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

+ **CRL.L.P. 629/2018**

STATE

..... Petitioner

Through: Ms. Kusum Dhalla, APP with SI
Rakhi, PS Rani Bagh.

versus

RAM MURAT & ORS.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

28.09.2018

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Crl.M.A. No. 33156/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 629/2018

The state has preferred this leave petition to seek leave to appeal against the judgment dated 08.08.2018 rendered by the learned ASJ (North-West)- 01: Special Court: POCSO, Rohini District Courts: Delhi in Sessions Case No. 44/2013, arising out of FIR No. 169/2011 under Section 376 IPC and 03 & 04 of Child Labour Act.

There were 4 accused in the case. Accused No. 1 and 4 were charged under Section 376IPC. So far as accused No.2 and 3 are concerned, they have been charged under Section 03 & 04 of the Child Labour Act.

On bone ossification test being conducted, the age of the child could not be established to be below 14 years. Consequently, the charge under Section 03 & 04 could not be proved.

So far as charge under Section 376 is concerned, the prosecutrix failed to identify accused No.1 in the TIP. Though, initially she alleged that accused No.1 had raped her, subsequently while recording her statement before the Court i.e., for the first time she claimed that it was accused No.4 who had raped her and not accused No.1. She claimed that accused No.1 had inappropriately touched her but she had made allegations against accused No.1 on account of coercion exercised by ASI Poonam Tyagi. However, the said police officer joined the investigation after the date when the prosecutrix made allegations against respondent No.1. There was no incriminating evidence against accused No.1 apart from the initial statement of the prosecutrix which she did not support in the Court.

So far as accused No.4 is concerned, the allegation against him came to be made, for the first time, while recording the testimony of the prosecutrix. His presence at the residence, at the relevant point of time, has not been proved since DW1 deposed that as per the call detail records of accused No.4, he was in his office i.e. about 8.5 kms away from the residence at the relevant point of time.

In these circumstances, merely because the hymen of the prosecutrix was found to be torn, could not be a reason to convict either accused No.1 or accused No.4. We do not find any reason to interfere with the impugned judgment.

Dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

SEPTEMBER 28, 2018
N.Khanna