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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 681/2019 & CRL.M.A. 42174/2019 & CRL.M.A.**
42173/2019

STATE

..... Petitioner

Through: Ms Kusum Dhalla, APP for
State with ASI Jatan Swaroop,
PS Krishna Nagar.

versus

BALBIR SINGH @ SUCCHI & ANR.

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% 09.12.2019

VIBHU BAKHRU, J

1. The State has filed the present petition seeking leave to appeal against a judgment dated 31.07.2019 passed by the Special Judge – POCSO Act, East District, Karkardooma Courts Delhi. Vide the impugned judgment dated 31.07.2019, the respondents were acquitted of the offences under Sections 323/357/506/34 of the Indian Penal Code, 1860 (IPC) and Sections 377/511 of the IPC.

2. The State contends that the impugned judgment is not sustainable, since the Trial Court failed to appreciate that PW-1 (the

victim's mother) had fully supported the case of the prosecution and her statements were consistent throughout. Further, the State contends that the testimony of PW-7 (examining doctor) was not appreciated by the Trial Court. In his testimony, PW-7 had stated that there were bruises present over the back, neck and face of the victim. The State also contends that the Trial Court erred in not appreciating the evidence of the victim, who had informed each and every detail about the incident to PW-1 (his mother).

3. It was the case of the prosecution that on 24.10.2012 at about 09:15 pm, Mast. 'L' (name withheld to avoid any ignominy) had left his house to purchase milk and to see the effigy of *Ravana* being burnt towards Shankar Nagar. After the effigy had been burnt and the crowd collected to witness the same had dispersed. It is alleged that at that time, respondent no. 1 along with his friend came in front of 'L', put a hand on his mouth and took him to an unknown place on a motorcycle. Respondent no. 2, who was the previous employer of 'L's mother, was present at that place. He asked 'L' to call his mother, which 'L' did not do. Thereafter, the respondents slapped 'L' and beat him with a belt. Respondent no. 1 then removed his trousers and tried to do wrong acts with 'L', due to which he lost consciousness and upon regaining the same, found himself in a hospital where police officials and his mother were present. L was medically examined. Statement of 'L' was not recorded, as it was stated that he had pain in his left ear and was thus, not in a position to say anything.

4. On 25.10.2012, 'L' and his mother came to PS Krishna Nagar to

give their statements. They stated that L had been kidnapped, beaten and sodomised by the respondents. Thereafter, FIR no. 408/2012 under Sections 323/367/506/34 of the IPC and Sections 377/511 of the IPC was registered with PS Krishna Nagar. During the course of the investigation, the respondents were arrested on 27.10.2012. Charges were framed against the accused on 25.02.2013, to which they claimed to be not guilty and demanded trial. The prosecution examined twelve witnesses and the defence examined eight witnesses. On conclusion of the trial, the Trial Court acquitted the respondents herein of all charges framed against them.

5. The State has relied on the testimonies of PW-1 ('L's mother) and PW-3 ('L') to assail the impugned judgment dated 31.07.2019. In her testimony, PW-1 stated that she was earlier employed at the office of *Rojana Times*, which belonged to respondent no. 2. She also stated that respondent no. 1 would accompany respondent no. 2 to the said office. She stated that due to bad atmosphere in the office, she left the same. Thereafter, the respondents kept pressurising her to again work at the said office and upon her refusal to do so, they started harassing her and her family. She stated that on 24.10.2012, she had sent 'L' to purchase milk. He had thereafter gone to see *Ravan Dahan* at DAV School, Shanker Nagar. Since he did not return, she searched for him and at about 12:00 am, she found him in an unconscious and semi-naked condition with injuries on his body. Thereafter, she made a call at 100 number. She took 'L' to the hospital and brought him home the next evening. On enquiry, he told her about the incident. On the day

thereafter 'L' was medically examined; the FIR in question was lodged; and 'L's statement was recorded by police officials.

6. In her cross examination, she stated that she was involved in a dispute with her previous landlord (one Mr Gajanand Gupta) because of the respondents herein. She had made a complaint against the said landlord with PS Krishna Nagar. She had also filed a complaint against him in Court. She stated that the said case was dismissed due to her non-appearance and she denied the suggestion that she had taken ₹1 lakh from Mr Gajanand Gupta to compromise the matter. Thereafter, she stated that her sister, Pooja, also used to reside with her. She (PW-1) had also filed a complaint against her brother-in-law (Pooja Singh's husband). Thereafter, she stated that she also resided in the premise of one Mr Anil Sharma at Rajgarh. She denied that she had made false complaints of sexual assault against different persons with a view to extort money from them. She affirmed that she had demanded ₹1 lakh from Mr Anil Sharma, however, she stated that the same was the amount for security. She stated that she had also filed a complaint against respondent no. 2.

7. In her further cross-examination, she denied that while she was working with *Rojana Times*, she had misused her position. She denied having extorted money from the public by threatening to publish news about them in the said paper. She denied having threatened respondent no. 2 herein to initiate a false criminal case by tearing her clothes. She stated that respondent no. 1 herein had come to her room and initiated a scuffle with her and thereafter, she made a complaint regarding the

same with the police. Respondent no. 1 sustained injuries in a scuffle with the police. Thereafter, she stated that she did not remember if she had made a call to 100 number from her mobile phone on 25.10.2012 and denied that the said call was made from a spot near Gauri Shankar Mandir. She stated that the statements of 'L' and her were recorded on 26.10.2012. She stated that 'L' had regained consciousness at the hospital and was unconscious while being taken to hospital.

8. 'L' deposed as PW-3. He deposed that after the effigy of *Ravana* was burnt, respondent no.1 (Balbir Singh) and one other person met him there and forcefully took him to an area of Lal Quarter on a motorcycle. He took 'L' to the ground floor or basement of a house, where accused Jugal Kishore (respondent no.2) was also present. Jugal Kishore told him to call his mother, however, 'L' refused to do so. Upon his refusal, he was beaten up with slaps and a belt and thereafter, respondent no.1 removed his pant and proceeded to do '*gandi harkat*' with 'L'. 'L' stated that he had lost consciousness and when he regained the same, he found himself in hospital, where his mother and police officials were present. He denied the suggestion that his mother (PW-1) had made a call to the police in the intervening night of 24.10.2012 and 25.10.2012 in his presence from Gauri Shankar Mandir.

9. In his cross-examination, PW-3 stated that his shirt, which he was wearing on the day of the alleged incident, had become blood-stained but he did not tell this to the doctors or the police. He stated that he regained consciousness in hospital. He stated that his mother had made a call to the police after 12 midnight on the intervening night of

24.10.2012 and 25.10.2012.

10. Eight witnesses were examined for the defence. Sh. Prabhakar deposed as DW1. He deposed as to the complaint made by respondent no. 2. HC Amit Goswami deposed as DW2. He exhibited various copies of FIRs and DD numbers which, *inter alia*, evidenced the complaints made by the respondents. Sh. Jagesh Kumar @ Lucky (son of respondent no.2) deposed as DW3. He deposed that respondents had been beaten by the police on 27.10.2012. HC Amit Kumar deposed as DW4. He deposed with regard to the complaint made by respondent no. 2. Sh. Anil Kumar (who deposed as DW5) deposed regarding the criminal complaint instituted by respondent no.1 against the victim's mother. DW6 (HC Amit) deposed regarding the complaint dated 18.01.2013. Dr Tarun Saini (DW7) testified that respondent no.2 was referred by the doctors at SDN Hospital through MLC No. 2378/2012 and he read the CT Scan of respondent no.2. He deposed that the said CT scan indicated linear undisplaced fracture of the scapula. Dr Richa Sharma (DW8) proved the copy of the MLC dated 27.10.2012.

11. The Trial Court examined the evidence obtaining in this case and found that the victim's mother (who deposed as PW1) was in a habit of making complaints. She had made complaints against her landlords, her sister's husband as well as the respondents (accused persons). The Court also found that there was a pre-existing dispute between the respondents and PW1. Respondent no.2 had filed complaints against PW1. PW1 had also filed a complaint against respondent no.2. The Court concluded that PW1 had the requisite motive to falsely implicate

the respondents.

12. Bearing the aforesaid in mind, the Trial Court examined the allegation against the respondents. First of all, the Court found that the offence claimed was improbable. 'L' had proceeded to witness *Ravan Dahan* at the DAV grounds. There was a large number of persons present at the grounds, including several police officials. The entire area was under CCTV surveillance and security arrangements and therefore, it would be difficult for any person to abduct 'L'. Next, the Trial Court noticed that the testimony of the victim also raised certain doubts. He had stated that he was taken on a motorcycle by respondent no.1 and his friend. However, he could neither mention the make nor the colour of the motorcycle. The Court also noted that *Ravan Dahan* was not done after 09:30 p.m. or 09:45 p.m. and therefore, the testimony of the victim that he had proceeded from his house at 09:15 pm to buy milk and thereafter, witnessed *Ravan Dahan* was belied by the fact that *Ravan Dahan* was not held after 09:30 p.m. or 09:45 p.m. L could not mention the place where he was taken. In his cross-examination, L stated that he was wearing a white shirt and jeans on the date of the incident. However, on a further question, he had stated that he was wearing a red coloured shirt and jeans.

13. The Court also noticed that L had stated that he was unconscious and he had regained his consciousness in the hospital. However, the MLC indicates that at about 01:00 a.m. on 25.10.2012 (that is, the time when the victim was taken to the hospital), he was conscious and was fit to make a statement. PW8 had also made categorical statement that

L was fit to make a statement when he met him for the first time. However, the said statement was either not recorded at the material time, or, if recorded, had not been produced. In the first MLC (that was conducted after the victim was brought to the hospital), there was no allegation regarding any sexual assault. The second MLC also does not establish any such assault.

14. Apart from the above, the Trial Court noticed the lack of proper investigation. The CCTV coverage of *Ravan Dahan* was not collected. Call details of the accused at the material time were not collected. Further, Statement of independent witnesses from the spot where the victim was allegedly found, was also not recorded.

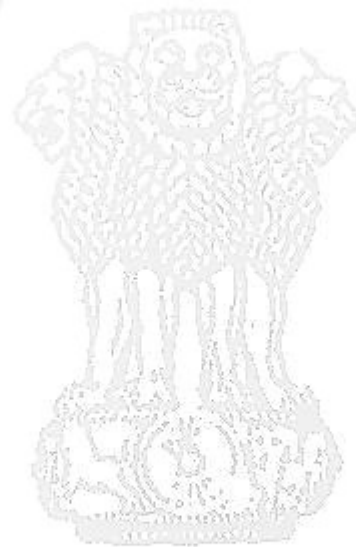
15. Apart from the above, the narration of the events as reported by PW1 also raises several doubts. It was the prosecution's case that PW1 (mother of the victim) found the victim lying in an unconscious state at about 12:00 am on 25.10.2012. However, it was found that she had made a call at 100 number and the DD Entry made with regard to the said call, bearing DD No.3A, indicated that the caller had reported a quarrel near Gauri Shankar Mandir. Ct. Pradeep (who had proceeded to the spot) had met PW1 and had thereafter, taken the victim (L) to SDN Hospital. However, the statement of any public person, was not recorded. Further, no person had made any call to the police reporting that the victim (L) was lying in an unconscious condition at Gauri Shankar Mandir. The Court reasoned that if the victim was found in an unconscious and naked condition and crowd had collected there; somebody would have surely made a call reporting the same.

16. Undisputedly, the view taken by the Trial Court after evaluating the evidence is a plausible view. In view of the above, this Court is unable to accept that there is any manifest error in the evaluation of the evidence. Thus, this Court finds no reason to interfere with the impugned judgment.

17. Accordingly, the present petition seeking leave to appeal against the impugned judgment is rejected. All pending applications are also disposed of.

DECEMBER 09, 2019
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VIBHU BAKHRU, J



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