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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 236/2018**

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Mr. Kewal Singh Ahuja, APP for
State

versus

FARUKH Respondent
Through:

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

ORDER
28.05.2018

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1. This is a petition by the State seeking leave to appeal against the judgment dated 27th January 2018 passed by the learned Additional Sessions Judge-01, Special Court (POCSO), South, New Delhi, in Sessions Case No.7062/2016, arising out of FIR No.246/2011 registered at Police Station ('PS') Vasant Vihar acquitting the Respondent for the offences under Sections 354, 342 and 376 IPC.

2. The Respondent was charged with having raped a minor girl on 8th August 2011. The case was registered on the statement given by the victim to the effect that at around 12:30 pm on that date, the Respondent, who resided in her neighbourhood and earlier worked with her father, entered her *jhuggi* and started disturbing the articles in the *jhuggi*. When she objected, he caught hold of her and tied her hands and legs and forcibly

committed rape. Subsequently, she narrated about the incident to her parents upon which her parents, her brothers and sisters took her to the Katwaria Sarai Village, where they came to know the address of the Respondent. They then reached IGNOU Maidan Garhi where the Respondent was found. He is supposed to have fled from there as well.

3. An FIR was registered and the victim was medically examined. On the following date, i.e. 9th August 2011, on the pointing out of the brother of the victim, the Respondent was arrested and his medical examination was conducted at AIIMS. The statement of the accused was recorded under Section 164 Cr PC and thereafter, a charge sheet was filed. The case of the prosecution was that the victim was 13 years old on the date of the offence. However, the trial Court noted that the prosecution failed to produce any documentary evidence or oral evidence to support such claim. No scientific evidence in the form of her bone-age test was also produced.

4. As far as this part of the finding is concerned, learned APP drew the attention of the Court to a remark in the MLC of the victim that her bone-age X-ray should be conducted. However, he was candid to state that no such X-ray was marked as an exhibit in the trial. Even today, there is no such bone-age X-ray sought to be produced before the Court. The result is that as of date the prosecution has been unable to produce any scientific or other evidence to prove that the victim was 13 years of age at the time of the commission of the offence.

5. As far as the commission of rape is concerned, the trial Court noted that there were discrepancies in the statement of the victim under Section 164

Cr PC when compared to her initial statement to the police under Section 161 Cr PC. The trial Court has also discussed the inconsistencies in the versions of the mother and brother of the victim.

6. As far as the MLC is concerned, it notes that the hymen of the victim is intact and there was no bleeding or any injury seen. The trial Court also noticed that there were no semen stains detected which could connect the accused with the crime. With the medical and forensic evidence not corroborating the testimony of the victim and with there being numerous inconsistencies in not only her version but also of the other prosecution witnesses, the trial Court held that the prosecution had failed to prove the guilt of the Respondent beyond all reasonable doubt.

7. The trial Court record has been perused. Learned APP is unable to persuade this Court that the trial Court has committed any grave error in acquitting the Respondent in the facts and circumstances of the case.

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

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 28, 2018

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