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

+ CRL.L.P. 739/2014

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Represented by: Mr. Ravi Nayak, APP for the
State with SI Suresh Pal, PS
Jama Masjid.

versus

DASHRATH SHARMA

..... Respondent

Represented by: Ms. Preeti Anand, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

10.01.2017

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1. State seeks leave to appeal against the impugned judgment dated 22nd September, 2014 acquitting the respondent for offences punishable under Section 376 (2) (i)/511 IPC and Sections 6/10 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act').
2. The prosecution case is based on the testimony of PW-2, the mother of the prosecutrix who deposed that she was a rag picker and begged for her survival. In the year 2012 on 10th day, the month she did not know, at about 6.00 PM she was lying down in a park at Meena Bazar. Her daughter, the prosecutrix was playing around her. In the meantime, the respondent came and asked her as to who had laid the blanket on which she was sleeping. PW-2 stated that she would sleep for some time and then hand over the blanket and slept. Immediately thereafter she heard her daughter crying and when she got up she found her daughter on the lap of the respondent and he

had put off his lungi. She knew the respondent since he was also residing with his family at Meena Bazar. Respondent was apprehended and beaten by the public and his family members and police was called.

3. PW-2 was cross-examined by the learned APP. In her cross-examination she improved her version and stated that the finger of the respondent was at the vagina of her daughter. She also admitted that soon thereafter the PCR call was made and the respondent was apprehended at the spot. During cross-examination material improvements in her statement were pointed out.

4. Thus the admitted case of the prosecution was that the respondent was apprehended immediately after the incident with no time to change the clothes. However, when the respondent was apprehended he was not wearing lungi but a pant and shirt which fact was deposed to by PW-7 SI Lalita Rawat.

5. The respondent had received grievous injuries and a case had been registered against the complainant and her husband for beating the respondent.

6. Learned Additional Sessions Judge vide the impugned judgment noted that no doubt conviction can be recorded on the sole testimony of a witness if the same is trustworthy however, the testimony of PW-2 does not inspire confidence and there was no corroboration from any source. Further PW-2 has made substantial improvements in the prosecution case. Noting that though Section 29 of the POCSO Act raises a presumption in favour of the prosecution, the same was rebuttable, could be rebutted even by cross-examination of the prosecution witness and it was not necessary for the accused to lead independent evidence to rebut the presumption.

7. Finding of the learned Additional Sessions Judge cannot be held to be faulted. The entire basis of prosecution case is that the respondent was wearing a lungi which was open from the front and he made the prosecutrix sit on his lap touching his penis. However, this fact is belied by the statement of the other witnesses.
8. Considering the evidence on record, the view of the learned Trial Court cannot be held to be perverse warranting interference. Hence this court finds no case for grant of leave to appeal.
9. Petition is dismissed.

MUKTA GUPTA, J.

JANUARY 10, 2017
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