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

+ **CRL.L.P. 370/2018**

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

versus

VINOD KUMAR SAHU & ANR. Respondents
Through: None

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

ORDER
% **29.05.2018**

CrI .M. A. No. 10701/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CrI. M. A. No. 10700/2018 (delay)

2. For the reason stated in the application, the delay of two days in filing the leave petition is condoned. The application is disposed of.

CrI. L. P. No. 370/2018

3. This Criminal Leave Petition by the State seeks leave to appeal the judgment dated 15th February 2018 passed by the Additional Sessions Judge, North West-01, Special Court, POCSO, Rohini Courts, New Delhi in Sessions Case No. 149/2014 arising out of FIR No. 520/2014 registered at Police Station (PS) Subhash Place, acquitting the Respondents of the offences under Sections 363/342/376 IPC, and

Section 04 of POCSO Act and Sections 23 and 26 of Juvenile Justice Act.

4. On 4th June 2014 a PCR call was received at about 12.07 am in respect of a quarrel by a drunk person at Shakur Basti. When the Investigating Officer (IO) went to the spot, he found that the PCR had already taken one man to the Bhagwan Mahavir Hospital, from where the IO collected the MLC of one Sagar with the alleged history of physical assault.

5. When the IO reached the spot again after collecting the MLC, one Smt. Shiva Gupta (PW-10) met him and stated that the victim (PW-4) had stayed with her i.e. (PW-10) for one night. The said Sagar, along with another person, had taken the victim from her residence. The victim was thereafter traced after much effort. According to PW-10, the victim had already left for the PS since she had disclosed that she had been raped.

6. The IO then reached the PS and found PW-4 and recorded her statement. She revealed that she was living at JJ Colony, Shakurpur at the time. According to the victim, she had come to Delhi on 18th April 2014 from her native village with the co-accused Rimita as she was not in a stable financial condition and was promised a decent living. After the victim stayed with her for a few days, co-accused Rimita got her employed at a house in Rohini, where the landlady was Alka, another co-accused. According to the victim, Alka used to abuse her

and, therefore, she left that job on 31st May 2014 and returned to Rimita's residence.

7. The victim was informed by Rimita's husband Vinod (the main accused), who was present at the time, that Rimita had gone to Bengal for 2-3 days. As a result, the victim decided to stay there for the night. At around 9 pm, Vinod brought food, which they both consumed. After dinner she slept in the office itself. According to her at around 11 pm on 31st May 2014 she was raped by Vinod. The next morning he left at 7 am and returned at 10 pm and raped her again. On 2nd June 2014 she somehow managed to escape went to the landlady i.e. Shiva Gupta living on the third floor and disclosed everything to her. Thereafter, she came to the PS in the early hours of 4th June 2014 and lodged the complaint.

8. It is important to note that in her initial statement to the police, the victim did not mention any role of Sagar and stated that she was raped by the accused on 31st May 2014 and 1st June 2014, and then on the next day she had managed to go upstairs and inform the landlady PW-10, who then took her to the PS. Interestingly Sagar himself was never examined as a witness.

9. The statement of the victim was recorded under Section 164 Cr PC. In both her previous statement to the police and in her statement under Section 164 Cr PC, the victim disclosed her age to be around 17 years.

10. In the course of the trial, a witness (PW-2) working at the school attended by the victim was examined. He placed on record the photocopy of the admission register which showed her date of admission to the school to be 6th May 2005. In the cross-examination of PW-2, it was stated that there was no document in the school record regarding the date of birth of the victim. Even the original admission form was not available and no supporting documents pertaining to the date of birth of the victim were available. For some reason no ossification test was also conducted.

11. In the judgment of the trial court, the entire deposition of the victim PW-4 stands reproduced. She *inter-alia* disclosed that she did not agree to her internal examination when she was taken to the hospital. Apart from PW-4, Smt. Shiva Gupta was examined as PW-10. *Inter-alia* PW-10 disclosed that she used to live above the office-cum-residence of accused Vinod on the third floor and the victim had come to her weeping on 31st May 2014 and asked her if she could stay at her house as wife of accused Vinod was not at home and there were some boys there. On the next day i.e. 1st June 2014 one Sagar and Rakhi came to her house offering to send the victim back to her native place. However, PW-10 refused to send the victim with them and got the fact confirmed with Vinod through her husband in the evening.

12. According to PW-10 in the evening of the same day the victim was taken by Sagar and Rakhi from her residence. That night at

around 11.45 pm, her door was banged but she was reluctant to open it at that time and called the police. Later after arrival of the police, when she opened the door, PW-10 saw Sagar who had been badly beaten by someone. The police had then made enquiries from Sagar and thereafter the victim was recovered at around 2.30 am.

13. PW-11, who is the husband of PW-10, also stated that on 31st May 2014 he had received a call from his wife that the victim who was living at placement agency of accused Vinod had come to their place on the pretext that there were boys living in the house of Vinod at the time and his wife was not present there. He consented to the victim staying with them for the night. When he got home and enquired from her, the victim told him that the accused Vinod was sending her to Bangalore against her wishes. The next morning when Vinod came there she refused to go to Bangalore or even to accompany him. On the evening 1st June 2014 one boy and girl came to take the victim on the pretext that they would take her back to her native place. When PW-11 returned home he found Sagar and Rakhi present there along with accused Vinod. Vinod told them that Sagar and Rakhi would take the victim to the village and thereafter, they took the victim away with them. Around midnight, their door was banged. They called the PCR and found that the boy Sagar had been beaten very badly. Sagar informed them that the victim had been kidnapped by 3-4 boys. The police then made enquiries and recovered the victim from J-Block, Shakurpur.

14. The trial Court has, apart from holding that the prosecution had failed to prove the age of the victim at the time of the offence, discussed the testimony of the victim in a great detail. It noted that the victim had thrice refused to undergo an internal medical examination. The trial Court concluded that there was no medical evidence to corroborate the victim's testimony that Vinod raped her on 31st May 2014, 1st June 2014 and 2nd June 2014.

15. Moreover, there was inconsistency in the testimony of the victim inasmuch as only for the first time in the Court did she mention the role of Rakhi and Sagar and that they were there to take her back to her village with them. The fact that she spent the night of 31st May 2014 with PW-10 and her husband made it improbable that she was raped that night by Vinod. Even the next day, she was supposedly taken away by Sagar and Rakhi and, therefore, the testimonies of PW-10 and PW-11 did not corroborate the victim's version that she was raped on 1st June 2014 as well.

16. The trial Court also found that there was no explanation for the delay of two days in registering the FIR. If in fact the victim was admittedly recovered at around 3 am on 2nd June 2014, the onus was on the prosecution to show why the FIR was registered only in the early hours of 4th June 2014. Consequently, the trial Court gave the accused the benefit of doubt and acquitted them of the offences with which they were charged.

17. This Court has heard the submissions of learned APP for the State. The Court has also perused the transcripts of the evidence of the PWs which have been referred to by the trial Court in the impugned judgment. The Court is not persuaded that the trial Court has committed any legal error in coming to the conclusions discussed hereinbefore. Although learned APP insisted that the trial Court record should be summoned to examine the evidence presented by the prosecution regarding the age of the victim, the Court does not consider it necessary for the reason that the testimony of the PWs have already been set out in great detail. Moreover, the learned APP has been unable to persuade the Court that the analysis of the testimony of the victim by the trial Court suffers from any legal infirmity warranting interference by this Court.

18. No grounds have been made out for granting leave to appeal. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 29, 2018

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