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

CNR No. DLHC012224122016

+ **CRL.L.P. 530/2016**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Satish Kumar, APP with Ms.
Upasna Bakshi and Mr. Gourav
Singh, Advs.
SI-Tamanna, PS: Vasant Vihar
Mr. Anuj Kapoor, Adv. (DHCLSC)
for LR's of the deceased

versus

RAJESH MALIK

.....Respondent

Through: Ms. Sunita Arora, Adv. (DHCLSC)

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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20.08.2026

1. By virtue of the present criminal leave petition under *Section 378(3)* of the Code of Criminal Procedure, 1973¹, the petitioner seeks leave to appeal against judgment dated 01.04.2016² passed by the learned Additional Sessions Judge-01, New Delhi District, Patiala House Courts, New Delhi³ in Sessions Case No.128/2014 titled '*State vs. Rajesh Malik*'.
2. As per the present FIR, during the intervening night of 21-22.08.2014 a fight took place between the husband of the complainant and

¹ Hereinafter referred to as "*CrPC*"

² Hereinafter referred to as "*impugned judgment*"

³ Hereinafter referred to as "*Trial Court*"



her *jeth*. Pursuant thereto, the husband of the complainant was taken to the Police Station, where he was accompanied by the complainant. In these circumstances, the complainant/ mother of the victim⁴ left her children including her eldest daughter/ prosecutrix at her *jhuggi* alone.

3. Thereafter, when the complainant returned to her *jhuggi*, she found the accused/ respondent attempting to open the string of the salwar of her daughter/ victim⁵ [**PW3**] lying on the cot, and he was also inappropriately touching her breast with his mouth. The accused after seeing the complainant somehow escaped from the spot. These led to registration of the present FIR.

4. Upon completion of investigation, the charge sheet was filed and the learned Trial Court framed charges under *Sections 451/354/354(A)* of the Indian Penal Code, 1860 [**IPC**] and under *Section 8* of the Protection of Children from Sexual Offences Act, 2012, [**POCSO Act**] against the accused/ respondent herein [**respondent**], to which he pleaded not guilty.

5. In order to prove its case, the prosecution examined *eight witnesses*, the most material amongst them being the victim herself [**PW3**] and her mother [**PW7**]. In his statement under *Section 313* of the CrPC, the respondent pleaded innocence, and thereafter led defence evidence wherein Smt. Poonam [**DW1**] was examined in his defence.

6. *Vide* the impugned judgment, the learned Trial Court acquitted the respondent, primarily on the ground that there were material inconsistencies in the statements of victim and her mother.

7. Aggrieved thereby, the State has preferred the present petition

⁴ Hereinafter referred to as “**mother**”

⁵ Hereinafter referred to as “**victim**”



seeking leave to appeal.

8. In support of his case, learned APP primarily submits that there are only certain minor discrepancies in the testimonies of the victim and her mother, which are bound to occur as human memory is not infallible and the learned Trial Court while acquitting the respondent has been swayed solely on the basis of those discrepancies. He submits that the same have to be seen in regard to the factum that their narration of events is consistent in every regard with chain of events.

9. In view thereof, learned APP submits the leave has to be granted.

10. *Per contra*, learned counsel for respondent submits that the learned Trial Court has rightly acquitted him after a full-fledged trial.

11. She submits that once there is an order of acquittal, there is a double presumption of innocence in favour of the accused/ respondent herein and the judgment of acquittal shall not be interfered with as a course unless the finding recorded by the learned Trial Court are manifestly perverse/ illegal/ unreasonable and wholly against the evidence on record.

12. Besides this, on merits also she submits that there are many lacunas and material discrepancies in the story/ evidence of the prosecution which goes to the root of the matter.

13. Having heard the learned APP and learned counsel for the respondent, as also gone through the materials on record, this Court finds that there are indeed material discrepancies/ contradictions *inter se* the testimonies of both the victim and her mother, which have a bearing to the case set up by the prosecution, more so, since they are both eye-witnesses to the entire incident.

14. On one hand, though the victim in her testimony stated that



pursuant to the fight between her father and her *tau ji*, her parents left for the Police Station at about 10:00/11:00 PM and the respondent in order to commit the offence entered her house at about 02:00 AM and the whole incident lasted for about *five minutes*, however, her own mother, who is also an eye-witness, stated that the fight between her husband and his jeth, *where the accused was also present*, took place only at about 02:00/02:30 AM, and it was only thereafter that she left for the Police Station. In fact, in her cross-examination as also in *tehrir* the mother stated that she returned to her *jhuggi* from the Police Station only at about 02:00/02:30 AM and 02:30/03:00 AM respectively, when she witnessed the respondent committing the offence.

15. Further, although the victim stated that she was sleeping on the same cot alongwith her two sisters, however, in contravention thereto her mother stated that when she entered the *jhuggi* only the victim was lying on the cot and her two sisters were lying on the floor.

16. Likewise, though the victim stated that the respondent had *opened* the string of her salwar and was lying over her as also putting his mouth on her breast, her mother stated that when she entered the *jhuggi*, the respondent was merely *trying to open* the string of victim's salwar.

17. Lastly, though the victim stated that the respondent extended threats in the morning, however, in contravention thereto her mother stated that the respondent returned and threatened the victim on the same night only.

18. For ready reference, the relevant extract from the impugned order dated 01.04.2016 dealing with the aforesaid are reproduced as under:-

“23. As per PW3, there was a fight between her father and Tau Ji and due to that reason all elder persons i.e. mother



and father had gone to police station to report. Again said-gone for medical examination. During her cross-examination she stated that her parents left at about 10/11 p.m. However, her mother returned at about 2.00 a.m. As per her, accused came at about 2.00 a.m. through the gate which was opened, opened the string of her salwar, laid over her and put his mouth on her breast. Immediately, her mother returned, apprehended the accused but accused escaped. In the morning accused threatened her mother that he would kill the family members. In her cross-examination she deposed that the entire incident took place in five minutes. As per her she along with her two sisters were sleeping on the same cot.

24. However, her mother PW7 deposed in the night of 20.08.2014 and 21.08.2014 at about 2/2.30 a.m. a fight took place between her husband and his brother. She called police. She along with her husband was taken to AIIMS Hospital, then to the police post and from there all of them came back. When she entered her house she found her eldest daughter (victim) was lying on the cot, two younger daughters were lying on the floor, accused was lying over her eldest daughter and was suckling her breast and was trying to open the string of her salwar. She tried to apprehend the accused but he pushed her and escaped. She went towards the police post, accused returned and threatened her that if she reported the matter to police he would not let her live in the house and would kill her and her family.

In the cross-examination, she deposed that when the fight between her husband and her elder brother took place, accused Rajesh Malik was also present.

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32. Now in this case as per PW7, the fight between her husband and brother of the husband took place at about 2/2.30 a.m. As per her, accused was also present at the time of the said fight. Now the alleged time of incident of offence of molestation is also 2.00 a.m. Then prosecution failed to explain as to how accused Rajesh Malik was at two places at the same time.



34. *In this case, the crime when with which the case started was the "non-presence" of parents at about 11.00 p.m. to 2.00 a.m. in the night of 20/21.08.2014 from the jhuggi where the prosecutrix was lying on cot. The witnesses had stated that due to a fight between the father and Tau of the victim, the parents of the victim had gone to police station or AIIMS hospital. Had it been a morning time, this fact had not be of that importance. However, considering the night time, leaving a young girl at home and that too with the door open, makes this fact quite important to be proved. This fact can be proved by producing any proceedings of police station or of AIIMS Hospital. No such facts were proved. This also give rise to the suspicion regarding the fact of "non-presence" of parents of victim at spot at the relevant time. This particular fact also gathers strength if we see the statement of PW5/prosecutrix vis-a-vis PW7. As per PW5, her mother alone came back. But PW7 had stated "from there we came back home". This shows that both she as well as her husband returned back to home. They both simultaneously reached home, nowhere the testimony of father of the victim was recorded during investigation."*

19. In addition thereto, this Court also finds it very strange that neither the other two sisters who were sleeping in the same room with the victim, nor her father/ the husband of her mother, who as per her own self returned along with her, deposed as witness(es) before the learned Trial Court.

20. Before drawing a closure hereto, this Court also finds it intriguing as to why parents of the victim left her along with their two more younger daughters alone in the *jhuggi*, and that too with door open at (mid-)night while leaving for the Police Station.

21. It is to bear in mind that the chain of events arising out of both the statements cannot be taken in solitude, and have to be reckoned conjointly,



and that too alongwith the prevalent factual matrix, particularly, since one is a victim herself and the other one eye-witness. And whence their statements, which are not only material but also form the very backbone of the case set up by the prosecution, are replete with numerous material discrepancies/ inconsistencies/ contradictions which are fatal to the case of the prosecution, they cannot be simply disregarded.

22. For the aforesaid reasons there is no interference required by this Court in the impugned judgment.

23. Accordingly, the present leave petition is dismissed.

SAURABH BANERJEE, J

AUGUST 20, 2026/Ab