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

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Judgement delivered on: 09.07.2018

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CRL.L.P. 417/2018

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through: Mr. Amit Chadha, APP for the State

versus

MOHD. ASHIF BILLA @ ASHIF & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The present leave petition instituted by the State under Section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C.) assails the judgment dated 06.04.2018 passed by the learned Addl. Sessions Judge, North West-01, POCSO, Rohini Distt. Courts, New Delhi, thereby acquitting the respondents in FIR No. 103/2014 registered under Sections 323/354A(1)/354/506/34 Indian Penal Code, 1860 (IPC) and Section 8 POCSO Act, at police station Ashok Vihar.

2. Briefly encapsulated, the case of the prosecution is that, a DD No. 31A dated 19.02.2014 was recorded when the complainant (PW-5) reported about physical assault on and abuse of her minor daughter (hereinafter referred to as 'the victim') by the persons mentioned in the complaint. The

victim was taken to BJRM Hospital where she was medically examined with alleged history of physical assault a day ago, around 1.00 p.m., by accused Hemant Singh Rawat- respondent no.2 herein. The Investigating Officer (IO) recorded the victim's statement to the effect that she was living with her parents; she had three sisters and a brother; she was studying in class 12th in a government school at H Block, Ashok Vihar, New Delhi; that two boys named Hemant Singh Rawat- respondent no.2 living at Moti Nagar and Ashiq- respondent no.1, followed her routinely to her school. In December, 2013 they offered her their friendship, which she refused. Respondent no.2 threatened her that if she did not accept his friendship, he would assault her with a blade and deface her. They continued to follow her for a month. On 18.02.2014 at about 1.00 p.m. when her school was over, she found them standing outside it, they asked her to come with them, she refused, respondent no.1 slapped her, and respondent no.2 gave fist and leg blows to her and threatened her that, if she will inform her parents, she would be killed. Terrified of their threat, she did not tell anyone about the assault that day. However, on 19.02.2014, she informed everything to her mother, who took her to police station and from where she was taken to the government hospital for medical examination. On her statement, the present FIR was registered. At the instance of the victim and her mother, respondent no.2 was arrested on 20.02.2014 from Deep Market, Ashok Vihar and respondent no. 2 was arrested on 21.02.2014 from the Bus Stand, Deep Market, Ashok Vihar. Statement of the victim was recorded under section 164 Cr.P.C. on 22.02.2014. The IO obtained age proof of the victim and after completion of investigation, charge-sheet was filed against the respondents. The Trial Court framed charges u/s 12 of the POCSO Act read with Section 11(iv) of

the POCSO Act or in the alternate 354(D)/34 IPC and 323/34 IPC and 506/34 IPC, against the respondents on 02.03.2015, to which they pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution examined 6 witnesses, including the victim (PW-1). statement of purported incriminating material was put before the respondents and the latter's statements under section 313 Cr.P.C. was recorded. The respondents denied all the allegations leveled against them. They claimed to have been falsely implicated. However, they did not adduce any evidence.

4. Having heard the parties and after thorough examination of the evidence on record, the Trial Court acquitted the respondents of the said charges framed against them. Particularly in view of the manifest contradictions in the testimonies of the victim (PW-1), the complainant mother (PW-5) and the IO of the case (PW-6) regarding the identification and arrest of the respondents and the unexplained delay in registration of FIR.

5. It is the said order of acquittal dated 06.04.2018, which has been assailed in the present petition, seeking leave to appeal. The acquittal of all the said charges is inter alia for the following reasons:

(a) The Trial Court observed that, there was an unexplained delay in lodging the FIR. The alleged incident of physical assault took place on 18.02.2014 at 1.00 p.m. but the victim along with her mother came to the police station on 19.02.2014 at 9.00 p.m.. As per the deposition of the victim, she informed her mother about the alleged incident on 19.02.2014, as

she was scared of the threats given by the respondents, however, contrary to the victim's version, her mother (PW5) has deposed that on inquiry the victim informed her about the incident on 18.02.2014 itself, when she returned from her school.

(b) In the complaint, the victim had not only named the respondents, but also mentioned their respective localities of residence. However, in the statement before the court, she has stated that, she did not know about the respondents and came to know about their names, when she was called by the IO at the Police Station to identify them. The fact remains unexplained as to how both the respondents were named in the FIR along with their respective localities of residence. Furthermore, the IO has stated that respondents were arrested on 20.02.2014 and 21.02.2014 from Deep Market at the instance of the victim. The prosecution failed to explain the contradictions regarding the identification and the arrest of the respondents.

(c) The IO stated that the respondents were not present at their respective houses, when they were searched. It was not explained as to how the residential addresses of the respondents came to the knowledge of IO, when as per the victim's version she was not aware of the same.

(d) Furthermore, in the MCL record, the alleged history of assault was mentioned only against respondent no.2, but the victim thereafter, improved her version by mentioning that both the respondents assaulted her. It is the victim's version that, at the time of alleged physical assault, she came out her school when it got over; which would logically imply that many other students would have been present at the school gate, when the victim was allegedly assaulted. However, no such evidence was led. The IO did not

interrogate any such witnesses, who may have been present at the spot, to ascertain the genuineness of the alleged incident.

Based upon the above material, the Trial Court came to the conclusion that the prosecution failed to prove beyond reasonable doubt the commission of the alleged offence by the respondents. Accordingly, they were acquitted.

6. On perusal of the above findings rendered by the Trial Court, it is evident that the prosecution has failed to produce any evidence to show the culpability of the respondents or to prove the prosecution's case. In the absence of any proof against the accused, he cannot be held guilty of any charges or be punished therefor.

7. This Court finds no ground to grant leave to appeal against the impugned judgment. It does not warrant any interference.

8. Accordingly, the leave petition is dismissed.

NAJMI WAZIRI, J

JULY 09, 2018