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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. L. P. 377/2018

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through: Mr Hirein Sharma, APP for State

versus

HARVINDER SINGH @ RAJU

..... Respondent

Through: None

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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21.08.2018

1. The State seeks leave to appeal against the judgment dated 19th March 2018 passed by the learned Additional Sessions Judge-01 (North West), Rohini Courts in SC No.139/2015 arising out of FIR No.1272/2015 registered at PS Mangol Puri acquitting the Respondent of the offence under Section 376/506 IPC and Section 6 POCSO Act.

2. The Respondent was charged with having sexually assaulted his step-daughter on 24th June 2015 at 3:30 pm at their house. The case of the prosecution is that the Respondent had adopted the victim, who was aged less than 14 years at the time of the offence about 12 years prior thereto, after the death of her biological father. The victim was living with the Respondent as his daughter. Four years prior to the incident, the wife of the Respondent died.

3. According to the prosecution, as told by the victim, at 3:30 pm on 24th June 2015, she was sleeping with the son and daughter of her *bua* (paternal aunt). At that time, the Respondent came in a drunken condition, picked up the victim's cousin who was sleeping on the bed and made him lie on the folding bed. The daughter of the *bua* was sleeping on the floor. The victim was lying on the bed without clothes with her mouth and hands tied. Her *pyjama* was also already removed and the Respondent was touching her vagina with his finger and was trying to insert his male organ into her vagina. He forcefully inserted his finger in her vagina and she started weeping and then the accused threatened her not to disclose this to anyone or else she would be killed. Then the Respondent went to the bathroom. Her cousin removed her *chunni* and the victim took out the keys which were lying under the pillow and opened the door locked from inside and she along with her cousins came downstairs. At around 7-8 pm, her paternal aunt/*bua* came from her job and she narrated to her the entire incident.

4. The victim along with her *bua* came to the PP at the SGM Hospital two days later on 26th June 2015 and made a complaint. The statement of the victim under Section 164 Cr PC was recorded on 30th June 2015.

5. The MLC of the victim found the hymen to be intact, although her statement was to the effect that the Respondent had inserted his finger forcibly into her vagina. It was contended by the defence that this was a case of false implication. The real sister of the Respondent, who was the complainant, had strained relations with him. The victim was also annoyed

with him because of his reprimanding her about her studies. Further, the independent eye witness, i.e. the cousin sister of the victim, and her mother, i.e. another paternal aunt of the victim, did not support the case of the prosecution.

6. The trial Court found that the delay of two days in lodging the FIR was not satisfactorily explained. There were contradictions in the statements made by the victim to the police and the one given by her under Section 164 Cr PC and further as deposed by her in the trial Court. The victim also admitted in her cross-examination that about six months prior to the incident, the Respondent continuously reprimanded her for her studies and she felt bad about the same. Significantly, the FSL report did not support the prosecution case as the DNA profile of the Respondent was not found in any of the samples of the victim.

7. The Court has heard the learned APP for the State on 30th May 2018. On that date, the learned APP had sought time to examine the trial Court record and in particular, the medical evidence. Accordingly, the case was adjourned for today.

8. The learned APP today informs the Court that after examining the trial Court record, and in particular the medical evidence, he is unable to make out any ground for leave to appeal as far as the trial Court's observations on the medical evidence is concerned.

9. This Court finds that the trial Court has not erred in its analysis of the evidence of the victim in light of the other evidence on record. The

conclusion that the prosecution had failed to prove the guilt of the Respondent beyond reasonable doubt for the offences with which he was charged, has not been shown to be perverse or contrary to the evidence on the record.

10. The criminal leave petition is accordingly dismissed. The trial Court record be sent back forthwith.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 21, 2018
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