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

+ CRL.L.P. 224/2018

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State.

versus

MAHESH YADAV

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER
07.05.2018

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1. The State has preferred the present leave petition to seek leave to appeal against the judgment dated 03.02.2018 rendered by Addl. Sessions Judge:(North-West)-01: Special Court:POCSO, Rohini District Courts:Delhi in Sessions Case No. 103/13. The Trial Court has acquitted the respondent/accused by the impugned judgment.

2. The case of the prosecution taken note of in the impugned judgment read as follows:

“Brief facts of the prosecution case are that on 04.06.2013 the complainant who is the mother of the victim came to police station and reported that the accused who is friend of her

husband has committed wrong act with her seven year old minor daughter. She was counselled and thereafter, gave her statement that her husband is mason by profession and she is working in a shoe factory and she has two sons and a daughter and the victim daughter is the youngest and studies in class-III. On 01.06.2013, her younger son Sonu told her that about 10-12 days ago, when she and her husband were not at home, the accused Mahesh uncle came at around 5.00/6.00 p.m. and sent the elder son Govind for bringing some snacks. Thereafter, Mahesh uncle took victim in the bathroom and thereafter he left. The complainant thereafter inquired the victim who told that accused was doing bad things with her. Her husband was not at home. On the next day, when she took the victim to toilet she came out crying and informed that Mahesh uncle took her to the bath room and removed his pants and inserted his penis in her mouth and thereafter, in her anus and vagina. She informed that since then she is having pain and burning sensation in her vagina and anus. Her husband was not in Delhi and came back on 03.06.2013, she informed everything to her husband and today has come to the PS to lodge the complaint. The victim child was taken to hospital where she was medically examined and hymen was found torn and 9 O'clock position. At the instance of the complainant, site plan was prepared, exhibits of the victim were seized and accused was arrested. Accused was also medically examined. Statement of victim under Section 164 Cr.P.C. exhibits were sent to FSL and awaiting result and chargesheet was filed”.

3. The Trial Court has acquitted the respondent for several reasons. Firstly, the prosecutrix herself has stated while recording her statement under Section 164 Cr.P.C. that the accused had inserted his private part in her vagina, anus and her mouth. However, while deposing before the Court, she had stated that the victim had inserted his finger in her vagina. This was a serious and material contradiction in the statement of the prosecutrix. Secondly, there was unexplained delay in the lodging of the complaint. The

complainant-mother had learnt of the alleged assault on 01.06.2013 from her younger son, which took place 10-12 days prior to 01.06.2013. Thereafter, it was claimed that the prosecutrix complained of pain when she came out of the toilet on 02.06.2013, but the complaint was lodged only on 04.06.2013.

4. The Trial Court has observed that it was not explained as to how the prosecutrix could have suffered pain on 02.06.2013 if the assault took place about 10-12 days earlier, as claimed by the prosecution. There was also a contradiction in evidence with regard to the timing during which the children, including the prosecutrix were left at home and whether they were alone at home or not. PW-7, the elder brother of the prosecutrix had stated that between 1P.M -6 P.M., the children remained with their aunt who lives on the first floor of the premises as he and his brother go to school from 1P.M. – 6 P.M. However, the complainant-mother claimed that the children remained at her home in her absence.

5. No doubt, the MLC of the prosecutrix showed that the hymen was torn at 9 0' clock position, however, that does not by itself associate the accused with the act, if any, which resulted in the tearing of the hymen. Pertinently, no semen stains were found on the clothes of the prosecutrix.

6. The defence of the accused was that the father of the prosecutrix was his employee and owed money to him and, therefore, he claimed false implication. It has also come on record that the accused had engraved the name of the complainant on his hand. The Trial Court has held that this appears to be the motive behind the complaint.

7. Having considered the impugned judgment and the evidence brought

on record which has been referred to by Ms. Tiwari, we are of the view that the view taken by the Trial Court is reasonable and plausible, and it does not call for interference by grant of leave.

8. Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 07, 2018

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