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

+ **CRL.L.P. 85/2018**

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms.Radhika Kolluru, APP for State.

versus

BINDER

..... Respondent

Through:

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

% **05.02.2018**

Crl.M.A.No.2104/2018 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.L.P. 85/2018

2. This is a petition under Section 378(1) Code of Criminal Procedure filed by the State/Petitioner seeking leave to appeal against the order dated 2nd November 2017 passed by the Additional Sessions Judge-01 (North-East), Karkardooma Courts, Delhi in Sessions Case No.06/2014 arising out of FIR No.484/2013, acquitting the respondent for the offences under Section 376 read with Section 511, Section 323 IPC and Section 4 read with Section 18 of Protection of Children from Sexual Offences Act ('POCSO Act').

3. The case of the prosecution was that the Respondent was running a factory and had stopped paying wages to the victim (PW-1), a minor girl aged 14 years. Even after two months after she had stopped working with

the factory, she was not paid the arrears. According to the prosecution, on 19th August 2013 at around 7.30 pm, the victim had gone to the Respondent to collect the amount at which time he called the victim to an adjacent room in the factory, removed her lower apparel (*salwar*) and tried to rape her. She raised an alarm but the Respondent gagged her mouth with his hand. Meanwhile, the victim's mother (PW-5) reached the spot, managed to open the door, scuffled with the Respondent and rescued her daughter, after which she and PW-1 fled.

4. The trial Court has, in the impugned judgment, discussed the depositions of PW-1 and PW-5 in detail and has found numerous inconsistencies in their respective statements.

5. To begin with, the victim (PW-1) stated that she had gone to the factory of the Respondent in the evening of 19th August 2013, because on the previous day, the accused had told her to come on that day. PW-1 stated that she had not disclosed to PW-5 that she is going to the factory of the Respondent. However, PW-5 stated that on 19th August 2013 the victim had received a call from the Respondent asking her to reach his factory and collect her dues.

6. Importantly, according to PW-1, only her *salwar* had been taken off by the accused whereas according to PW-5, all the clothes of the victim had been taken off. PW-1 stated that her clothes were not torn, whereas PW-5 stated that the clothes were completely torn. According to PW-1, the room in which the respondent tried to rape her was bolted from inside, whereas according to PW-5 it was not.

7. PW-8 and PW-9, who were working in the factory at the relevant time, failed to support the prosecution. According to them, PW-1 and PW-5 had come to the factory demanding money from the Respondent. He declined and slapped PW-5, after which she came away and called the police.

8. Having perused the statements of PW-1 and PW-5, the Court is not persuaded to take a view different from that of the trial Court. It will be unsafe to return a finding of guilt of the Respondent for the aforementioned offences on the basis of such evidence. Further even as regards the offence under Section 323 IPC, the trial Court is not in error in holding that the slapping of PW-5 by the Respondent happened in the heat of moment and was trivial, thereby extending the benefit of Section 95 IPC to the Respondent.

9. No ground is made out for grant leave to appeal to the Petitioner/State against the impugned judgment of the trial Court. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 05, 2018/‘dc’