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

+ CRL.REV.P. 86/2018

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State

versus

SANJAY @ LALLA

..... Respondent

Through: Mr. Mukesh Kumar, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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17.04.2018

Vide order dated 18.01.2018, this Court had *suo motu* taken the cognizance of the judgment rendered by the learned Additional Sessions Judge Sh. Sunil Chowdhary in Sessions Case No. 141/2013, titled as *State versus Sanjay @ Lalla*, arising out of FIR No. 120/2013, registered at Police Station New Friend Colony under Sections 363/354A IPC and Section 8 POCSO Act, since this Court, *prima facie*, was of the view that the said judgment suffers from manifest error of law, demonstrates glaring illegality, resulting in miscarriage of justice. The case was registered as Criminal Revision Petition and notice was issued to the respondent/accused. Today, we have heard Mr. Rajat Katyal, Additional Public Prosecutor for the State as well as learned counsel for the respondent/accused.

The case of the prosecution has been taken note of in the judgment in

question and the same reads as under:

“Brief facts of the prosecution case as per final report are that on 06.05.2013 SI Sushma Saxena on receiving a phone call reached Police Station New Friends Colony and on receiving DD No.37A she alongwith SI Ashok Giri reached at the spot Taimoor Nagar Pahadi, where the accused was produced by Ct. Dharambir and the complainant Smt. Sunita and her daughter/prosecutrix (original name is withheld as per law) also met her. The Complainant was inquired and she stated at around 10 AM in the morning she was washing clothes and her daughter/prosecutrix went outside her house while playing and when she did not find her daughter, upon inquiry one child stated to her that she had seen the prosecutrix with Lalla. She went to Jhuggi of Lalla where loud noise from deck was coming. She went inside the jhuggi and Lalla lifted her daughter from the bed on his lap and gave to her. On her asking to him that why he has brought her with him, he ran away from there by pushing her. She inquired from her daughter/prosecutrix who told her that Lalla gave her 10 rupees for purchasing kachori and five rupees for eatables for her and when she brought kachori Lalla pulled her by her hand inside the jhuggi and laid her on the bed on a pillow meanwhile she reached there. Complainant stated that Lalla took her by alluring her to his jhuggi with bad

intentions to commit wrong act with her. She stated whole incident to her husband when he came from his duty and they informed the police who then apprehended the accused. On the statement of complainant, case was registered. Crime team was called and prosecutrix was got medically examined but complainant refused for the internal examination of prosecutrix. Accused was thereafter arrested and got medically examined from AIIMS Hospital and exhibits were taken into possession by the police. Statement u/s-164 Cr.P.C. was also got recorded of the prosecutrix. After completion of investigation, charge sheet for the offence punishable under Section 363/354A IPC and Section 8 of POCSO Act was filed in the court against the accused.”

A perusal of the judgment in question shows that the case of the prosecution was that the prosecutrix was 7 years of age. However, the learned Additional Sessions Judge has held that the prosecution has not proved the age of the prosecutrix as 7 years. This was despite the fact that the prosecution had produced PW-9, Ms. Sunita, the teacher from SDMC Primary School, Taimoor Nagar, New Friends Colony, New Delhi, who had produced the school record, as per which, the prosecutrix was admitted in the said school in class 1st on 09.04.2012 and in the school record, her date of birth is 27.06.2006. She produced the copy of the application form – Ex.PW9/A and the copy of the admission register containing the relevant entry of admission of the prosecutrix in the school as PW-9/B.

The reasoning adopted by learned Additional Sessions Judge in

returning the said finding reads as follows:

“7. As the age of victim is required to be proved below 18 years so the prosecution has called her school record which is produced by PW9. As per the record produced by this witness, victim was admitted in school in class 1st on 09.04.2012 and her admission was entered in the admission register at serial no.6106 and the date of birth of the victim is 27.06.2006. The witness in her cross-examination stated that child was not admitted by her and she have no personal knowledge regarding the particulars of the child. The parents of the prosecutrix has also been examined and none of them has stated the date of birth of their daughter. As per the first statement given by the complainant upon which FIR was registered age of her daughter was 7 years in the year 2013 and when she prepared in the witness box in 2014 she stated the age of her daughter 6 years. The Hon’ble Apex Court dealt the issue of age as per school record in case Satpal Singh vs. State of Haryana (2010) 8 Supreme Court Cases 714 and held as under:

“28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The

authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.”

8. *Although the age of the prosecutrix in all the documents is mentioned below 18 years and she has been examined by the predecessor of the court without administering the oath observing that she is only 7 years of age but it can be aid that the prosecution has not proved the age of the prosecutrix as per law.”*

In our view, the said reasoning is incorrect and not in accordance with law. Recently, we had occasioned to deal with another judgment rendered by the same learned Additional Sessions Judge, wherein by adopting the same process of reasoning, the learned Additional Sessions Judge did not accept the evidence lead by the prosecution to establish that the age of the child victim was 10 years at the time of commission of the offence. By a detailed judgment, in Crl. Appeal No. 1184/2017 decided on 23.03.2018, titled as *State of NCT of Delhi versus Dharmendra*, we have set aside the finding returned with regard to the age of the victim in that case. In our view, the issue with regard to the age of the prosecutrix needs to be re-examined in the light of the said decision.

The learned Additional Sessions Judge has, thereafter, proceeded to

take note of the statement of the prosecutrix, who was examined as PW-2 and her mother was examined as PW-1. The learned Additional Sessions Judge has rejected the said testimonies on the premise that the child witness is susceptible of tutoring and her evidence required evaluation more carefully and with greater circumspection and that the evidence of the child witness must find adequate corroboration before it is relied on.

By making the same observations in *Dharmendra (Supra)*, the learned Additional Sessions Judge had rejected the statement of the victim while acquitting the accused. We examined the law with regard to the admissibility and reliability of the statement of the child victim in the light of several earlier decisions including those of the Supreme Court. Like in *Dharmendra (Supra)*, in the present case as well, we find that the learned Additional Sessions Judge has rendered only lip service to the principle taken note of by him and he has, in fact, not analyzed evidence brought on record in the correct perspective. Thus, once again, we find that the finding returned by the learned Additional Sessions Judge appears to be incorrect and not in accord with the law.

Lastly, we find that even though the charge-sheet had been filed under Sections 363, 354A IPC and Section 8 of the POCSO Act, the charge was framed only under Section 8 of the POCSO Act and, in the alternative, under Sections 354A IPC. The order on charge is rather cryptic and is not analysed as to why the offence under Sections 363 IPC was not *prima facie* made out. Similarly, the trial court appears to have omitted to consider whether, in the context of the case of the prosecution, the offence under Section 18 POCSO Act should have been added as an alternate to Section 8 POCSO Act. Looking to the case of the prosecution, we are of the view that the said

aspect requires deeper examination, non consideration whereof has resulted in miscarriage of justice.

In the aforesaid circumstances, we set aside the judgment of acquittal rendered by the learned Additional Sessions Judge in case No. 1734/2016 dated 27.09.2016 and Sessions Case No. 141/2013, titled as *State versus Sanjay @ Lalla* and we remand the case to the Special Judge, POCSO, South East District, Sake Courts, New Delhi with the direction that the learned Additional Sessions Judge shall firstly re-consider the aspect of framing of charge under Sections 363, 354A IPC, Section 8 of POCSO Act or, in alternative, of Section 18 of POCSO Act, and thereafter decide the case afresh in accordance with law.

The Trial Court be sent back.

The respondent is directed to surrender before the trial Court on 01.05.2018.

VIPIN SANGHI, J

P.S.TEJI, J

APRIL 17, 2018

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