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

+ CRL.L.P. 583/2018

STATE Petitioner

Through: Mr. Kewal Singh Ahuja, APP.

versus

MONU Respondent

Through: None.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
06.09.2018

Crl.M.A.No.31482/2018 (Exemption)

1. Exemptions allowed, subject to all just exceptions.

Crl.M.A.No.31481/2018 (Delay)

2. For the reasons mentioned in the application, the delay of 34 days in filing the leave petition is condoned.

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3. The State seeks leave to appeal against the judgment dated 28th April 2018 passed by the learned Additional Sessions Judge-06 (West) in SC No.62/2018 arising out of FIR No.83/2015 acquitting the Respondent of the offences under Sections 376/506 IPC and Section 6 POCSO Act.

4. The charges framed against the Respondent were that at around 2 am on

18th November 2015, when the victim (PW-1) went to use the toilet outside her house, the Respondent dragged her into his room and repeatedly committed penetrative sexual assault upon her on in the alternative raped her and also threatened to kill her brother with a knife. According to the victim, at around midnight on 24th November 2015, when she was sleeping, someone knocked on the door of her house. When she opened the door, she found the Respondent who again caught hold of her hand and tried to take her forcibly into his room. When she cried, her father came there and the Respondent ran away.

5. The FIR itself was registered only on 4th December 2015 much after the aforementioned incidents took place.

6. The statement of the victim was recorded under Section 164 Cr PC on 5th December 2015. The date of birth of the victim was stated to be 15th August 2001 and by the time she was examined in Court, it was 23rd August 2017. The trial Court, on the analysis of the evidence, found that the deposition in Court by the victim was at complete variance with her statement under Section 164 Cr PC. The following observations of the trial Court in this regard are relevant:

“23. The State through Ld. Addl. PP had declared the prosecutrix hostile and sought permission to cross-examine the witness to clarify the date of occurrence and by putting leading question & it was clarified by PW1 during her cross-examination that the first incident was of 18-11-2015 and the second incident was of 24-11-2015, meaning thereby is that there were two separate incidents and there was a gap of 6 days.

According to such depositions during her cross-examination, it was deposed by the prosecutrix that the first

occurrence (18-11-2015) was of 'knocking of the door' & barging of the accused into the house of the prosecutrix and that the accused had tried to pull her by holding her hands out of her house and the second incident was of 24-11-2015 when the occurrence of alleged penetrative sexual assault upon the prosecutrix was committed by the accused.

24. To the contrary, as per the version of the prosecutrix given in her statement recorded Ex. PW1/D recorded u/s 164 Cr.PC, the date of first incident of 18-11 -2015 was of the alleged penetrative sexual assault by the accused and the date of second incident i.e. 24-11-2015 was of knocking of the door by the accused and barging into her house

.....

Therefore, it is observed that the prosecutrix has changed her version from beginning when she gave her complaint, then to her statement u/s 164 Cr.PC, again she changed her version in her testimony, again in her cross-examination as to when & what happened with her.”

7. Unfortunately for the prosecution, there is no legal evidence to substantiate the version of the prosecutrix particularly since the FIR itself had been registered after a considerable unexplained delay. Even in this regard, the explanation given was inconsistent as noted by the trial Court as under:

“45. But according to the date of FIR, the matter was reported to police only on 04-12-2015, thus, even there are 'contradictions' in her versions given in her complaint to her testimony on the aspects of 'threatenings' given to her because as per her version given to the police after the occurrence of alleged rape she did not inform anyone for quite a long time for 6 days as she was threatened by the accused for not reporting/informing the incident to anyone, otherwise he will kill her brother.

To the contrary, to her complaint Ex. PWI/B, she deposed in the court as PW1 that she had told everything to her father just after reaching home to her house after occurrence and her father had reported the matter to the police.”

8. The Court also notes the lapses in the investigation. There was failure to draw up a proper site plan of the place of occurrence. The site plan drawn up did not even indicate the location of the toilet to which the prosecutrix was going when she was purportedly grabbed by the accused. Even the location of the room where the incident took place was not indicated.

9. The trial Court also rightly rejected the plea of the State that the presumption under Section 29 POCSO Act would be attracted in the present case. The initial burden on the prosecution of putting forth a credible story not having been discharged, the question of shifting the burden of proof to the Respondent did not arise.

10. Having carefully perused the evidence brought on record with the assistance of the learned APP, the Court is not satisfied that any ground has been made out for grant of leave to appeal. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 06, 2018 / tr