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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 725/2017

THE STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Ms Radhika Kolluru, APP for State with
Inspector Rajni PS Khyala

versus

RAJEEV KUMAR

..... Respondent

Through: None

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

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16.01.2018

1.The State seeks leave to appeal against the judgment dated 29th July 2017 passed by learned ASJ-01, West District, Tis Hazari Courts (Special Judge, POCSO Act) acquitting the Respondent for the offences under Sections 363/366/376 of the Indian Penal Code ('IPC'). He has also been acquitted for the offence under Section 6 of the POCSO Act.

2. The case of the prosecution is that the Respondent had kidnapped the prosecutrix (PW1) who, according to the prosecution, was below the age of 18 years on 3rd May 2016 at around 9.30 am and had taken her to Vaishno Devi and thereafter to Agra between 3rd May 2016 and 12th July 2016. He kept her in a room of a hotel in Agra as well as at Katra in Jammu. The Respondent is alleged to have committed aggravated penetrative sexual

assault and rape on PW1.

3. The prosecutrix is examined as PW1, her father is examined as PW2 and the Investigating Officer ('IO') as PW3. The evidence of the prosecutrix was recorded in the vulnerable witness category in the Court in-camera.

4. Although PW1 identified the Respondent as her neighbour, she denied having gone with him. She was then declared hostile and cross-examined by the learned Addl. PP. In her cross-examination, PW1 denied knowing the Respondent. When confronted with her statement given to the police as well as her statement recorded under Section 164 Cr PC before the learned Metropolitan Magistrate, PW1 denied both.

5. PW2, the father of PW1, was unhelpful in proving her age. He stated that the police had not taken any document from the school concerning the date of birth of PW1 in his presence. The IO (PW3) deposed regarding the investigation conducted and the documents gathered.

6. The trial Court noted that PW1 had turned hostile and therefore there was no evidence at all that the Respondent had in fact committed the offence of kidnapping, penetrative sexual assault and rape upon her. The evidence of PW2 was hearsay, particularly when PW1 herself denied the commission of any crime by the Respondent. In the circumstances, the recording of the statement of the Respondent under Section 313 Cr PC was dispensed with by the trial Court as nothing incriminating had emerged during the evidence

led by the prosecution.

7. It is submitted by Ms. Radhika Kolluru, learned APP for the State, that PW1 underwent a medical termination of her pregnancy and the DNA of the aborted foetus matched with that of the Respondent.

8. However, as pointed out by the learned trial Court, the age of PW1 has not been able to be proved. In other words there was no evidence that she was not an adult at the time she was allegedly taken away by the Respondent. Further, there was no evidence that she was taken away by the Respondent and subjected to sexual intercourse against her will or without her consent. Therefore, the charges against the Respondent must be held to be not proved.

9. The Court is unable to find any legal infirmity in the impugned judgment of the trial Court. The Court accordingly declines to grant leave to appeal. The petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 16, 2018

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