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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 46/2019**
STATE OF NCT OF DELH

..... Petitioner

Through: Ms.Aashaa Tiwari, APP for State.

versus

SANJAY SIKKA

..... Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

21.02.2019

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1. The present leave petition has been filed by the Petitioner/State under Section 378(1) Cr.PC seeking leave to appeal against the judgment of acquittal dated 15.11.2018 passed by the Trial Court in SC No.2/2016 arising out of FIR No.897/2015 under Sections 376/509 IPC and Section 6 of POCSO Act Police Station South Rohini, Delhi.
2. Brief facts as noted by the Trial Court are that on 17.11.2015 at about 11:08 am DD No.21A was recorded regarding quarrel with a lady at Flat No.136, Pocket -7, Sector-2, Rohini. When the IO reached the spot, the complainant, mother of the victim 'L' reported that wrong act was done by the respondent with his minor daughter. The Trial Court noted that the victim aged 15 years was a special child who could not listen or speak and was mentally challenged as well. It was noted that the victim could not be examined either during the course of investigation or during the trial despite efforts made to record her statement.

3. While passing the order of acquittal, the Trial Court noted that the medical as well as the forensic evidence did not support the case of the prosecution. Dr.Kamini Sukhija was examined as PW-9. She deposed that the mother of the child victim had brought the victim at her clinic and had expressed doubt that her husband had physical relations with the victim. As per her testimony, during the internal examination of the victim, she found the victim's hymen torn. The FSL report (Ex.PW-4/A) was also negative.

4. The complainant, mother of the victim had appeared as PW-3. She deposed that:

(i) In July, 2015, she noticed some bite marks on the left hand of the victim.

(ii) In September, 2015, while the victim was down with dengue fever, she noticed that the respondent had given bath to the victim.

(iii) In June/July, 2015, she found that the respondent was sleeping in the room of the victim, as she used to sleep in a separate room.

(iv) On one occasion, while she returned to her house from the market, she found the T-shirt of the victim above her chest, leaving her chest exposed and the accused was lying beside her.

(v) In October, 2015, while she returned from the Bank, she found that the door of the house was bolted and was opened by the respondent after a considerable time. On her asking, the respondent replied that he had gone to use the toilet. The victim was semi-conscious and her clothes were not properly tied. She also noticed certain red colour spots on right side chest of the victim.

(vi) On some occasions, she found the victim trying to pull the knicker of the respondent and then aggressively scratching the respondent on his

thighs.

(vii) The witness also produced five photographs (Ex.PW-3/A to Ex.PW-3/E) which showed the respondent sitting on the lap of the child victim and the photograph has been clicked by their younger daughter in the presence of family members.

5. Suspecting the respondent, the witness took the victim to the clinic of Dr. Kamini Sukhija (PW-9), who examined her and found her hymen torn. From the examination and cross-examination of PW-3, it appears that the complainant had a matrimonial dispute with the respondent and two days prior to the lodging of a FIR, a settlement was agreed upon between them. The witness was confronted with a written settlement (Ex.PW-3/DX-1) which was admitted by her. During the cross-examination, it was suggested to her that it was agreed that the respondent and his family members would not seek return of Rs.8 lacs from her mother towards the committee. She denied the suggestion that on 17.11.2015, she had asked the respondent to transfer the ownership of the house in her name.

6. We have heard the submissions put forth by learned APP for the State and perused the record.

7. This Court finds itself in complete agreement with the decision of the Trial Court. During her testimony PW-3, mother of the child victim has nowhere stated of any actual offence being committed by the respondent; she had got the FIR registered only on the basis of her suspicion and the opinion of PW-9, Dr. Kamini Sukhija to the effect that the hymen of the child was torn. In the MLC record of the child victim, no injuries were noticed by the Doctor. The FSL report is also in the negative. Moreover, the possibility of the false implicating complaint on account of her matrimonial

dispute cannot be ruled out. The complainant had admitted that she received the amount and articles from the respondent towards the settlement vide Settlement dated 16.11.2015. The statement of the child victim could not be recorded in Court despite best efforts made for the same. The photographs (Ex.PW-3/A to Ex.PW-3/E) placed on record by the witness were clicked by her younger daughter in the presence of other family members. As noted by the Trial Court, the said photographs only show the accused/respondent and the victim in a playful mood.

8. The Hon'ble Supreme Court in the case of '**Sharad Birdhichand Sarda Vs. State of Maharashtra**', (1984) 4 SCC 116 referred to its earlier decision in **Shivayi Sahebrao Bobade Vs. State of Maharashtra**, AIR 1973 SC 2622 and held as under:-

“it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions; the facts so established should be consistent only with the hypothesis of the guilt of the accused; that the circumstances should be of a conclusive nature and tendency that they should exclude every possible hypothesis except the one proposed to be proved; that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

9. The law with regard to grant of leave is well settled by a catena of judgements. Leave to appeal can be granted only where it is shown that the

findings of the trial court are perverse and that there are very substantial and compelling reasons to set aside the same. Reference is made to decision in *Syed Peda Aowlia vs. Public Prosecutor, High Court of Andhra Pradesh reported as (2008) 11 SCC 394*.

10. From the evidence which has emerged on record, we concur with the conclusion arrived at by the Trial Court that the prosecution has failed to prove its case beyond reasonable doubt. There is no infirmity in the impugned judgement which calls for any interference by this Court. The present leave petition is accordingly dismissed. The Trial Court record be returned forthwith along with a copy of this order.

MANOJ KUMAR OHRI, J.

HIMA KOHLI, J.

FEBRUARY 21, 2019
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