

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

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Decided on: 12th March, 2018

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CRL.L.P. 575/2016

STATE (NCT OF DELHI)

..... Petitioner

Represented by: Ms. Kusum Dhalla, APP with
Insp. Gyan Chand, SI
Shailendra Kr. Singh PS
Gokulpuri.

versus

PINTO @ MINTU

..... Respondent

Represented by: Mr. Anwesh Madhukar, Mr.
Pranjal Shekhar, Mr. Pranesh
Misra, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition the petitioner seeks leave to appeal against the judgment dated 28th May, 2016 whereby the respondent has been acquitted for offence punishable under Sections 354/324/308 IPC and Section 10 of the Protection of Children from Sexual Offences Act (in short POCSO Act).

2. In the above-noted FIR the complainant alleged that on 18th September, 2014 at about 5 - 6 PM when she was present at her house doing household work, her daughter aged 12 years called her and stated that the respondent had hit her on the head with a brick. She was found bleeding from her ear and head. Victim also told her mother that the respondent pulled her by his hand and when she raised alarm he closed her mouth with his hand and ran away to the stairs, picked up a brick and hit her on head.

3. The learned Trial Court noted that in the MLC of the victim at GTB hospital alleged history was mentioned as injury due to fall from the staircase resulting in unconsciousness. As in the CT Scan fracture on the skull was found, after investigation charge-sheet was filed against the respondent for offences punishable under Section 354/308 IPC and Section 8 of the POCSO Act. The learned Trial Court noted that the contents of the complaint given by the complainant PW5 vide Ex.PW-5/A were in material contradiction to her deposition in Court wherein she deposed that on 18th day of the month at about 5.00 PM while she was doing her work, the landlord made a call to her husband who in turn called her. She returned back home and found the victim lying unconscious on the stairs.

4. Based on this testimony of the complainant, learned Trial Court granted benefit of doubt to the respondent. Learned Trial Court also noted that the respondent has taken the plea of unsoundness of mind and had been directed to be treated at IHBAS. Though the respondent led no evidence nor proved any document to show that he was suffering from legal insanity making him incapable of understanding the nature and consequence of his act but from the demeanour and medical status of the respondent, the learned Trial Court noted that the respondent needed more time to understand, comprehend and formulate his responses to the queries put forth to him during the trial. Though, there was no evidence of psychiatric illness, the intelligence quotient of the respondent appeared to be low, thus affecting his capability to take decision on an action.

5. As noted above version of the complainant is totally contrary to the contents of the complaint as noted above and in conformity with the alleged history given in the MLC of fall from the stairs.

6. On being issued summons the respondent had appeared in person. This Court also interacted with the respondent and found that he takes time in comprehending and formulating his responses to the query put forth, even if the queries are simple in nature.

7. On the evidence of the prosecution witnesses and the condition of the respondent, this Court is of the considered view that the finding of the learned Trial Court that the accused deserves benefit of doubt and also benefit of protection under Section 84 of the IPC as he is incapable of understanding nature of his acts cannot be interfered with. Leave to appeal petition is thus declined.

8. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 12, 2018
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