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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 273/2018**

STATE (GOVT OF NCT OF DELHI) Petitioner

Through: Mr. Aashneet Singh, APP
SI Mahesh Yadav, PS Defence Colony
versus

MEHFOOZ

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **21.02.2025**

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 20.12.2017, passed by the learned ASJ-01, Special Court (POCSO), South-East District, Saket Courts, Delhi in Sessions Case no. 2218/2016 titled '*State vs Mehfooz*', whereby the respondent was acquitted of the offences under section 354/354D of IPC, 1860 and section 10 of the POCSO Act.

2. Briefly stating the facts are that the victim, aged around 4 years (at the time of the offence), was a Pre-Primary (K.G.) student at a school located on Joseph Broz Tito Marg, Sadiq Nagar, New Delhi. She had been consistently complaining after returning from the school that the respondent had been inducing her to step out of the school van and accompany him on one reason or the other. On 12.08.2015, after the school got over for Pre-Primary class, around 12noon, the victim was sitting in her private van alongwith other children, when the respondent came and started molesting the victim forcibly and caught hold of her. He further kissed her on her cheeks and lips



continuously due to which the victim was not able to breathe properly. The victim was in mental shock and thereafter, she refused to go to school.

3. On 13.08.2015, the complainant i.e. the father of the victim along with her wife went to the school of the victim. After inquiry, the complainant got to know about the incident. Hence, the FIR No. 328/2015 came to be registered under sections 354/354D of IPC, 1860 and section 10 of the POCSO Act.

4. During the course of investigation, the statement of minor victim was recorded and after completion of the investigation, the chargesheet was filed and charges were framed under section 354/354D and section 10 of POCSO to which the respondent pleaded not guilty and claimed trial.

5. On 20.12.2017, the learned ASJ-01, acquitted the respondent on the ground that the victim failed to identify the respondent.

6. Mr. Singh, the learned APP submits that in the present case, the testimony of the victim has remained consistent in her statements recorded under Sections 161 and 164 of the Code of Criminal procedure, 1973, as well before this Court.

7. He further states that the victim was unable to identify the respondent due to a time gap of approximately one and a half years between the incident and the date when she was required to identify the respondent.

8. He further states that as per the PW-6, i.e. SI Pushpender the respondent was arrested on the victim having pointed out the respondent as the accused.

9. The findings of the learned Sessions Court are contained in paragraph 15 of the impugned judgment dated 20.12.2017, which reads as under:-

“15. Thus, from above depositions, It is evident that PW-1/prosecutrix is the most material witness being the child victim and she has not identified the accused, facing trial, to be the same uncle



who had molested her on 12.08.2015. She categorically stated that the said uncle was thin. The Ld. Addl. PP for the State has argued that the victim might have forgotten about the identity/face of the accused due to lapse of time but basing the conviction of accused in view of non-identification by the victim will be against all canons of justice. Even otherwise as per the deposition of PW-2 the victim had told about the incident to her mother who in turn told the father/PW-2. However, neither the mother of the victim has been cited as witness nor got examined in court by the prosecution. The victim/PW-1 has also deposed during her testimony that her friends were also present at the time of incident but no such witness has been cited by the prosecution and rather the entire charge sheet is silent about the investigations made by the police from the friends of the victim or any school official/teacher/guards. In these circumstances, when the victim has categorically deposed in court that the accused is not the same uncle who had molested her, it cannot be held with certainty that the accused is guilty of charges framed against him. Accordingly, the accused is entitled for the benefit of doubt and the prosecution has failed to prove the charges U/s 354/354D IPG & 10 of POCSO Act against the accused beyond all reasonable doubts and, therefore, the accused is acquitted of said charges. Consequently, the personal bond/surety bond of the accused, if any, is discharged.”

10. 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, in the present case, the prosecutrix



(PW-1) has not been able to identify the accused. In this regard, the testimony of the victim recorded on 01.02.2017 reads as under:-

“.....

Considering the answers given by the witness, having conversation with her, I have satisfied myself that the child is intelligent. She understands the questions and can answer them in appropriate manner. I am convinced that she is a competent witness. However, she is only 6 years of age and therefore cannot be expected to understand the purpose and consequences of oath.

Without Oath.

I have come to tell that the bad uncle kissed me on cheeks, lips and chin. He be punished heavily. At that time I was in my van but he was not the driver of my van. The van was standing near our school and as I had come after finishing my class and were waiting for other fellows to come. The said uncle came there leaving his van. He kissed me when I was in my van. At that time my friends whose name I do not remember now were also present. I asked uncle many times not to do such things but he did not stop. After reaching to my home, I narrated the incident to my mother. My mother told the facts to my father. I narrated the incident to uncles and aunties. I did not go to the school with my parents. I went to my school by my van and my parents came in the school there on and I showed that uncle to my parents. I had come to this court earlier also and on that day I disclosed the incident to one aunty.

I can identify accused, if shown to me.

At this stage, accused Mehfooz who is facing trial is shown to the witness through video link and after seeing him, the witness stated that he is not said uncle.



At this stage, Ld. APP requests for calling the witness in the court for identification of accused face to face so that it may be possible that due to video link the witness is unable to identify the accused facing trial properly. At this stage, the witness is brought into the court by the support person and she is asked whether the said uncle is present in the court or not. After taking considerable time the witness stated that he is not the same uncle.

At the time of incident I was in K.G. Now I am studying in 1st class.

At this stage, Sh. Sunil Dutt, learned Additional Public Prosecutor for the State requests to cross examine the witness on the point of identification of the accused.

Heard. Request is allowed.

XXXXXXX by Sh. Sunil Dutt, learned Additional Public Prosecutor for the State.

It is correct that I am unable to identify the accused due to passage of long time. (Vol. The said uncle was thin).

XXXXX by Sh. Ramesh Rawat, Ld. DLSA counsel for accused.

I had not gone to school today as I have to come in the court. My mother told me that I have to go to the court for work today. My parents have also told me what is to be said by me in the court. It is wrong to suggest that I am deposing falsely as tutored by my parents. It is wrong to suggest that I identified that uncle on the asking of my parents before the police.”

11. Furthermore, during cross-examination, PW-1 had also deposed that



her friends were present at the time of the incident. However, the prosecution neither cited these witnesses nor conducted any investigation regarding their presence.

12. To my mind, convicting the respondent solely based on circumstantial evidence, without proper identification of the respondent, would not be correct. In the absence of clear and sterling testimony regarding the identification of the respondent, the benefit of doubt has to accrue to the respondent.

13. For the said reasons, I find no infirmity in the judgment dated 20.12.2017, passed by the learned ASJ-01, Special Court (POCSO), South-East District, Saket Courts, Delhi in Sessions Case no. 2218/2016 titled '*State vs Mehfooz*' whereby the respondent was acquitted of offences under sections 354/354D of IPC, 1860 and section 10 of the POCSO Act. Hence, the leave to appeal application is rejected.

14. Consequently, the appeal becomes infructuous and the same is disposed of.

JASMEET SINGH, J

FEBRUARY 21, 2025 / (MS)

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