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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 607/2019 and CrI.M.A. Nos. 40300/2019 & 40301/2019**

STATE

..... Petitioner

Through: Ms Kusum Dhalla, APP for State.

versus

INDERPAL @ HUNNY & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.11.2019

1. The State has filed the present petition seeking leave to appeal against a judgment dated 22.05.2019 passed by the ASJ-07 (POSCO) Special Court, South East District, Saket, Delhi, whereby the respondents were acquitted the ground of benefit of doubt for the offences under Sections 363/366/354 of the Indian Penal Code, 1860 (IPC).
2. The present case arises from FIR No. 87/2012, under Sections 363/366/368/354/506/34 of the IPC, registered at PS Govind Puri. The case of the prosecution is that on 10.02.2012, the father of the prosecutrix (identity withheld), lodged a missing person report of his daughter at PS Govind Puri. He suspected that she might have been kidnapped by respondent no.1. The said complaint was registered and efforts were made to trace the prosecutrix.

3. It is the case of the prosecution that while searching for the prosecutrix, the police officials reached Ahuja Sweet Shop at Street No.5 and spotted the prosecutrix and respondent no.1 coming from the opposite direction. On identification, the police rescued the prosecutrix and apprehended respondent no.1.

4. The prosecutrix stated that respondent no.2 (mother of respondent no.1) had compelled her to stay at her house where she has been molested by Inderpal (respondent no.1). The prosecutrix was medically examined at the All India Institute of Medical Sciences and her statement was recorded under Section 164 of the Cr.P.C. She was, thereafter, produced before the Child Welfare Committee and her custody was restored to her parents.

5. The Trial Court had acquitted the respondents principally, for the reason that it found that there were material inconsistencies in the statements made by the prosecutrix at different stages of the investigation. The Court noted that in her initial statement recorded under Section 161 Cr.P.C. on 10.02.2012, the prosecutrix had mentioned that she had met Inderpal on her way when she was going for her tuitions. Inderpal had persuaded her not to attend the tuition class by enticing her that he would take her on an outing for a nice meal. She had stated that Inderpal had taken her to Moolchand and Kalkaji Metro Stations and thereafter, he had taken her to his house. She stated that Inderpal had extended threats to her when she tried to go back to her residence and had molested her during the night by touching her private parts. She stated that next day, he gave her clothes of his sister and took her out for an outing. However, on the way, her father and police officials had stopped them and had apprehended Inderpal. Her statement under Section

164 of the Cr.P.C. was recorded on 03.02.2012. She now stated that she was returning back from her tuition class when she met Inderpal. She stated that she had inquired from Inderpal about the reason for his standing there, but he had told her that there was no specific reason. She had subsequently stated that one of the friends of Inderpal, namely Darpan, arrived there and Inderpal had sent him on an errand to bring him a chocolate/pastry. She explained that 09.02.2012 was a “Chocolate Day”. She stated that Darpan had left the spot while she and Inderpal remained sitting on the staircase. Darpan returned after a while without getting any chocolate or pastry.

6. She stated that Inderpal had kept his head down and she got an impression that he was not well and therefore, she told Darpan that they would drop Inderpal to his house. On the way, a common friend of Inderpal and Darpan met them and Darpan left along with the said friend.

7. In view of the aforesaid, the Trial Court found that the prosecutrix version, as recorded under Section 164 of the Cr.P.C., was completely different from her statement recorded a few days earlier. While in her statement recorded on 10.02.2012, she had stated that she had met Inderpal on her way to the tuition class, in her statement recorded subsequently she stated that she was coming back from the tuition class. While on an earlier occasion, she had stated that Inderpal had taken her to places near Moolchand and Kalkaji Metro Stations; in her subsequent statement, she stated that she dropped Inderpal to his house.

8. It is also relevant to note that the prosecutrix in her statement under Section 164 of the Cr.P.C. had referred to 09.02.2012 as being “Chocolate

Day”. It is well-known that these days, a large number of youngsters celebrate each day of the week preceding Valentine’s Day. One of such days is “Chocolate Day”. This also indicates that respondent no.2 and the prosecutrix were on such terms as would prompt Inderpal to celebrate a “Chocolate Day” with the prosecutrix.

9. The Trial Court had further noted that in her statement recorded under Section 164 of the Cr.P.C., the prosecutrix had alleged that the mother of Inderpal (respondent no.2) had served her water and she had insisted that the prosecutrix stay for the night. She also stated that Inderpal had threatened that he would cut his veins (and thereby commit suicide), if she did not concede to his request of staying the night at his house. The prosecutrix also stated that Inderpal, his sister, his grandmother and his parents were present in the house. His maternal aunt had also come to the house and she also insisted that the prosecutrix not go back to her house.

10. The prosecutrix stated that respondent no.2 insisted that the prosecutrix sleep with Inderpal and thereafter, she also described how Inderpal had molested her. She had stated that he had shoved his hands on her breast and her waist and also put his hands on her private parts. She also stated that the mother of Inderpal had locked the room from the outside.

11. It is also important to note that the prosecutrix stated that on the next day, Inderpal took her for an outing in his friend’s car and while she was in the car, Inderpal had received a call from his maternal aunt asking him to reach the police station. She also advised the prosecutrix to not disclose anything to the police. After noting down the two versions (statement

recorded under Section 161 of the Cr.P.C. and Section 164 of the Cr.P.C.), the Trial Court concluded that there was a material inconsistency in her two statements. In her statement under Section 164 of the Cr.P.C., the prosecutrix had decided to implicate Inderpal's mother and other relatives as well.

12. The Trial Court also noted that her testimony in court was in variance with her statement made on 10.02.2012 as well as her statement recorded under Section 164 of the Cr.P.C. on 13.02.2012. She now presented a different version of the events. She now stated that two friends of Inderpal had arrived at the spot and had told her to take Inderpal to his house. She stated that she did so on the insistence of his friends. The prosecutrix stated that she was served milk by Inderpal's mother and on consuming the same, she felt drowsy. Respondent no.2 had told her to go and sleep and had provided her a single quilt to sleep with Inderpal. Apart from the above, the Trial Court found that there were other material inconsistencies in the testimony of the prosecutrix and her statements recorded earlier. In addition, the Court also found that the prosecutrix had also tried to conceal material facts. Her testimony indicates that family members of Inderpal were not acquainted with her, however, this was belied by other evidence.

13. The Trial Court also noted that her testimony of how she was molested was in material variance with her statements recorded earlier. In her testimony she stated that whenever she tried to sleep, the accused had woken her up by shaking her. He had touched her, kissed her and also tried to commit sexual intercourse with her after taking out his private part. This testimony was completely in variance with her earlier statement.

14. Ms Dhalla, learned APP does not dispute that the analysis of the Trial Court with regard to the statements made by the prosecutrix is accurate. She, however, states that the prosecutrix was a minor at the material time and even if it is accepted that she had voluntarily accompanied Inderpal, he could not be acquitted of the offence for which he was charged.

15. The aforesaid contention is unpersuasive. The Trial Court had found that the testimony of the prosecutrix was unreliable. Undeniably, there is good reason for holding so. As noticed above, the Trial Court had also found that the prosecutrix was intentionally seeking to conceal that she was acquainted with the family of Inderpal.

16. In view of the above, the Trial Court cannot be faulted in disbelieving her testimony. Admittedly, apart from her testimony, there was no other evidence to establish that Inderpal had committed any offence or had violated the prosecutrix in any manner. The medical evidence also indicated that there was no sign of any intoxication or external injury. The hymen of the prosecutrix was also found intact.

17. Apart from the testimony of the prosecutrix, there was also no evidence to establish that the prosecutrix had been confined contrary to her will.

18. The Trial Court had evaluated the testimony obtaining in the case and indisputably, the Trial Court's view that it was not proved beyond reasonable doubt that the respondents were guilty of the alleged offences, is a plausible view.

19. In view of the above, this Court finds no compelling reason to interfere with the impugned judgment. The petition seeking leave to appeal is, accordingly, rejected. The pending applications are also disposed of.

VIBHU BAKHRU, J

NOVEMBER 15, 2019
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