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

+ CRL.A. 42/2018

STATE

..... Appellant

Through: Mr. Rajat Katyal, APP for State

versus

MANJEET SINGH @ PAUWA

..... Respondent

Through: Mr. B. Badrinath, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE I.S.MEHTA**

**ORDER**

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**16.07.2018**

The present appeal has been preferred by the State upon grant of leave to appeal, against the judgement dated 26.05.2016 rendered by the learned Additional Sessions Judge-01: (North-West), Rohini District Courts: New Delhi in Sessions Case No.107/2015, State v. Manjeet Singh @ Pauwa. The Trial Court by its judgment acquitted the respondent/accused of the charge framed against him under Section 5(m)(p) of the POCSO Act punishable under Section 6 of the said act, under Section 323 IPC and under Sections 11(vi) of POCSO Act, punishable under Section 12.

We have heard Mr. Katyal, learned APP for the State and Mr. B. Badrinath, learned Amicus Curiae for respondent. The relevant facts have been noted in the impugned judgement itself and we reproduce the same hereinbelow:

“1. The facts of the case as borne out from the record are

that a disturbed family has been residing in Sultan Puri at the address on record (address with held by the court). There are four brothers namely Sh. Arjun Singh, Sh. Dildar Singh, Sh. Roop Singh and Sh. Pappu @ Kale. Child Victim B, aged about 7 years, daughter of Sh. Arjun Singh (herein after referred to as B) was residing with the family of Sh. Dildar Singh as her mother had abandoned the house of her father about 3 months prior to the date of incident. Sh. Pappu @ Kale has been projected as a person of bad character having served jail term in a case of rape. Accused Manjeet Singh @ Pauwa, the cousin brother of Pappu @ Kale (son of his Mosi), was earlier residing with his sister Geeta in the house of Sh. Pappu @ Kale, who had an evil eye on Geeta. He wanted to get married to her and in his this pursuit he used to make phone calles to her, stalk her and wanted her to speak to him. She had never responded positively towards his such advances and had made complaint against him to the accused. On account of this a quarrel had taken place between accused and Sh. Pappu @ Kale. Ultimately accused and his sister had to shift to another house nearby. There also Sh. Pappu @ Kale continued to harass Geeta.

On 09.05.2015 at about 2:36 p.m. a call was made at number 100 by Sh. Dildar Singh inter-alia complaining about commission of sexual assault upon B by one of his relatives i.e. accused SI Deepak Purohit and Ct. Mohan went to the spot where they found B, her aunt Renu Kaur wife of Sh. Roop Singh, Dildar Singh, Pappu @ Kale and a number of persons of locality lying gathered. After preliminary inquiry made from B and Smt. Renu Kaur and finding it to be a case of sexual assault, child B and her aunt were taken to SGM Hospital. In the meantime WSI Omwati and Smt Kavita Kaur, the mother of B also reached at the hospital. After the medical examination of B, WSI Omwati got her counselled through a counsellor from an NGO and recorded her statement in question answer form wherein she stated that on that day in the afternoon she was alone at her home, accused came there and asked her to accompany him to his house and also promised to pay Rs. 10/- to her. She categorically refused to go along with him on which he gave a slap to her and

took her forcibly by holding her hand to his house where he removed her pazami (lower wear) and inserted his finger in her vagina. She raised alarm hearing which her cousin sister, child A aged about 13 years came there and knocked at the door whereafter the accused ran away after opening the door. Child A brought B to the house of Smt. Renu Kaur to whom B narrated the entire incident and she in turn informed about the incident to Sh. Dildar Singh and the matter came to be reported to the police.

On the basis of statement of B, the present case FIR was registered and investigation of the case was carried out by SI Omwati. Accused was arrested and his disclosure statement was recorded. Accused also pointed out the place of incident. Site plan of the place of incident was prepared at the instance of B. Statement of B u/s 164 Cr.P.C was got recorded. After conclusion of the investigation, the charge sheet was prepared and filed in the court.”

The submission of Mr. Katyal, learned APP is that the acquittal of the accused is premised on the testimony of PW9-Renu Kaur who is the wife of one of the four brothers namely Roop Singh. It has come in her testimony that after the registration of the FIR in the present case, a property dispute had emerged in the family. The reason for PW9-Renu Kaur for not supporting the case of the prosecution and turning hostile was the said family dispute. Consequently, the hostile testimony of PW9 was not a valid reason to doubt the case of the prosecution. Mr. Katyal submits that the prosecutrix ‘B’/PW3 and the child witness-A/PW1 corroborate each other and their testimonies are consistent. He submits that the testimonies of PW3 and PW1, in the light of the testimony of PW2 Dildar Singh, are sufficient to conclusively prove the guilt of the accused.

On the other hand, the submission of learned counsel for the

respondent is that the background in which the respondent was falsely implicated emerges from the cross examination of the prosecution witnesses and the testimony of PW9-Renu Kaur. The marital interest that Kaale @ Pappu-uncle of the prosecutrix had in the sister of the accused-Geeta, and the reluctance of Geeta to marry Kaale @ Pappu, was the reason for false implication of the accused. He further submits that, whereas the victim PW3 claimed that she was inside her house when the accused took her away, the other prosecution witnesses, namely, PW1 says that she was playing outside her house when the accused took her away. It is also pointed out that even though the prosecutrix in her statement recorded under Section 164 Cr.P.C Ex.PW3/A had disclosed the name of the child witness 'A'/PW1 as the person who had come to the house of the accused, the statement of child witness 'A' was not got recorded under Section 164 Cr.P.C. It is also pointed out that in her statement recorded under Section 164 Cr.P.C. the prosecutrix had given a completely different version by claiming that the accused had mounted her – which is not the case of the prosecution in the charge sheet.

It is a matter of record that the prosecutrix PW3 as well as PW1-child witness 'A' are both cousins. It is also not in dispute that the accused is a cousin of Pappu @ Kale i.e. mausi's son. The accused has probablized the defence of false implication on account of Kale showing marital interest in the sister of the accused-Geeta, which was not acceptable either to Geeta or to the accused. This is clear from the testimony of PW9-Renu Kaur who is also a family member being the wife of Roop Singh. That apart, we find force in the submission of Mr. B. Badrinath that it is not explained as to why the statement of child witness 'A' was not got recorded under Section 164

Cr.P.C. even though she was named in the statement that prosecutrix recorded under Section 164 Cr.P.C. The version given by the prosecutrix in her statement under Section 164 Cr.P.C. is markedly different from that claimed by the prosecution. In this background, the versions given by the prosecutrix-PW3 and PW1-child witness 'A' with regard to the whereabouts of the child witness, when the accused allegedly took her away also assumes significance. In our view the Trial Court has rightly given the benefit of doubt to the accused. The appeal is accordingly dismissed.

The personal bond filed by the accused stands discharged.

**VIPIN SANGHI, J**

**I.S.MEHTA, J**

**JULY 16, 2018**

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