

\$~7.

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

+ **CRL.L.P. 561/2018**

STATE

..... Petitioner

Through: Ms. Kusum Dhalla, APP

versus

LALLAN SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

29.08.2018

%

Crl. M.A. No. 30926/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.L.P. 561/2018

The State has preferred the present petition to seek leave to appeal against the judgment dated 04.05.2018 passed by the learned Additional Sessions Judge (North West)- 01: Special Court: POCSO, Rohini District Courts: Delhi in Sessions Case No. 04/2015, arising out of FIR No. 1194/2014, under Section 376/366IPC & Section 6 of the POCSO Act, registered at PS Sultan Puri.

The Trial Court has acquitted the respondent accused of the charges framed against him under Section 366 IPC and Section 5 (j) (ii) (n) and (p)

of POCSO Act 2012 punishable under Section 6 of the said Act and alternatively under Section 6 (2) (f) (h) and (n) IPC. The facts taken note of in the impugned judgement are as follows:

“ The facts of the case as borne out from the record are that on 20.10.2014, after entrustment of DD no. 33-A, W/SI Rakhi reached at Sanjay Gandhi Memorial Hospital, where SI Deepak Purohit and Ct. Dhan Singh met her and then SI Deepak Purohit handed over the MLC of the victim A as well as MLC of baby of victim A and told that victim, who is unmarried, has delivered a child and that the victim A is admitted in the ward and child is admitted in the nursery. Thereafter, IO SI Rakhi got the prosecutrix A counselled through NGO counsellor and recorded her statement to the effect that in the month of May 2014, she was not feeling well and her mausa Lallan i.e., the accused took her to Badli on the pretext to get her check up through a Mulla and as the shop of said Mulla was found closed, the accused took her to a house, where he committed penetrative sexual assault upon her without her wishes and consent and thereafter, accused took her to the said Mulla, got her medicines and then left her to her house. She further stated that she did not disclose about the incident to her mother as they were already tensed because of her previous case and thereafter, the accused took her 2-3 times to that room on the pretext of getting her medicine and committed penetrative sexual assault upon her forcibly. She further stated that since last 5-6 months she was also not menstruating and she disclosed about this fact to the accused, but he asked her not to worry about it and ultimately, due to more pain in her stomach, she was got admitted in Sanjay Gandhi Memorial Hospital, where she delivered the child and said child is of accused and she requested for legal action against the accused. ”

The reasoning found in the impugned judgment for acquittal of the

accused is the following:

- (i) The prosecutrix had alleged rape on an earlier instance, in respect whereof FIR No. 295/2013, dated 12.12.2014 was registered. Vide a judgment Ex. PW15/DX1, the age of the prosecutrix was found to be above 18 years in May 2014. Thus, the charge under POCSO Act did not survive.
- (ii) The FIR, in the present case, was lodged after a delay of nearly 5 months. The first sexual assault alleged against the respondent was in May, 2014 but the FIR was registered on 20.10.2014 when the victim delivered a male baby at SGM hospital.
- (iii) The DNA report prepared by drawing the DNA of the male child born to the prosecutrix and comparing the same with the DNA drawn from the blood sample of the accused did not match. Thus, the child, which the prosecution claimed was born out of the offence of rape, was not found to be that of the accused.
- (iv) The Court found discrepancy in the statement of the prosecutrix recorded under Section 164 Cr.P.C and that made before the Court.
- (v) There was discrepancy in the statement of the prosecutrix and the statement made by her mother PW11. The prosecutrix claimed that she had been taken by the accused on 2-3 occasions whereas the mother of the prosecutrix PW11 stated that her daughter had been taken by the accused only on 1 occasion.
- (vi) The Trial Court found that there was no evidence on record to show that the male child born to the prosecutrix was preterm. The sexual assault on the prosecutrix was committed in May 2014, the child born out of the rape could not have been born in October, 2014 i.e., within five months.
- (vii) The MLC Ex. PW7/A does not show that the child was born preterm.

Ms. Dhalla submits that the prosecutrix had alleged rape by the accused not only in her statement recorded under Section 164 Cr.P.C. but also in her statement before the Court.

Though the sole testimony of the prosecutrix may form the basis of conviction in charge of rape, the same has to be completely reliable and trustworthy. However, the aforesaid circumstances taken note of by the Trial Court raise sufficient doubt to discredit the testimony of the prosecutrix.

We find no merit in this petition. Dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

AUGUST 29, 2018
N.Khanna