

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

% Decided on: 7th August, 2018

+ **CRL.L.P. 539/2016**

Ms. A

..... Petitioner

Represented by: Ms. Amita Singh Kalkal,
Advocate

versus

STATE & ANR.

..... Respondents

Represented by: Ms. Rajni Gupta, APP for the
State with SI Narender, PS
R.K.Puram.
Mr. Harsh Prabhakar
(DHCLSC) with Mr. Anirudh
Tanwar, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. As per requirement of law, the name of the prosecutrix is withheld to conceal her identity and she has been referred to as 'Ms. A'.
2. Aggrieved by the judgment dated 13th July, 2016 whereby the learned Additional Sessions Judge acquitted the respondent No.2 Taslim for the offences punishable under Section 376(2)(n)/506 IPC and Section 4 of Protection of Children from Sexual Offences Act (in short POCSO Act), the petitioner/prosecutrix has preferred the present leave petition.
3. The case of the prosecution is that on 13th July, 2014 at about 4:40 P.M. information was received about quarrel in front of Masjid, Indira Market, Sector-7, R.K.Puram. Aforesaid information was recorded vide DD No. 27A (Ex. PW2/E) and was assigned to ASI Suresh (PW-12). Consequently, he reached the spot, however, no incident of quarrel was seen

by him. In the meantime, at about 5:40 P.M. another information was received about the quarrel at the same place which was recorded vide DD No. 30A (Ex. PW2/C) and was also assigned to ASI Suresh (PW-12). He called up the caller and came to know that the prosecutrix had been taken to Police Station. Thereafter, he went to the Police Station and met the prosecutrix and her aunt. In the meanwhile, father of the prosecutrix also reached the Police Station. The matter was handed over to Insp. Saroj Bala (PW-13) who recorded the statement of the prosecutrix vide Ex.PW 6/A. She stated that Taslim stays near her house and about a year ago when she was going to fill water at around 4:00 A.M., Taslim held her and took her to his house. She also stated that he has two houses out of which one was vacant, he took her to the vacant house and tried to have physical relations with her. He threatened her that if she tried to tell about the incident to anyone he would kill her. She was scared and therefore did not inform about the incident to anyone at home. She also stated that 3-4 days later he started making physical relations with her frequently and kept threatening her. On the day of the incident at around 4:00 P.M., when she was returning home from the market and her brother was behind her carrying the packets, on the way Taslim caught hold of her hand and started pulling her. On seeing this, her brother (PW-10) told Taslim to leave her hand consequent to which Taslim started fighting with her brother. She informed her mother and the police was called.

4. On the basis of the above statement, FIR No. 499/2014 (Ex.PW2/A) was registered at PS R.K. Puram for offences punishable under Sections 376/506 IPC.

5. Insp. Saroj Bala (PW-13) alongwith Ct. Jaiveer Singh (PW-3) took the prosecutrix to Safdarjung Hospital for medical examination. She was medically examined vide MLC Ex.PW-1/A, however, she refused to undergo internal examination.
6. Thereafter, Insp. Saroj Bala (PW-13) took the prosecutrix to the spot and prepared the site plan (Ex.PW-13/B) at her instance. Search for Taslim was made who was apprehended at the instance of the prosecutrix from in front of Indira Market Masjid. Taslim was arrested vide arrest memo PW-3/A, his personal search was conducted vide Ex.PW-3/B and his disclosure statement was recorded vide Ex.PW-3/C.
7. During the course of investigation, the age-proof of the victim was sought from her father. However, since the prosecutrix had not been admitted in any school, the age determination test of the prosecutrix was conducted by the medical board on 28th July, 2014.
8. After completion of investigation charge sheet was filed vide order dated 13th October, 2014 and charge was framed for the offences punishable under Sections 376(2)(n)/506 IPC against the respondent.
9. Dr. M.K. Wahi (PW-8), Professor, Department of Forensic Medicines and Toxicology stated that after general physical, dental and radiological examination, the age of the prosecutrix was between 18 to 21 years (more than 18 years and less than 21 years). The report was proved vide Ex.PW-8/A.
10. Prosecutrix (PW-6) deposed that on the day of the incident she had gone with her mother to the market, who left her in the lane and went to another market to make more purchases. While she was walking back to her house, Taslim again tried to pull her inside the bathroom of his house. Her

brother who was going to read Namaz, saw her and Taslim and confronted Taslim. Thereafter, both of them started fighting with each other and her mother returned from the market. She also stated that the wife and mother of Taslim started fighting with her mother (PW-7) after which she called the police on 100 number.

11. Mother of the prosecutrix deposed that the prosecutrix had informed her that Taslim was sexually harassing her for a period of over 2-3 months. She and her son were beaten by the relatives of Taslim. During her cross-examination, she stated that while she was on her way back home and had reached near the house of Taslim, wife of Taslim caught her hair and when she protested, the neighbors including the aunt of the prosecutrix got her separated. The house of Taslim was adjoining her house and they have a common wall. The house of aunt of the prosecutrix was 3-4 houses ahead and her son was inside their house who came out on hearing her screams. She stated that on hearing her screams, her husband (PW-9) and the prosecutrix also came out.

12. Father of the prosecutrix stated that family members of Taslim were quarrelling with his wife due to which she received injuries. He further stated that the police had taken him, his wife, the prosecutrix and aunt of prosecutrix in their PCR. He and his wife were dropped at the hospital while the prosecutrix and her aunt were taken to the Police Station.

13. Brother of the prosecutrix (PW-10) stated that on the date of the incident at about 4:00 P.M., he was going to attend Namaz in the Masjid near his house where he saw that Taslim had caught hold of the hand of the prosecutrix. When he intervened, Taslim started manhandling him. He also stated that his mother had been beaten by Taslim's son and 2-3 other boys.

14. Aunt of the prosecutrix stated that the prosecutrix had told her that Taslim had committed rape on her about one year ago and also about a month ago from the date of incident, he had last committed sexual forcible intercourse with the prosecutrix. She further stated that she had taken the prosecutrix to the police station in an auto.

15. Taslim in his statement under Section 313 Cr.P.C. stated that on the day of the incident, a dispute had taken place on account of water between his wife and mother of the prosecutrix. He further stated that it was he who had called the police at 100 number and not the father of the prosecutrix.

16. The prosecutrix in her deposition stated that on the day of the incident she had gone with her mother to the market. The fact that she had gone with her mother to the market was not stated by her in her statement recorded under Section 164 Cr.P.C. and was also not stated in the testimony of her mother. The prosecutrix has not mentioned any specific days, time or place regarding the alleged first incident of sexual assault and has also refused to undergo her internal examination. Thus, there is no evidence to corroborate the version of the prosecutrix.

17. It is clear from the deposition of mother of prosecutrix that a quarrel took place between her and the wife of Taslim after which people had gathered at the place of incident. This makes the defence of Taslim probable that a fight had taken place between his wife and the mother of the prosecutrix over water resulting in his false implication.

18. Findings of the learned Additional Sessions Judge based on the evidence on record are plausible. Hence, the impugned judgment acquitting the respondent no. 2 cannot be said to be perverse warranting interference of this Court.

19. Leave to appeal petition is dismissed.
20. Trial Court record be sent back

(MUKTA GUPTA)
JUDGE

AUGUST 7, 2018
‘vn’

