

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

% Decided on: 11th December, 2018

+ **CRL.L.P. 820/2018**

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Represented by: Ms. Rajni Gupta, APP for the
State.

versus

PAPPU GIRI

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. No.49351/2018 (Exemption)

Allow subject to just exceptions

CRL.L.P. 820/2018

1. Aggrieved by the judgment dated 24th September, 2018 whereby the learned Additional Sessions Judge acquitted the respondent for the offences punishable under Sections 363/342/354/354B/366 IPC and Section 8 of Protection of Children from Sexual Offences Act (in short POCSO Act), the State has preferred the present leave petition.

2. Brief facts of the case are that on 30th October, 2014, at around 12:30 P.M. a PCR call was received regarding wrong act committed with the victim/complainant by a boy who was residing at Jaipur. Aforesaid information was recorded vide DD No.14A. Thereafter, the investigating officer reached Laxmibai College where he met with the victim/complainant. She was taken to BJRM hospital for medical

examination where she refused for her internal medical examination.

3. Her statement was recorded wherein she stated that she was a first year student and had known the respondent for about two months and they used to communicate with each other through the phone. On 16th October, 2014, the respondent came to her college and took her in a TSR to a hotel in Karol Bagh where he forcibly removed her clothes and tried to force himself upon her and when she refused he threatened to make physical relations with her next time. She did not inform the police or her parents about the incident due to the fear of defamation. On the basis of the aforesaid statement, FIR No. 662/2014 was registered at PS Ashok Vihar for the offence punishable under Sections 363/342/354/354(B) IPC and Section 8 POCSO Act.

4. Statement of the victim was recorded under Section 164 Cr.P.C. wherein she stated that the respondent took her to a hotel and did "*Ched Chad*" with her. She refused to make physical relations with him, slapped him and left the hotel. On 30th October, 2014 out of frustration she called the police and she did not want to go ahead with the case anymore. The respondent was then arrested from Jaipur on 27th May, 2015 and was medically examined.

5. After completion of investigation, charge sheet was filed. Charge was framed vide order dated 29th September, 2015 for the offences punishable under Sections 363/342/354/354B IPC and Section 8 POCSO Act against the respondent.

6. In support of its case, Prosecution examined 9 witnesses.

7. Victim was examined as PW-2 who deposed in sync with her complaint to the police. She additionally stated that she came in contact with the respondent through a facebook friend after which they started talking to

each other. The respondent had told her that he had a government job and was unmarried. On 30th October, 2014 her father received a phone call from the wife of the respondent due to which she got to know that he was married. Pursuant to this she made a complaint to the police. In her cross-examination she stated that she used to make phone calls and send messages to the respondent from the mobile phone of her parents. She spoke to the respondent regularly from 16th October 2014 to 30th October 2014.

8. PW-1 proved the date of birth of the victim from the school record wherein her date of birth was noted as 7th July 1997. Thus on the date of alleged offence she was a minor.

9. Pappu Giri in his statement under Section 313 Cr.P.C. stated that he had been falsely implicated in the present case by the victim at the instance of her parents.

10. Having gone through the evidence, this Court finds that there was a delay of 14 days in lodging the FIR for which a reasonable explanation has not been provided by the prosecution. Further, it has been established through the Call Detail Records of the respondent and parents of the victim, that the victim and the respondent were regularly in contact with each other even after the incident of 16th October 2014. It is highly improbable that the victim continued to talk to the respondent even after the alleged sexual assault. The victim has also considerably improved her statement made before the court. In her statement recorded under Section 164 Cr.P.C., she did not mention anything about the respondent forcibly removing her clothes or threatening to establish sexual relations on the next date. Furthermore, the parents of the victim have also not corroborated the testimony of the victim.

11. Findings of the learned Additional Sessions Judge based on the

evidence on record are plausible. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference by this Court.

12. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 11, 2018
'Varuna/yo'

