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

+ **CRL.L.P. 253/2018 & CRL.M.A. 7212/2018**

THE STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Sunil Kumar Gautam, APP with
SI Meena, PS Maurya Enclave.

Versus

ANWAR & ANR

.....Respondent

Through: Mr. Ankur, Adv. with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

20.02.2025

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CRL.L.P. 253/2018

1. This is an application filed under section 378 (3) of the Code of Criminal procedure, 1973 seeking grant of leave to appeal against the judgment dated 22.11.2017, passed by learned ASJ-01, Special Court, POCSO, District North-West, Rohini Courts, Delhi, wherein the respondents have been acquitted for the offences under sections 292/354-A of IPC; section 12 of the POCSO Act; section 23 of J.J. Act and 67 of the I.T. Act.

2. The facts, according to the prosecution are that on 23.05.2013, respondent no.1 entered into the room of the prosecutrix/child victim and showed her a porn video film on his mobile. When the victim refused to watch the video, respondent no. 1 started beating her. The respondent no. 1 also held the hand of the victim without her permission. The victim informed the said incident to her mother. Hence, the mother of the prosecutrix lodged a complaint with the police. Thereafter, respondent No.1



was arrested and his mobile phone was seized by the Investigating Officer (IO).

3. During investigation, respondent No.1, stated that he had obtained the porn video film from respondent No.2. Subsequently, respondent no.1 was sent as a dummy customer to respondent No.2 and respondent No.1 after taking Rs.20/- from respondent No.1 and another memory card downloaded the porn material from the hard disk of his computer. Subsequently, respondent No.2 was arrested. Rs.20/- note and hard disk were seized from respondent no.2 and was sent to FSL.

4. Thereafter, the statement of the prosecutrix was recorded under 164 Code of Criminal Procedure, 1973 on 24.05.2013.

5. On 30.07.2016, the statement of the respondents was recorded under section 313 of Code of Criminal Procedure, 1973, whereby both the respondents pleaded not guilty and stated that they have been falsely implicated in the case, and no such incident took place. The Respondents did not lead any defence evidence.

6. On 22.11.2017, the learned Sessions Court after analysing the entire evidence acquitted the respondents for the offences under sections 292/354-A of IPC; section 12 of the POCSO Act; section 23 of J.J. Act and 67 of the I.T. Act. The operative portion of the judgment reads as under:

“25. Further, MHC(M) sent three sealed pullandas to FSL through PW-2. MHC(M) was examined as PW-6 who stated that on 19.03.2013, he handed over three sealed pullandas and one unsealed pullanda containing hard disk to HC Baljeet (PW-2) to be deposited in the FSL. In his cross examination, he stated that “I do not know which of the hard disk was sealed and which was



unsealed.” This admission in the cross examination shows that possibility of tampering with the pullandas cannot be ruled out. Further as per Road Certificate Ex.PW6/B. three sealed pullandas containing mobile phone, memory card and hard disk with one data cable were sent to FSL, whereas FSL report Ex. PX shows that at serial no. 3, FSL found only one hard disk marked as HDDD-1 from sealed pullanda and there was no data cable was found in the sealed pullanda. When Road Certificate Ex. PW6/B shows that pullanda was containing hard disk and one data cable then how FSL did not receive this sealed pullanda with the same contents. Prosecution has failed to prove the offence against accused Rahul beyond reasonable doubt. Possibility of tampering with the sealed pullandas is there on the file and no offence is proved against accused Rahul beyond reasonable doubt.

26. As far as accused Anwar is concerned, it is important to note that alleged mobile phone was never played in the court to show that it contains any porn video clip. Further FSL laboratory has not been able to examine this mobile phone to ascertain if any porn video clip existed in this mobile phone or it was later on deleted. The FSL result Ex. PX at page no. 2 at point 3 in the result of the examination shows "facility to examine the exhibit Mobile Phone marked “MP1” is not available in the laboratory. Hence, data could not be retrieved from Ext. “MP1.” Prosecution as such has failed to prove that this mobile phone ever contained



any porn video.

27. Coming to the seizure and handing over of the mobile phone, witness PW-4 in her examination in chief stated that mobile phone Ex.P-2 was taken into possession by the police in her presence and in her cross examination she stated that police did not seize Ex.P2 in her presence. Sealing of mobile phone as such in the presence of any public witness becomes doubtful. Further, victim in her statement recorded under Section 164 Cr.P.C. by the Ld. Judicial Magistrate does not name the accused. She simply stated that “Tabhi wahan ek ladka aya aur usne mera haath pakad, liya meine kaha ki haath chhod nahin to chappal se marungi, per usne mera haath nahin chhoda, phir usne jabarjasti apne mobile par ek gandi film dikhai.” The victim does not name the accused in her statement given to the Ld. M.M., whereas in her cross examination in the court, witness states that she knows accused Anwar for the last 3-4 years. If accused Anwar was known to her then why he was not named in the statement of the child victim under Section 164 Cr.P.C. , which is not clarified by the prosecution. It is not proved that mobile phone contains any porn material as none of the witnesses of the prosecution stated that they saw porn film in the said mobile phone. The prosecution as such has also failed to prove commission of any offence by the accused Anwar. Further, statement of mother of the victim recorded by the police Ex PW4/A shows that when the victim refused to see porn film, the victim was beaten by the accused



Anwar. MLC of the child victim, however does not support any such beating and no external, physical or any internal injury was found on the child during her medical examination.”

7. Mr. Gautam, learned APP states that the testimonies of both the prosecutrix and her mother are clear, cogent, and credible and hence, cannot be ignored. He further states that the sole testimony of the prosecutrix is enough to convict the respondents.

8. It is true that an accused can be convicted based on the sole testimony of the prosecutrix, provided that the testimony is of sterling quality and is entirely free from doubt, however since both the prosecutrix as well as the accused have a right for a fair trial, thus, if the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence, such as, medical evidence or the surrounding circumstances. In the present case, the corroborated material which is the hard disk of the phone of respondent No.1 as well as hard disk of the computer of respondent No.2 have all been analysed and nothing incriminating has been found in the same.

9. In my view, apart from the statements of the prosecutrix and her mother, there is no corroborative material on record.

10. Even the fact that the prosecutrix was beaten by respondent no.1 is also belied from the MLC of the prosecutrix which does not show any beating, external, physical or internal injury.

11. For these reasons, I am of the view that the order of the learned Additional Sessions Judge is well-reasoned and based on a proper appreciation of the evidence on record. The Judge has correctly analysed the



material before the court and has justifiably concluded that the benefit of the doubt must be extended to the respondents in the absence of any corroborative evidence.

12. For the said reasons, the leave to appeal is dismissed. Consequently, the appeal becomes infructuous and is disposed of.

JASMEET SINGH, J

FEBRUARY 20, 2025/pk

[Click here to check corrigendum, if any](#)