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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 821/2018 & CrI. M.A. No.49354/2018

STATE

..... Petitioner

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

Versus

MOHD IMRAN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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11.12.2018

This petition seeks leave to appeal against the order of acquittal passed by the learned Trial Court in case bearing FIR No.703/2013, registered under sections

The allegations against the respondent was that he had committed offences against the minor girl against her wishes, therefore, he would be prosecuted not only under the Indian Penal Code, 1860 but also under section 4 of the Protection of Children from Sexual Offences Act (POCSO Act), 2012. The complaint was registered at the instance of the mother of the prosecutrix, when the latter went to the Police Station on 05.10.2013 and told the police that the respondent-accused had forcibly committed sexual acts upon her minor girl about 20 to 22 days prior to the date of the incident. However, subsequently, the prosecutrix had stated before the Trial Court that she was having a love affair with the respondent and her physical relations with him were consensual and that when the respondent's

prospective marriage was fixed with another girl, she wrote a letter that she was in a relationship with the respondent and the said prospective marriage fell through. She further stated that after the prospective marriage fell through, the family of the respondent-accused reached her home and had an altercation, therefore, out of spite, they had filed a false case against the respondent. Furthermore, the neighbourhood impressed upon them to file the case against the respondent as she and the respondent-accused belong to different communities. Similar is the version of the mother as well. The Medical Report concluded that although the prosecutrix was a minor, her hymen was torn and that there were no telltale signs of any injury on her body.

The learned Trial Court was of the view that the date of the alleged incident was not clear, the version of the prosecutrix was not corroborative apropos the allegation of assault on her, her testimony prevaricates between the existence or non-existence of a consensual relationship with the respondent, she also stated that she was forced to register a false complaint against the respondent/accused. The Trial Court reasoned and held as under:-

“18. From the inconsistent, contradictory, waivering and materially improved testimony prosecutrix/PW-2, it can be safely concluded that her testimony is not of sterling quality to base conviction on her uncorroborated testimony. The mother of the prosecutrix was examined as PW-3 and she deposed that family members of accused had quarrelled with them on the issue that the mohalla people had told them that their daughter and accused were having affair though in fact her daughter was not having any affair with the accused. She has also deposed that since family of accused had quarrelled and beaten them they had lodged this false complaint. Since PW-3 was not supporting the prosecution case she was permitted to be cross-examined by the

Ld. Addl. PP for the State but nothing material of favourable could be elicited from her cross-examination by Ld Addl. PP for the State. During cross-examination by the Ld. counsel for accused, PW-3 has deposed that accused, Imran is Muslim and their mohalla people keep enmity with Muslims hence they- had pressurized her daughter to lodge a false complaint against the accused. She has also stated that accused had not made any physical relations with her daughter and that her daughter had lodged a false complaint of forcible penetrative sexual assault upon her at the instance of mohalla people. Thus, the testimony of PW-3/mother of prosecutrix is not corroborating the testimony of prosecutrix/PW-2 on the material point of sexual relation between accused and PW-2 and rather it contradicts the version/testimony of prosecutrix/PW-2. The physical relations by accused is not supported by victim's MLC as there is considerable force in the submissions of Ld. Counsel for accused that hymen of an adolescent girl as prosecutrix/PW-2 can be torn due to variety of reasons besides sexual intercourse. The prosecutrix as well as her mother's testimony is full of contradictions and same are not reliable or credible enough to hold that the accused had committed any sexual assault upon the minor girl/PW-1. In fact the statement of the victim during the proceeding of 164 Cr.P.C. also makes the prosecution case doubtful. In the judgment reported as Suraj Mai Vs State (Delhi Admn.), AIR 1979 S.C. 1408, it has been observed by the Hon'ble Supreme Court that "Where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence -and in the absence of special circumstances no conviction can be based on the evidence of such witness." Similar view was also taken in the judgment titled as Madari @ Dhiraj & Ors. v. State of Chhattisgarh, 2004(1) C.C. Cases 487. In the judgment reported as Namdeo Daulata Dhavaaude and others Vs. State of Maharashtra, AIR 1977 SC 381, it was held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it

would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused. If one integral part of the story put forth by a witness was not believable, then entire case fails. Where a witness makes two inconsistent statements in evidence either at one stage or both stages, testimony of such witness becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on such evidence. (Reliance can be placed upon the judgment of the Hon'ble Delhi High Court reported as Ashok Narana v. State, 2012 (2) LRC 287 (Del).

19. *In the light of uncorroborated testimony of PW-2 and particularly when her testimony is full of contradictions, inconsistencies, material improvements as discussed above and in view the above case laws, it cannot be held with certainty that the prosecutrix/PW-2 was sexually assaulted or threatened by the accused. Accordingly, the prosecution has failed to prove the charges U/s 506 IPC & Section 4 of POCSO Act against the accused beyond reasonable doubt and, therefore, the accused is acquitted of said charges. Consequently, the personal bond/surety bond of the accused is discharged.”*

In view of the above, the Court finds no reason to interfere in the aforesaid order. The petition is without merits and is accordingly dismissed.

NAJMI WAZIRI, J.

DECEMBER 11, 2018

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