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

+ CRL.L.P. 84/2015

STATE

..... Petitioner

Represented by: Mr. Hirein Sharma, APP for
the State with Inspector
Mukesh Devi, PS Burari,
Delhi.

versus

CHUNNU

..... Respondent

Represented by: Mr. Sumer Kumar Sethi and
Ms. Dolly Sharma, Advocates
with respondent in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

05.12.2016

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1. Charged for offences punishable under Section 354A IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO') the respondent faced trial and was acquitted by the impugned judgment dated 19th November, 2014. Aggrieved by the same the State has sought leave to appeal.

2. The sole evidence relied upon by the State to seek conviction of the respondent is the statement of the prosecutrix aged 13 years. Relevant portion of her testimony where she alleges sexual assault is that she had gone to the house of Golu to complete his homework where the respondent came between 3.00-3.30 PM and asked his aunt to prepare meat. Thus the respondent's aunt went to the market to fetch meat. Respondent further

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asked the prosecutrix to fetch his pants from the roof. When she went at the roof top, he followed her, took her to a room and pressed her mouth. He put off his pants and shirt and also put off her pajami and laid her on the bed. It is further alleged that he touched her breast and hips and laid upon her. She stated that there was no door in the room and immediately thereafter wife of respondent came there searching him. She scolded her and slapped the respondent.

3. In the cross-examination the prosecutrix admitted that she had never been to the house of Golu either prior to the incident or after the incident. She was further cross-examined that who asked her help for completion of the homework of Golu to which she replied that the mother of Golu asked her and when asked whether the mother had come to her house to call for help, she replied in the negative. There are variations in the time of the various incidents in the examination-in-chief and cross-examination.

4. The prosecutrix admitted that she was at the house of Golu only for five minutes and that respondent did not reside in the said house but in a house which was five houses away from that of Golu. In the cross-examination, when questioned further that since respondent was not residing in the said house how could his pants be on the roof, the answer was vague. She further stated that the wife of respondent entered the room within one minute when they entered the room and she was alone with the respondent only for a minute. She further admitted that there was not much difference either in the height or weight of the prosecutrix or the respondent and further stated that when the respondent came to the house of Golu he was only in towel which fact was inconsistent with her examination-in-chief that he took

off his pant and shirt before laying on her. In the cross-examination she also admitted that she had gone to the house of Om Prakash who had not paid rent and at that time Om Prakash gave ₹100/- to which her mother was not satisfied as the same was not the entire rent.

5. The explanation of the respondent in his statement under Section 313 Cr.P.C. was that a quarrel took place between the respondent and the brother of the prosecutrix as Om Prakash was a tenant in the house of the prosecutrix but on the respondent's asking he vacated the room. Thus the family of the prosecutrix was annoyed with him. Earlier also a quarrel had taken place on 12th February, 2014 with the brother of the prosecutrix at Wazirabad in which the respondent received an injury. Suggestions on this count have also been made to the prosecutrix which she denied as noted above. However, she admitted that Om Prakash was tenant in their house earlier. In the cross-examination it was also elicited from the prosecutrix that from one hand the respondent closed her mouth and from the second he took off his clothes. It was evident that her arms and hands were free, however, no protest was shown by her. According to the cross-examination of the prosecutrix the respondent went away with his wife in a towel itself after she came to the place of incident.

6. Considering the fact that in the cross-examination, the prosecutrix could not withstand her version, the learned Trial Court acquitted the respondent. Before this Court the learned APP for the State submits that for an offence punishable under Section 8 of the POCSO Act, presumption is required to be drawn under Section 29 of the POCSO Act and the learned Special Court failed to draw the same. Under Section 29 of the POCSO the

Special Court is directed to presume that a person who is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the POCSO Act, committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. It is thus evident that the presumption so required to be drawn is a rebuttable presumption.

7. It is trite law that the presumption can be rebutted not only by leading defence evidence but also eliciting facts in the cross-examination which to my mind the respondent was successful in eliciting in his favour during the cross-examination of the prosecutrix.

8. The view expressed by the learned Special Judge vide the impugned judgment holding that the prosecution has failed to prove the guilt of the respondent beyond shadow of reasonable doubt, cannot be held to be a perverse view. Hence this Court finds no reason to interfere with the same.

9. Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

DECEMBER 05, 2016

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