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

+ **CRL.L.P. 23/2024 & CRL.M.A. 794/2024**

STATE

.....Petitioner

Through: Mr. Mukesh Kumar, APP for State.
Insp. Sumit Malik with WSI
Sharmila, PS Lodhi Colony.

versus

HARI NARAYAN SINGH

.....Respondent

Through: Mr. Vishal Khari, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **12.09.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-State under Section 378(3) of the Cr.P.C. seeking leave to appeal to challenge the impugned judgment of acquittal dated 15th February, 2020, passed by learned Additional Sessions Judge, in Case No. 24511/2016, arising out of FIR No. 341/2015, under Sections 354/376 of the IPC and Sections 4 and 12 of the POCSO Act, registered at Police Station Lodhi Colony.
3. The allegation in the said FIR was that the Respondent had committed aggravated penetrated sexual assault upon two minor girls namely, 'P and 'L'. The first incident is stated to have taken place in the first week of October, 2015 on Survivor-'P', and thereafter, another incident took place on Survivor-'L' on 8th October, 2015. The FIR was registered on 9th/10th



October, 2015.

4. The Trial Court has analysed the evidence on record and found various contradictions in the testimonies of the two Survivors as also their mother. The Trial Court has also come to the conclusion that there is no reconciliation possible between the versions given by the two Survivors and the mother. The findings of the Trial Court are set out hereinbelow: -

“12. PW-1/Victim P could not either specify the date or time of the alleged incident but stated that accused took her to a room on the upper storey of the jhuggi and kissed her on vagina. She changed this version in the same same breath by mentioning that accused asked her, if he can kiss on her vagina. She mentioned that accused only kissed on her cheeks. She conveyed that accused was residing on the upper storey of the jhuggi. She mentioned that accused confined her in the upper storey of the jhuggi for around two hours. She mentioned that accused left after two hours and thereafter, she went to her mother and narrated her the entire episode. The version of victim P was in sharp contrast with the prosecution's case. It was the prosecution's case that victim P did not immediately disclose the Incident to her mother and she disclosed the incident only at the time when the victim L was narrating the episode of sexual assault to PW-5 (mother of victim P). PW-5 has mentioned that her daughter told her on 09.10.2015, accused had committed penetrative sexual assault upon her around 4-5 days back whereas victim P has conveyed that she narrated the incident to her mother on the same day. It is not possible to reconcile these versions. Victim P stated in cross-examination that at the time of incident, accused did not remove her clothes whereas it was the version of her mother that accused removed the underwear of her daughter. These contradictions find no explanation from record. The contradictions put question-mark over the authenticity



of the facts narrated by victim P.

13. Now, coming to the statement of PW-2/Victim L. She deposed that on the date of incident, accused grabbed her hand and kissed her. She mentioned that she shouted and on hearing her screaming, her mother arrived at the spot. She stated that her mother called the police and in the meantime, her sister (PW-5) also arrived there. She mentioned that at that time, victim P also came there and disclosed that accused had also kissed her. This version of the victim L. further contradicts the prosecution's story. It was the prosecution's story that victim L went to the shop of her sister/PW-5 and told her about the incident of sexual assault. It was stated that after gaining the information from her sister, PW-5 made a call at 100 number. PW-5 has deposed that her sister came to her shop and disclosed her the entire episode. She mentioned that thereafter, she shared the incident with her mother and made a call at 100 number. On the other hand, victim L has nowhere stated that she went to the shop of her sister. She has mentioned that her sister came at the spot where the accused kissed her. She has mentioned that in the first place, she narrated the incident to her mother whereas PW-5 has stated that victim L. disclosed her the entire episode at her shop and thereafter, she shared the incident with her mother. Record reveals that contradictions have come in the testimony of victim L. not only about the place where she met her sister but also about the allegations of sexual assault. These contradictions cast serious doubt over the veracity of this witness.

14. PW-5/A (mother of victim P) supported the initial story of the prosecution Toy deposing in line with her initial statement given to the police. However, the victims have contradicted her version by presenting different set of allegations. The testimony of PW-5 contains various Improvements. She has tried to



exaggerate the allegations. She mentioned that accused repeatedly kissed her sister (victim L) and dragged her to his room whereas victim L. did not mention that accused repeatedly kissed her. Victim L also did not state that accused dragged her towards his room. PW-5 has mentioned that around 4-5 days back, accused removed the underwear of her daughter and kissed her on vagina whereas her daughter (victim P) did not support this version. She has only stated that accused asked her if he can kiss on her vagina. She has mentioned that accused only kissed her on cheeks. PW-5 has stated that apart from kissing on the vagina, accused also inserted his penis in the mouth of her daughter whereas, her daughter has not supported these allegations. The exaggerations in the testimony of PW-5 shows her tendency to implicate the accused. It is unsafe to rely upon the testimony of such a witness.

15. Further, PW-5 categorically mentioned that her sister (victim L) came to her shop and narrated her the entire episode whereas her sister has nowhere stated that she went to the shop of PW-S. Victim L. has stated that at the time when accused kissed her, she raised alarm and on hearing the alarm, her mother reached at the spot and after a while, PW-5 also came there. Victim L has mentioned that at that time, victim P was sleeping in the house. She has stated that the call was made to the police by her mother. On appreciating testimony of victim L, it is apparent that she has tried to portray that there was hardly any time gap between the alleged Incident and the call which was purportedly made to the police whereas it is an admitted position that the matter was reported to the police on the next day. It is not possible to reconcile these contradictory versions.

16. There are not only glaring and irreconcilable contradictions in the testimonies of prosecution witnesses but also an inordinate delay in registration of



FIR. PW-5 has stated that accused sexually assault her sister on 08.10.2015. She has mentioned that accused committed penetrative sexual assault upon her daughter (victim P) around 4-5 days before 08.10.2015. However, the victims have contradicted this version by mentioning that PW-5 came to know about the incident on the same day. Victim P has stated that after the incident, she immediately went to her mother and narrated her the entire episode. Victim L has also conveyed that the information was given to the police on the same day. Although, the victims have given contrasting versions but both have mentioned that the matter was reported to the police on the same day. This further puts dents on the prosecution's case. In case, the version of PW-5 is deemed to be correct, then why she did not immediately report the matter to the police. Her conduct is unusual and finds no explanation. The inordinate and unexplained delay provide support to the defence taken by the accused that he has been falsely implicated in the present case.

17. In a criminal trial, the prosecution is duty bound to establish the charges against the accused beyond reasonable doubt by leading cogent and reliable evidence. On the other hand, accused is required to present a defence which is probable or believable. The prosecution is bound to lead evidence to rule out any hypothesis which may point towards the innocence of the accused. On appreciating the testimonies of the victims, I have reached a conclusion that they both are tutored witnesses, who have deposed falsely against the accused. They have frequently changed their stand. They have narrated chain of events which run counter to the prosecution's story. It is not possible to reconcile their statements. Their statements are full of contradictions. It is not possible to rely on their testimonies. PW-5 has made various material improvements in her testimony and her testimony



contradicts the version of the victims. Her testimony is also not reliable and trustworthy. Admittedly, there was no Independent source to corroborate the statement of these witnesses. I have reached a conclusion that there is no reliable evidence to substantiate the charges of sexual assault and aggravated penetrative sexual assault. There has been an inordinate delay in registration of FIR and the prosecution has failed to tender plausible explanation for the said delay. There is evidence to show that the victims were tenants under the father of the accused. The accused has mentioned that the families of the victims were in arrears of rent and they were not clearing the arrears. Although, accused has not led evidence to establish this fact but keeping in view the fact that the families of the victims were tenants of the father of the accused, the defence raised by him can not be considered improbable. The defence presented by the accused can not be rejected as unbelievable. On the other hand, there is no reliable evidence to show that accused sexually assaulted the victims. The result is obvious. Accused Hari Narayan Singh stands acquitted from the charges under Section 6 & 10 of the POCSO Act.”

5. This Court notices that there is an application being **M.A. 794/2024** filed on behalf of the Petitioner seeking condonation of delay in refiling of the present petition.
6. The present petition was initially filed on 06th January, 2022. However, there is a delay of more than 698 days in refiling.
7. After having perused the impugned judgment of acquittal as also reasons for the delay, this Court is not inclined to grant leave to appeal or condone the delay in refiling. The trial court's judgement is well reasoned and has taken into consideration the entire evidence including the testimonies of the girls and her mother. The same does not warrant interference.



8. Accordingly, the present leave to appeal is dismissed along with the application for condonation of delay in refiling.
9. Pending applications, if any, also stand disposed of accordingly.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

SEPTEMBER 12, 2024/VLD/rks