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

+ CRL.L.P. 654/2019

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP for
State with SI Amit Tyagi, PS DBG
Road.

versus

ARVIND HANS

.... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.12.2019

CRL.M.A. 41549/2019

1. Allowed, subject to all just exceptions.

CRL.L.P. 654/2019 & CRL.M.A. 41550/2019

2. The present petition has been filed by the State seeking leave to appeal against the judgment dated 24.04.2019 passed by the learned Special Judge (POCSO Act), acquitting the respondent for offences punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 354/506 Indian Penal Code, 1860.

3. The FIR in question (being FIR No. 332/2013) was registered on 29.10.2013 with PS DBG Road, based on the statement made by the prosecutrix, who was, at the material time, aged about 14 years. She had alleged that she was a student of Standard VIII studying in a school in Karol

Bagh (hereafter 'the school'). She had stated that her examinations got over on 23.09.2013 and the students, including her, had proceeded on leave. She had re-joined her school on 24.10.2013 and on the next date – that is, on 25.10.2013 – she, alongwith seven to eight students, was sent to the Science Laboratory to appear for the unit test examination.

4. She stated that the respondent, who was a Science teacher at the school, was present at that time. She stated that every student had flown (thrown) their papers in the air and had fled away from the laboratory. She had bent down to collect the papers. On doing so the respondent had caught hold of her from behind and gagged her mouth so that she could not raise any alarm. He further threatened her that he would kill her and ruin her life.

5. She alleged that she had touched her breast inappropriately. She had then pushed him away and opened the latch of the door of laboratory and had returned to the class room.

6. She narrated the said incident to her friend and her classmate, Ms V, on 28.10.2013. The said incident was then narrated by Ms V to her mother and consequently, the FIR in question was filed.

7. The statement of the prosecutrix was recorded under section 164 of the Cr.P.C. The prosecutrix resiled from the allegations made by her in the FIR in question. She now stated that the respondent had scolded her twice and on the third time, he had scolded her by holding her hand. All her friends had started laughing. She stated that she had lodged a complaint in anger. She also stated that her mind was not in sound condition and apologised for the same. She stated that nobody had scolded her in the manner as done by the respondent.

8. However, in her testimony before the court, she reiterated her allegations. She stated that the test was held in the laboratory. However, she did not remember the date. She also stated that students from Standard IX and X were present in the laboratory and disclosed the name of six students, including Ms V. She stated that on that day, one Ms Sumit madam was on duty as the regular teacher was not available. She reported that the incident had taken place in the laboratory.

9. There are inconsistencies in the complaint and the prosecutrix's testimony, inasmuch as, she had deposed that the respondent had asked her to collect the answer sheets whereas in her, complaint, she had not made any such statement. In addition, she also stated that she had protested against his conduct but he had threatened her. Her conversation with the respondent, as narrated by her in the testimony, was not similar to the one as she had stated in the complaint.

10. The learned APP was permitted to ask leading questions from the prosecutrix. He had suggested that the incident had taken place on 25.10.2013. However, the prosecutrix stated that she could not admit or deny the same.

11. Two witnesses were examined for defence. Ms Jaspreet Kaur, who is the regular science teacher, deposed as DW-1. She deposed that she was working as a TGT Science Teacher at the school for the last eleven years. She testified that she had conducted the science unit test examination on 17.10.2013 initially. However, five students were absent and, therefore, their re-test was conducted on 25.10.2013. She also named the five students, which included the prosecutrix. She stated that the test was

conducted during the fifth period and the answer sheets were collected by her. She testified that she was present during the unit test for the entire period and there was no other person except her in the class room, during the said period. The examination was conducted in the classroom and not in the science laboratory. DW-1 was cross-examined and her testimony remained unshaken.

12. The respondent examined himself as DW-2. He deposed that he had left the school at about 11:30-45 AM, as his daughter was blessed with twins. He stated that he had set out for his home along with keys to his car and the laboratory. He had picked up his wife and purchased some sweets and reached the hospital (MAX Hospital, Saket) at around 2:00 PM. The fact that DW-2's daughter had delivered twins on that date was substantiated by the records produced by him. The IO had also deposed that the school records also indicated that the respondent was not available in the school after 12:01 PM.

13. The mother of the prosecutrix had stated in her examination -in chief that she did not wish to pursue the case. However, in her cross-examination conducted by the learned APP, she had stated that she had learnt about the incident in question from Ms V on 28.10.2013.

14. None of the students, except one Ms S, was examined. She was not one of the five students who had taken the retest on 25.10.2013. She stated that she was informed about the incident by the prosecutrix.

15. It is apparent from the above that the testimony of DW-1 and DW-2 remained uncontroverted. The Investigating Officer did not even assert as to how many students had taken the re-test. The students who had taken the re-

test could verify whether the test was conducted in the science laboratory where the respondent was present, as asserted by the prosecutrix, or in the class room where only DW-1 was present.

16. In view of the testimony obtaining in this case, the trial court had rightly found that the allegations made against the respondent were not established beyond reasonable doubt. This Court concurs with the view of the Trial Court. Clearly, in view of the evidence as obtaining in this case, the respondent cannot be convicted of the offences for which he is charged.

17. In view of the above, the present petition seeking leave to appeal is dismissed. The pending application is also disposed of.

DECEMBER 02, 2019
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VIBHU BAKHRU, J