9. The finding of the learned Trial Court that in the teeth of the admission of the child victim that her ball had accidentally hit the accused, it can be inferred that the accused wanted to complain against the child to her parents, therefore he was trying to take her to her house which was misunderstood by PW-7, cannot be faulted. Since the reasoning of the learned Trial Court is not perverse and a plausible view can be taken on the basis of evidence led, no case for grant of leave to appeal is made out.

10. Petition is dismissed.

11. Trial Court Record be sent back.

MUKTA GUPTA, J.

FEBRUARY 10, 2017
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