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

+ **CRL.L.P. 446/2018**

THE STATE, GOVT. OF N.C.T. OF DELHI ..... Petitioner

Through: Mr. Hirein Sharma, APP for State  
with SI Sunil Kumar, PS Subhash  
Palace

versus

MOHD. JUNAID

..... Respondent

Through None

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE VINOD GOEL**

**ORDER**

% **18.07.2018**

**Crl. M.A. No. 12812/2018 (delay)**

1. For the reasons stated in the application, the delay in filing the Criminal Leave Petition is condoned. The application is disposed of.

**Crl. L.P. No. 446/2018**

2. This criminal leave petition by the State seeks leave to appeal against the order dated 3<sup>rd</sup> April 2018 passed by the learned Additional Sessions Judge, Special Court (POCSO), North-West District, Rohini Courts in SC No.130/2015 arising out of FIR No.519/2015 registered at PS Subhash Place acquitting the Respondent of charges under Section 376 IPC and Sections 6 and 12 Protection of Children from Sexual Offences Act ('POCSO Act').

3. The case of the prosecution is that on 12<sup>th</sup> June 2015, a PCR call was received and entry DD No.28A was recorded about the Respondent being

apprehended while he was trying to commit some wrongful act with a girl child at Shri Nagar Colony in Delhi. When Assistant Sub-inspector Megraj Singh, who was the Investigating Officer ('IO') in the case, reached the spot, the father of the victim met him and gave him a handwritten complaint of the victim. On the basis of that handwritten complaint, an FIR was registered. By this time, the Respondent had already been apprehended and was formally arrested.

4. The statement of the victim under Section 164 Cr PC was recorded. According to her, she was returning home from the house of her paternal grandmother when one person asked her for help to lift his goods. He was sitting at the shop of one Sardarji (not examined as a witness). When she went near that person, he purportedly started misbehaving with her. According to the victim, her younger brother was also with her at that time. The younger brother has also not been examined as a witness.

5. The victim stated that she then tried to scream but the Respondent put his hand over her mouth. Her brother ran away from there for assistance and she also ran away. She informed this fact to a lady nearby and that lady along with her two sons apprehended the Respondent. The victim added that the Respondent removed her clothes and touched his "toilet wali jagah" to her "washroom side". She then called her father on the phone.

6. The IO thereafter found out the date of birth of the victim to be 13<sup>th</sup> February 2005 and accordingly, filed the charge sheet after concluding his investigation. Charges were framed against the Respondent for the

offences mentioned hereinbefore. The prosecution examined 13 witnesses during the trial.

7. The improvements made by the victim during her deposition in Court have been discussed in detail by the trial Court. The findings of the trial Court in this regard are reproduced as follows:

“8. Coming to the main incident, it is important to note that the victim in her hand written complaint Ex.PW3/A has stated that at about 6.15 p.m. one person asked her to help him in lifting his goods and when she refused he caught hold her hand and asked her to come with him. He tried to drag her forcibly and she ran away freeing herself from the accused. In this statement, she did not make any allegation about sexual assault nor she stated that her brother was with her at the time of alleged incident. It is important to record that this is not a statement recorded by the police but it is a hand written complaint addressed to SHO by the victim in the presence of her father after counselling and it cannot be said the victim was nervous or perplexed at that time to give correct version of incident. Further, in this statement, she has stated that she after rescuing herself, went upstairs on the second floor and called her father on phone. In the meantime, the ironman and some public person chased and apprehended the accused. In the meantime, her father came and she told him that this is the man who caught her from her hand. In her statement recorded u/s 164 Cr.P.C, she stated that accused was sitting on a bench at the shop of one Sardarji. The accused was saying that no one is listening to him and when she went to him he started abusing her and when she tried to scream, he closed her mouth with his hand. Her brother left for help and she also ran away. In this statement, she has mentioned that accused was sitting on bench at the shop of one Sardarji but that Sardarji was neither interrogated nor he was made a witness in the case. Another important eye witness i.e. younger, brother of the victim was also not cited as a witness in this case. In this statement, she has stated that two sons of aunty chased and apprehended the

accused. Here she did not mention about the iron man who was referred in the original hand written complaint where these two boys were not mentioned. She also added that he removed her clothes and touched his 'toilet wali cheej at her washroom side'. The place where the accused removed her clothes and touched his private part to her private part was not mentioned. Later on, when she was examined in the court, she has stated that the accused took her to the stairs of a nearby house and at that time her brother was also with her and then accused removed her clothes and his clothes and touched his washroom wall jagah to her washroom wall jagah and on seeing this, her brother ran away and that man chased his brother and she also ran away. It is not clear that when the accused chased the brother of the victim then how he was apprehended at the spot. Since admittedly in the meantime the victim ran and went to the second floor of her house, called her father from a mobile of a neighbour and then they all came down and still accused was found in the same street and the victim identified him and he was apprehended. As per record, PW-6, PW-7 and PW-8 have stated that when they came down with the victim child, no clue of the persons who misbehaved with the victim was found and then the victim identified a man passing through the gali as the person who misbehaved with her and he was apprehended. It is very surprising that the accused who as per victim ran to chase her brother was still roaming in the gali inviting his apprehension and arrest. The story of the prosecution does not appear to be plausible. Further the victim made material improvement from her hand written complaint till her deposition in the court. The victim has admitted that the alleged place of incident was densely populated and many public persons gathered when she screamed. None of those persons saw the accused running or chasing the brother of the victim. Further the site plan Ex.PW11/C shows the place of incident on road whereas as per victim she was taken to a house and on the stairs of that house leading to the first floor, the alleged act of sexual assault was committed. The prosecution has failed to prove commission of any of offence against the accused beyond reasonable doubt. Accused Mohd. Junaid is given

benefit of doubt. Accordingly, he is acquitted. He is in JC. He be released forthwith from JC, if not required in any other case or proceedings.”

8. As far as the Respondent is concerned, he examined himself as DW-1. He disclosed that he was a tailor by profession. Between 3 and 3.15 pm, he was moving towards the railway station to travel to Agra to meet his sister when he noticed a crowd already in the *gali*. Two boys suddenly pointed towards him and identified him as the accused and the crowd suddenly started beating him up.

9. The Court has, with the assistance of learned APP, examined the documents placed on record. The learned APP has also read out the deposition of PW-7 who was supposed to be witnesses to the apprehension of the Respondent. The Court is of the view that there are indeed numerous inconsistencies and improvements made by the victim during her deposition in the Court which were not even mentioned by her in the handwritten complaint given to the IO in the first instance. It would be unsafe to proceed to convict the Respondent on the basis of such evidence.

10. The Court is unable to find any legal infirmity in the impugned judgment of the trial Court. The criminal leave petition is dismissed.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**JULY 18, 2018/*mw***