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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 693/2017

THE STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Ms.Radhika Kolluru, APP for State.
PSI Upendra, PS-New Ashok Nagar

versus

WASEEM AHMAD

..... Respondent

Through:

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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04.12.2017

Crl.M.A.No.19969/2017 (condonation of delay)

1. This is an application under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 filed on behalf of the Petitioner-State seeking condonation of delay in filing the criminal leave petition.

2. For the reasons stated in the application, the delay in filing the leave petition is condoned. The application stands disposed of.

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3. This is a petition by the State seeking leave to appeal against judgment dated 8th August, 2017 passed by the learned Additional Sessions Judge-1, Special Court under POCSO Act, East District, Karkardooma Courts, Delhi acquitting the Respondent-accused of the offences under Sections 363/328/376 IPC & Section 4 of POCSO Act. The case arose out of FIR No. 185/2014, registered at Police Station (PS) New Ashok Nagar.

4. The case of the prosecution was that on 18th February, 2014 the mother of the victim lodged a complaint at the aforesaid PS stating that her daughter aged about 15 ½ years had left home in the morning for school but had not returned. Her suspicion was on a boy named Intzar. The aforementioned FIR was registered on the same day under Section 363 IPC.

5. Two days later, on 20th February 2014 the victim returned home of her own. Her parents took her to the PS where her statement under Section 161 Cr PC was recorded. The police produced her before a counsellor who also recorded her statement. According to the victim, instead of going to school, she had gone to Rajghat with her friend Shalu and her boy friend Raj. When she was getting late Shalu asked the victim not to go home as a complaint was already lodged with the police that she had gone missing. The victim then chose to go Ganga Nagar to the Respondent. She stated that from Rajghat she first went to Anand Vihar railway station where a friend of the Respondent met the victim and took her to the New Delhi railway station. There another friend met her, gave her Rs. 2000 and made her sit in a train to Ganga Nagar. On the next morning she reached Ganga Nagar and the

Respondent took her to his factory where he gave her some intoxicating material and thereafter committed rape on her.

6. During the medical examination of the victim she also informed the doctor about the rape committed on her. Thereafter her statement under Section 164 Cr PC was recorded by the Magistrate.

7. Amongst the reasons that weighed with the Trial Court for giving the benefit of doubt to the Respondent was that the DNA Test report did not favour the prosecution in any manner because “neither DNA nor any semen sample could be generated nor any comparison could be made.” The second reason was that the material witnesses viz., the victims friends Shalu and Raj, who apparently were with the victim when she left for Ganga Nagar, were not made witnesses. The victim is supposed to have made a call to Monu from an STD booth in Ganga Nagar. It is Monu who brought her back home after having met her at Delhi railway station. For some reason Monu was not examined. The other friends of the victim who took put her on the train to Ganga Nagar were also not examined.

8. The mobile phone of Shalu from which the victim made calls was not seized and no call detail record (‘CDR’) of the said mobile phone was collected by the prosecution. Further, no CDR of the phone of the Respondent, showing him at Ganga Nagar was collected.

9. The Trial Court has discussed at length the statements of the victim made at different stages. The trial Court has detailed the manner in which there

were inconsistencies and improvements in the material particulars in the statements made by her to the police and that were made before the Magistrate under Section 164 Cr PC.

10. Having perused the statement of the victim and the analysis of the record by the trial Court, this Court is unable to be persuaded that the trial Court has erred in its conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt.

11. The Court finds no reason to interfere with the judgment of the trial Court. The Court, therefore, declines to grant leave to appeal against the said impugned judgment.

12. The petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 04, 2017

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