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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 634/2019

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Amit Gupta, APP for the State with
Insp. Azam Khan, PS Jamia Nagar.

versus

ABBAS & ORS.

..... Respondents

Through: None.

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Date of Decision: 26th November, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J (Oral):

CRL. M.A. 41126/2019 (for exemption)

Allowed, subject to just exceptions.

Accordingly, the application stands disposed of.

CRL.L.P. 634/2019

1. Present criminal leave petition has been filed on behalf of the State challenging the judgment dated 21st August, 2019 passed by Additional Sessions Judge-01 (POCSO), South-East District, Saket Courts, New Delhi acquitting the respondents-accused in Sessions Case No.2108/16 (Old No.77/12) in FIR No.749/2012 registered with Police Station Jamia Nagar,

District South-East, under Sections 363/373/34 IPC & 376 IPC as well as Sections 4, 5 and 6 of Immoral Traffic (Prevention) Act, 1956.

BRIEF FACTS

2. The relevant facts as noted by the Trial Court are as under:-

“1. In brief the case of the prosecution is that on 03.08.2012 at about 09.00 a.m. at Bus stop Shahin Bagh near Kalindi Kunj, Jamia Nagar, Delhi accused Sumit Jatav and Radha @ Radhika in furtherance of their common intention kidnapped Ms. ‘P’, a minor girl aged about 14 years (name and complete particulars withheld but known to the accused persons) from the lawful guardianship of her parents with the intention that she will be employed for the purpose of prostitution/illicit intercourse with unknown persons and thereafter detained her from 03.08.2012 till 15.09.2012 at their house in Dayalbagh and at Karnal where she was subjected to sexual assault by number of persons and they were found knowingly living on the earning of prosecutrix Ms. P and thus thereby the accused persons committed offence punishable u/s 363/373/34 IPC & Section 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956.

2. Further accused Abbas at time and date unknown however prior to 03.08.2012 committed rape upon prosecutrix ‘P’, a minor girl aged about 14 years, (name and complete particulars withheld but known to the accused person) without her consent and against her will, because of which she became pregnant and thus thereby the accused committed offence punishable u/s 376 IPC.

3. Charge sheet was filed in the court and in compliance of Section 207 Cr.P.C. accused persons were supplied the documents. Thereafter vide order dated 16.02.2013 charge for offence u/s 363/373/34 IPC and section 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 was framed against accused Sumit Jatav and Radha @ Radhika and charge for offence u/s 376 IPC was framed against accused Abbas, to which they pleaded not guilty and claimed trial.”

3. The Trial Court by way of its impugned judgment acquitted all the three respondents-accused. The relevant portion of the impugned judgment is reproduced hereinbelow:-

“59.the victim gave two absolutely inconsistent, contradictory statements, one during the investigation and other during the trial. In one statement she had claimed that she was compelled, forcefully made to sit in the car by the accused persons, whereas in the other statement she claimed that accused Sumit & Radhika met her and accused Radhika asked her that if she can look after her child she will pay her money. Hence in the statement in the court the victim completely negated her story that she was kidnapped by the accused persons.

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61.in the statement u/s 164 Cr.P.C. she gave a completely different picture of the alleged incident of kidnapping. In the above statement she claimed that somebody closed her mouth and she was made to sit in the car and she does not remember what happened thereafter. She further claimed that she came to know the name of accused as Sumit and Radhika at the house where they had taken her. These inconsistent, contradictory statements renders the victim's version doubtful and untrustworthy.

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77. As far as allegations that the accused Radhika & Sumit were living on the earnings of prostitution are concerned, prosecution could not prove even remotely that the accused persons were indeed living on the earning of prostitution i.e. by forcing, compelling the victim to have sexual intercourse with different persons for which they were receiving monetary consideration. Victim's testimony does not inspire confidence. She kept on shifting her stand repeatedly during the trial thus rendering her an untrustworthy, unreliable witness. Prosecution on its part could not prove the alleged places where the victim was taken and subjected to sexual intercourse

or subjected to sexual exploitation for commercial purpose. No details of such places, addresses etc. was brought on record. It was claimed that the victim was taken to Karnal at different places and also to various hotels but prosecution miserably failed to prove the same. Address of the places, house etc., names of the Hotel was not proved on record. Victim did not give the description of any such place. She also did not give the name, details or description of the boys who according to the prosecution story had sexually assaulted her. These are the basic facts which are missing from the prosecution case.....

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79. Furthermore and most importantly it is to be seen that in her complaint Ex.PW1/A she did not even once state that she was raped by accused Abbas. Even in her statement u/s 164 Cr.P.C. as recorded on 17.09.2012 i.e. Ex.PW12/B she never complained that she was raped by accused Abbas. It was only in her second statement u/s 164 Cr.P.C. as recorded on 25.09.2012 Ex.PW14/B that she claimed that accused Abbas had raped her for the first time around two months before Rakshabandhan and thereafter repeatedly at his house. She had also claimed that accused Abbas is her boyfriend and that the child, as she was pregnant, belongs to Abbas. She had claimed that she was raped by him at his house however she failed to give the address, details of the house of the accused. She failed to give the details of her friend who had introduced Abbas to her. She had claimed that after Abbas had raped her at his house for the first time, which according to her was objected to by her, he starting calling her at his house repeatedly and committed rape upon her every time. In my considered opinion if needed Abbas had committed rape upon the victim, the victim who was around 17 to 18 years old (as per the ossification report), independent, working as a labourer, would have definitely informed her parents or her friend or her employer if not the police about the said act of the accused. She would not have remained mum if indeed she was raped. If indeed she was raped by accused Abbas she would not have gone to his house again repeatedly. If she was raped against at his house she would have atleast for the third time not gone to his house. Her

repeatedly visiting the house despite allegations of rape do not inspire any confidence, do not appeal to a prudent mind as there are no allegations against accused Abbas that he had threatened or criminally intimidated the victim that in case she told about it to anybody he would kill her, them or her family or harm her in any other way.

80. Furthermore during her cross-examination she completely denied that she was raped by the accused.....

81. When the above statement is considered in light of the age of the victim no offence of rape is made out against accused Abbas. The relationship between the accused and the victim, if there were any, were consensual. Same stands proved from the record as well as the deposition of the victim. The age of consent was 16 years at the relevant time. The victim who was 17 to 18 years old had otherwise attained the age of discretion and hence she knew exactly what she was doing, she knew the repercussions which could follow and she had indulged in physical relation with the accused without any complaint ever to her parents, relatives or any authority.....

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83. Last but not the least the FSL result failed to connect accused Abbas with the alleged crime. Though the victim had claimed that the child in her womb was of Abbas however as per the DNA analysis, FSL report i.e. Ex.PW23/A dated 17.05.2013 it is evident that the pregnancy, the child in the womb of the victim did not belong to the accused Abbas. The victim had undergone medical termination of pregnancy on 30.09.2012 as was proved by PW15 Dr. Ms. S. Renu Bala who also proved that the placenta and foetus were preserved and handed over to the police. The report Ex.PW23/A read as “The exhibit “2” (gauze piece of accused) is not the biological father of the source of exhibit “3c” (fleshy material)”. The fleshy material was the foetus. Hence there was no medical corroboration to the victim’s claim of having been raped by accused Abbas because of which she became pregnant.”

ARGUMENTS ON BEHALF OF THE PROSECUTION

4. Mr. Amit Gupta, learned APP for the State submits that simply because the prosecutrix/victim has turned hostile during cross-examination, her version given during examination-in-chief cannot be disbelieved. He emphasises that the prosecutrix/victim in her examination-in-chief had claimed that respondent-accused Abbas had raped her and respondent-accused Radhika used to beat her and that she was sent by respondent-accused Radhika and her husband respondent-accused Sumit Jatav with different boys, who used to rape and sexually assault her.

COURT'S REASONING

5. Upon a perusal of the deposition of the prosecutrix/victim, this Court finds that in her cross-examination she has categorically denied that she was raped by respondent-accused Abbas or by the boys with whom she was sent by respondent-accused Radhika.

6. In fact, in her cross-examination, she has admitted that she was very comfortable during the period she worked as a domestic help at the house of respondent-accused Radhika and respondent-accused Sumit Jatav.

7. The prosecutrix/victim has further stated in her cross-examination that whatever she had stated before the Magistrate was told to her by the police officer and that she had given a wrong statement before the Trial Court during her examination-in-Chief as respondent-accused Radhika had not paid her salary. The relevant portion of cross-examination of the prosecutrix/victim is reproduced hereinbelow:-

“.....It is also correct that accused Abbas and I were in love with each other. It is correct that accused Abbas had never

called me at his house. It is also correct that accused Abbas has never threatened me in connection with this case.....It is correct that accused Abbas had never forced me to do anything. It is correct that accused Abbas had not raped me.

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.....It is correct that I was working as a domestic help at the house of accused Sumit and Radhika. It is wrong to suggest that I was got employed there by accused Abbas. It is correct that my salary was fixed at the rate of Rs.5,000/- per month. It is correct that on 15.08.2012 I alongwith Radhika, Sumit and their children had gone to watch a movie 'Ek Tha Tiger' at Crown Interior Mall, Sarai Khawja, Faridabad. It is also correct that accused Radhika had purchased clothes for me on that day. It is correct that I used to look after the younger child of Radhika namely Tanishk. I worked there for 2 months.....

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.....It is correct that I did not have any problem while working with accused Sumit and Radhika while taking care of their child.

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.....It is correct that during my stay of 2 months at the house of accused Radhika & Sumit I was comfortable. I used to go for shopping and also watched movies with them. It is correct that whatever I have stated in my statement before the Magistrate was told to me by police officer.

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It is correct that during the said 2 months period while I was residing at the house of accused Sumit and Radhika, Radhika had sent me alongwith the other boys 3 times. It is wrong to suggest that those boys used to take me to some unknown place and thereafter used to remove my clothes as well as their clothes and thereafter, committed sexual intercourse with me. It is wrong to suggest that the above said sexual intercourse was done upon me 3 times on different days during my stay of 2 months by different boys. It is wrong to suggest that first time 3 boys had committed above said sexual

intercourse with me and second time 2 boys had committed above said sexual intercourse with me and 3rd time 5 boys had committed sexual intercourse with me. Vol. once accused Radhika had sent me with a boy, but that boy had not committed any sexual act with me and accused Radhika had not paid my pay and that is why I had given wrong statement before the court on the previous date.....”

(emphasis supplied)

8. Consequently, this Court is of the view that it would neither be fair nor reasonable to convict either respondent-accused Abbas or respondent-accused Sumit Jatav or respondent-accused Radha @ Radhika on the sole testimony of the prosecutrix/victim, which had been wavering and was not consistent as recorded by the Trial Court.

9. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. [See: *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 SCC 450].

10. In view of the above, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 26, 2019

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