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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 708/2018 & Crl. M.A. No.35024/2018

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for State.

Versus

SUBODH KUMAR DAS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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29.10.2018

The State seeks leave to appeal against the acquittal of the respondent in FIR No. 465/14, registered under sections 354/354-D of the Indian Penal Code, 1860 and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Greater Kailash, New Delhi. The allegation was that the respondent had held the hand of a minor girl and attempted to draw her towards him. The incident happened in the evening in a congested busy area, near a water tank, where many people used to come and fill water from and if the minor girl had raised an alarm, then other persons present there would have noticed the same. It is the prosecution's case that the minor had gone to fetch milk from a milk booth with her brother. However, since she ran short of money, her brother went home to bring the requisite amount, while she was asked to stay at the milk booth. After the incident, the minor girl told her mother, who told the same to the father the next morning, but the latter did not file a police complaint right away but did so in the evening, after returning from office.

The impugned order has reasoned that the statement of the minor girl was not entirely reliable because in her cross-examination, she had stated

that she had Rs.19/- in her pocket, whereas cost of milk from the booth was Rs.18/- per litre. Therefore, there was no shortage of money and they could have bought the milk and returned home. The prosecution's story that her brother went home to fetch the requisite monies would, therefore, not be credible. Furthermore, the parties are stated to be living on the same floor of a building and there were regular altercations between the respondent's family and the minor girl's family apropos the latter's excessive usage of water and draining out of the water tank. The Trial Court found that oddly the Investigating Officer had not examined the girl's brother or the owner of the milk booth to ascertain and verify the story of the minor girl. Furthermore, the prosecution failed to produce any witness from amongst the people who had gathered near the water tank and who could have witnessed the incident, if it had so happened. Indeed, the water tank itself was not mentioned in the prosecution case. No public witnesses were joined. The defence had stated that it is because of the quarrels over water between the parties that the said false complaint had been filed against the respondent.

The Trial Court had reasoned as under:-

“14....The prosecutrix during her testimony on 12.07.2016 has stated that on 26.10.2014 she alongwith her younger brother had gone for taking milk and she was short of money and therefore her brother asked her to stand near the tap and he went away for bringing money from home. She deposed that accused's vessel was kept near the tap and he came near her and also followed her and caught her hand and pulled her towards him. She further stated that when she tried to raise noise accused left her and went to his home. She deposed that she ran to her mother and narrated the incident who disclosed the incident to her father in the morning and when her father went to accused for talking the

accused started quarrelling with her father and thereafter her father made call to police. She also deposed that accused had also followed her twice earlier and she had told the same to her father. The mother of the prosecutrix was examined as PW-4 and she also stated that her husband was sleeping when her victim, daughter came back to home after incident and on the next morning i.e. on 27.10.2014 when he awoken her then she told the incident to him. It is strange that neither the victim/PW-1 nor her mother/PW-4 informed father of the victim immediately, after incident-despite the fact that prosecutrix/PW-1 had tried to raise alarm at the time of incident and she had come running .to her house and informed about the incident to her mother/PW-4 immediately. It is doubtful that the victim or her mother would not have told about the said incident to PW-4 on the. same day if any such incident taken place. Admittedly the place of occurrence is a thickly PW-3/father of the prosecutrix has also admitted that several tenants are residing there and there is a common water tap for 5/6 families. However, none of the tenants or any other public persons had been cited as a witness nor got examined by the prosecution. The prosecutrix during her cross-examination has also stated that at the time of incident 3/4 persons were standing at a short distance and they went from there when she raised alarm. She also stated that one of them was residing in their building on the first floor. However, the said person, who was an eye witness and material witness and residing in the same building and known to prosecutrix, was not enquired by the police nor he has been cited as a witness and said lapse in investigation also makes the prosecution story doubtful. PW-1 has stated during her cross-examination that they used to bring milk from Mother Dairy Booth daily and they used to bring one liter (2 tokens) from the booth daily and rate of the milk was Rs.18/- per token. She also stated that no guest had come to their house on that day and she was having Rs.19/- with her at the time of incident and she was short of Rs.1/- to purchase the^ milk. It is not explained as to how the prosecutrix was short of Rs.1/- when rate of milk was Rs.18/- per token and she was having Rs.19/- with her. The shopkeeper of the shop where the prosecutrix/PW-1 has claimed to have gone for purchasing milk

has not been cited as a witness or examined by prosecution to establish the factum of prosecutrix going to shop at the time of incident. Even her brother who is stated to have accompanied the prosecutrix and asked her to wait while going to bring money from house has not been cited as witness by the prosecution. All these circumstance raise doubt about prosecution case as they would have corroborated the testimony of PW-1 which is otherwise not found to credible or reliable by this court. No complaint was made to the police by father of the prosecutrix/PW-1 about any stalking by the accused although the prosecutrix/PW-1 claimed that she had told her father about accsued's following her to school twice. PW-3/father of the prosecutrix has stated that he had made complaint to brother of the accused in this regard but it is not clarified as to what happened thereafter or why the matter was not brought to notice of police if the accused had repeated his act of harassing the prosecutrix/PW-1. So far as presence of the public persons and tenants near the place of occurrence is concerned, the same is also confirmed by SI Manisha/PW-6 who admitted that there were several houses occupied by the tenants at the place of incident. She also confirmed that room of the complainant as well as that of the accused were on the same floor. However, she stated during her cross-examination on 09.05.2017 that she had not recorded statement of any neighbourer/tenant or shopkeeper during investigations of the present case. She claims that she had made inquiries from the shopkeeper but he refused to give his statement and that she had not given any notice U/s 160 Cr.P.C. or to any other person to join the investigation or to give his statement. Surprisingly PW-6 stated that she does not know whether there was a common water tap for the tenants in the premises which was used by all the tenants whereas the prosecutrix as well as her parents have categorically stated that common water tap was being used by the tenants. The deposition of PW-1 as well as her mother/PW-4 is unreliable as they don't explain as to why the father/PW-3 was not told about the incident immediately. The inconsistency regarding alleged shortage of money for purchasing milk at the time of incident also make the testimony of prosecutrix unreliable. Testimony of

prosecutrix/PW-1 and her parents is also not credible in view of the fact that matter was not reported to police immediately after its occurrence and there is unexplained delay in lodging FIR. It is also unbelievable that prosecutrix or her mother would not tell the incident of sexual assault to their father immediately after the occurrence even if he had gone to sleep at the time of victim's return to house. The claim that father of the prosecutrix was sleeping when she returned to house and narrated the incident to her mother and he was not woken up or the other neighbours living in the vicinity were not informed about the incident belies the normal conduct of any reasonable person rendering the prosecution story doubtful. It is not possible that no public person or tenants living in vicinity of place of occurrence would not have heard the alarm raised by prosecutrix at the time of incident. All these contradictions in testimonies of victim and her parents coupled with lapses in investigation render the prosecution case doubtful. Accused has examined DW-1 and DW-2 who have deposed that there was a dispute with regard to sharing of water from the common tap between the accused and family of the prosecutrix. DW-1 categorically stated that there was no quarrel on 26.10.2014 and the police had also made inquiries from him. He also stated that his statement was recorded by a lady police official in the police station but he does not have copy of the same. Similarly, DW-2 has stated that room of the complainant's family is adjacent to his room on the ground floor and there was a dispute regarding sharing of water as the family of the complainant used to waste water in the day time from common tap and when they used to return in the evening there was no water left in the common tap for them. He also clarified that there was only a verbal dispute and no physical assault was ever caused to the complainant or any of her family members. He also stated that every neighbours residing in the building also used to object sharing of water and that accused never assaulted the complainant at any point of time. He also stated that he had gone to police station and informed that no such incident of assault had taken place but his statement was not recorded. It is settled law that the witnesses of the defence are entitled to the same respect as is given to the prosecution

witnesses. There is no justification of discarding testimony of defence witnesses merely on the ground that have been produced or called by the defence or that they are acquainted with the accused. The delay in reporting the matter to the police is not convincingly explained by the prosecution rendering the prosecution case doubtful. Although the prosecutrix and her parents have stated that there was no water dispute/quarrel between them and the accused's family but it is established on record that there is a common water tap used by the family of prosecutrix as well as the accused and other tenants living in the building. In view of the credible and cogent testimony of DW-1 and DW-2 it cannot be held with certainty that there was no dispute over water between the family of the accused and prosecutrix. In the absence of any public person having been examined by the prosecution and when neither the shopkeeper nor the brother of the prosecutrix have been cited as a witness or got examined and the prosecutrix and her mother did not tell about the incident even to father of the prosecutrix immediately after the incident, it cannot be held with certainty that accused had sexually assaulted or harassed the prosecutrix. Accordingly, the accused is entitled for benefit of doubt. In these facts and circumstances and in view of above discussion, the prosecution is held to have failed in proving the charges against the accused beyond reasonable doubt.....”

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merits and it, alongwith pending application, stands dismissed accordingly.

NAJMI WAZIRI, J.

OCTOBER 29, 2018

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