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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 638/2017

STATE

.....Petitioner

Through: Ms. Kusum Dhalla, APP

versus

HAMID ANSARI @ MUNNA

.....Respondent

Through:

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE REKHA PALLI

ORDER

07.11.2017

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CRL.M.A. 18107/2017

1. Allowed, subject to all just exceptions.

CRL.M.A. 18106/2017

2. For the reasons stated therein, the delay of 61 days in filing the Criminal Leave Petition is condoned. The application is disposed of.

CRL.L.P. 638/2017

3. This Criminal Leave Petition by the State seeks leave to appeal against an order dated 24th December 2016 passed by the learned Additional Sessions Judge (ASJ)-01, South East District, Saket Courts, New Delhi acquitting the Respondent of offences under Section 363/376/174A IPC in SC No. 47/12 in Case No. 2358/2016 and FIR No. 129/2010, Police Station (PS) Jaitpur.

4. The complainant lodged a report with the PS on 24th June 2010 that his

daughter, aged about 12 years, was missing from his house since 20th June 2010. He suspected the Respondent-Accused, who was working with him as a labourer and was residing in the same building.

5. An FIR under Section 363 IPC was initially registered. It is stated that during the investigation, the birth certificate of the girl was collected from the school. It is claimed that the girl was recovered from a village in Bihar where the accused was permanently residing. Her statement under Section 164 Cr PC was recorded and she was medically examined. As far as the Respondent is concerned, he was declared as a proclaimed offender on 23rd February 2011. After coming to know that he was in judicial custody in some other case, he was arrested in the present case and after investigation, the charge sheet for the aforementioned offences was filed.

6. The prosecution examined 18 witnesses. The explanation offered by the Respondent in his examination under Section 313 Cr PC was that it was the complainant who had withheld the hard-earned money of the accused and when the accused demanded it, the complainant falsely implicated him in the present case.

7. Among the factors that weighed with the trial court in acquitting the Respondent was the failure of the prosecution to correctly prove the age of the victim girl at the time of abduction. The prosecution was not able to corroborate the entry of the date of birth in the school record which was shown as 1st April 1998, since “no documentary evidence is brought on file”. The explanation offered by the complainant of having children every

two years was found by the Court to not be reliable as it received no corroboration from the mother of the victim girl. From the testimony of the parents, the trial court deduced that the girl may have been born in 1995 and was therefore about 15 years of age as of 20th June 2010. However, the testimonies of the parents about the grade in which she was admitted in school and about the grade in which she was studying at the time of offence were contradictory. Consequently, the trial court had held that the age of the victim was not proved beyond doubt “and the age as per assumptions is not permissible”.

8. Another factor that weighed with the Court was the inconsistencies in the statement of the victim girl recorded under Section 164 Cr PC about the place at which the alleged rape was committed on her. The third factor was the failure on the part of the prosecution to prove that the victim had, in fact, been recovered from the house of the Accused. The trial Court concluded that “no independent witness has been examined in the trial despite availability at the house of the accused during the recovery proceeding of the victim thus in the absence of independent witness and considering the inconsistencies in the statement of the witnesses in this regard the claim that the victim was recovered from the house of the accused is not established beyond doubt.”

9. As regard the offence under Section 174A IPC, the trial Court concluded that there was no evidence that the proclamation which was issued by the Court was duly published as required by law.

10. The trial Court has also given cogent reasons as to why the version of the victim girl is not reliable. It noted:

"The version of the victim was that she was taken by the accused under allurement and, at the house of his friend, she was raped by him and then was taken to his village. She went by train and bus and had not raised any noise or alarm that she was being taken forcibly or under allurement and had been raped by the accused. No explanation has come on file for not raising the alarm and refusing to accompany the accused to his village if she was raped by the accused at the house of his friend. In the facts of the present case, uncorroborated testimony of a victim who has improved her case does not inspire confidence and cannot be said to be reliable and trustworthy and so, is not sufficient to believe that the accused took her by alluring her and then raped her."

11. Having heard learned counsel for the State and having perused the evidence on record, the Court is not satisfied that any ground is made out for grant of leave to appeal.

12. The Criminal Leave Petition is dismissed.

S. MURALIDHAR, J.

REKHA PALLI, J.

NOVEMBER 07, 2017
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