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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 697/2017

STATE (NCT OF DELHI)

..... Petitioner

Through Ms. Kusum Dhalla, APP
for State with SI Jainender Kumar,
P.S. Anand Vihar

versus

SIKANDAR & ORS

..... Respondents

Through

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

O R D E R

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05.12.2017

Crl.M.A.No.20055/2017 (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.

Crl.M.A.No.20054/2017 (Exemption)

3. Allowed, subject to all just exceptions.

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4. This is a petition by the State seeking leave to appeal against the judgment dated 31st July 2017 passed by the learned Additional Sessions Judge cum

Presiding Officer of Special Court under POCSO Act, East District, Karkardooma Courts, Delhi, acquitting the Respondents of the offences under Sections 376/366A/328/506/34 IPC & Section 4 of POCSO Act. The case arose out of FIR No.347/2012, registered at Police Station ('PS') Anand Vihar.

5. The case of the prosecution was that at around 3 pm on 4th December 2012, the victim aged about 16 years came to the aforementioned PS with her parents and informed the Investigation Officer ('IO'), Sub Inspector ('SI') Gunjan Singh, that Respondent No. 1 'had made forcible relations with her against her will.' The IO immediately sent her for medical examination. Thereafter, the victim returned to the PS and made a complaint whereupon the FIR aforementioned was registered.

6. In her complaint, the victim alleged that Respondent Nos. 2 and 3 were real sisters residing in a *jhuggi* near the one in which she herself was residing with her parents. The victim was on visiting terms with Respondent Nos. 2 and 3 since August 2011. According to the victim, Respondent Nos. 2 and 3 asked her to play 'Ludo' with Respondent No. 1, who was their brother in law (*Devar*). According to the victim, they used to give her a cold drink which would render the victim unconscious and Respondent No.1 would start misbehaving with her while she was in that condition. When she complained to Respondent Nos. 2 and 3 they asked her to treat it as a common thing and not disclose it to her parents.

7. According to the victim, Respondent No.1 in this manner raped her and when she again complained to Respondent Nos. 2 and 3, they asked not to

brother about it and that they would perform her marriage with Respondent No.1. She claimed that the three respondents threatened her not to disclose these facts as otherwise she would be killed.

8. According to the victim during the period from August, 2011 to November 2012, Respondent No.1 committed rape upon her several times in the jhuggi of Respondent Nos. 2 and 3. She even claimed that the Respondent No.1 had raped her several times while coming into her own house in the night when she was sleeping in the room on the upper floor while her father and brothers were sleeping on the ground floor.

9. According to the victim on 15th November 2012 Respondent No.1 left Delhi for Patna and at his instance and under his threat, she boarded a train for Patna on 23rd November, 2012 in order to meet him. At the Kanpur railway station, police officials stopped her and after making inquiries called her father to Kanpur. She was thereafter sent back to Delhi with her father. She then went to the PS on 4th December, 2012 and lodged a complaint. The statement of the victim was also got recorded on 5th December, 2012 under Section 164 Cr PC before the learned Metropolitan Magistrate (MM).

10. Respondent Nos.2 and 3 were arrested on 5th and 7th December, 2012 respectively. Respondent No.1 is stated to have surrendered in the Court and was formally arrested on 10th December, 2012.

11. Eleven prosecution witnesses were examined. In their statement under Section 313 Cr PC Respondent Nos. 2 and 3 maintained that a false case had been registered against them because on 10th November, 2012 a quarrel had

taken place between the father and brother of the victim on one hand and between the Respondent Nos. 2 and 3 and their family members on the other hand. Respondent Nos.2 and 3 claimed to have suffered injuries in the said quarrel and have been medically examined at the hospital. According to Respondent Nos. 2 and 3, the present case was as a retaliation to the aforementioned incident.

12. As far as Respondent No.1 is concerned he stated that the victim had wanted to marry him but when he refused he was falsely implicated. Respondent No.2 examined herself as DW-1. One Dr. Ravi Shekhar from Hedgewar hospital was examined as DW-2 to prove the medical reports showing injuries suffered by Respondent Nos. 2 and 3.

13. The Trial Court has discussed the evidence in great detail. As regards the age of the victim, the school record gave her date of birth as 10th April, 1998 which meant she was 14 years and 8 months on the date of registration of the FIR. According to her father i.e. PW-1 she would be around 17 years when the FIR was lodged. According to her mother (PW-4) she would be 14 years and 9 months. The Trial Court noted that there was no matriculation certificate to validate the age proof given by the school in which the victim first got admission. The IO had not collected the age proof from the MCD. The deposition of the parents PW-1 and PW-4 also added to the confusion. Nevertheless the Trial Court proceeded on the basis that since the age of the victim was 17 years she would be a child in terms of Section 2 (d) of POCSO Act and proceeded on that basis.

14. The trial Court noted that there was an unexplained delay of lodging the FIR. If according to the victim she had been raped first in August, 2011, then the delay was 1 year 4 months as on 4th December, 2012. There was even a delay after returning to Delhi from Kanpur on 24th November, 2012. The delay was not satisfactorily explained.

15. The medical examination did not indicate any external injury or evidence of forcible rape. The Trial Court also noted from the description of the house in which the victim was living with her parents that it was improbable that she was raped in her house several times by the Respondent No.1. There was only one room on the ground floor and one room on the first floor and there was no way of reaching the room on the first floor except through the stairs in the ground floor. While the parents maintained that the staircase to the first floor was inside the house in the ground floor, the IO stated that the staircase to the first floor was from outside. The Trial Court accordingly concluded "IO most probably had not visited the house of the victim."

16. Regarding Respondent No.1 having enticed the victim, while deposing in the Court the victim introduced a third person, Vikas, who happened to be brother of Respondent Nos. 2 and 3, who i supposed to have met her on 23rd November, 2012 and told her that Respondent No.1 was calling her to Patna and that when she refused, he threatened her with dire consequences. There was no mention of this person either in her statement under Section 161 Cr PC or even before the learned MM under Section 164 Cr PC. No attempt had been made by the prosecution to examine Vikas to prove that the victim

boarded the train to Patna under the influence or pressure of Respondent No.1. Therefore, the possibility of the victim having gone to Patna voluntarily to meet Respondent No.1 was not ruled out.

17. There were letters written by the victim to Respondent No.1 which the Trial Court found to be in her own handwriting. The story of the victim that it was Respondent No.3 who got it written from her was disbelieved. It was not the case of the victim that she was coerced or pressurized in writing such letters. The case of the prosecution that the victim was given cold drink containing any intoxicating substance was disbelieved as no evidence could be produced in support thereof.

18. The Trial Court also noted that the defence witnesses had proved the previous enmity with the family of the victim. PW-1 and PW-4 also admitted in their cross-examination about the quarrel that took place between the parties on 10th November, 2012. DW-2 proved the MLC and medical treatment card of both Respondent Nos. 2 and 3 which showed that they suffered injury on 10th November, 2012 with alleged history of assault. The Trial Court concluded that the evidence of the defence witnesses was 'very convincing and reliable and the possibility of involvement of the accused persons in the present case due to previous enmity cannot be ruled out.'

19. The Trial Court also found it unusual that during the entire period i.e. from August, 2011 to 4th December, 2012 when the FIR was registered, the victim did not complain anyone about the accused persons. Even if the victim's version about being threatened by Respondent No.1 was correct, as

noted by the Trial Court this came to an end when he left for Bihar on 15th November, 2012. Even then the victim did not disclose to her parents at the time of leaving for Patna by train. During her cross examination, the victim admitted that she had not complained against Respondent No.1 even to the Kanpur police. The prosecution also did not formally tender the FSL report which showed that some stains on the underwear of the victim matched with the blood of the accused. It was held that this by itself was not sufficient particularly when there exists chances of the intercourse being consensual. The Trial Court has discussed in detail the various contradictions and improvements in the statement of the victim from time to time.

20. Having examined the documents placed on record and the judgment of the Trial Court and having considered the submissions of learned APP, the Court is not satisfied that there exist sufficient grounds for grant of leave to appeal against the impugned judgment of the trial Court.

21. The petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 05, 2017

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