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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 43/2019 & CRL.M.A. 591/2019**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State.

versus

PARVINDER

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.08.2019

1. The State has filed the present application under Section 378(1) of the Code of Criminal Procedure, 1973 (Cr.P.C). seeking leave to appeal against a judgment dated 28.09.2018 passed by Additional Sessions Judge acquitting the respondent of the charges framed against him.
2. The learned Trial Court had acquitted the respondent of the charges, as it found that there were material inconsistencies in the testimony of the prosecutrix and her mother.
3. An FIR was lodged with PS Sun Light Colony at 23:50 hours on 05.02.2013. As per information received, Ms R (who was less than 15 years of the age at the material time) alleged that on 03.02.2013 at around 04:00 p.m., she had gone to purchase vegetables. While on her way, she was accosted by the respondent along with his friend (RJN). She had complained that both the said boys had approached her and had made obscene

comments. Ms R objected to the same and on doing so, RJN took out a sharp object (knife) and threatened her not to relate the incident to any other person. Ms R had stated that she was terrified and had related this incident to her mother who then called the police. She also alleged that both the said boys had also followed her in the past.

4. In view of the complaint, an FIR (FIR No. 49/2013 under Sections 509 and 506 of the Indian Penal Code, 1860 and Section 12 of Prevention of Children from Sexual Offence Act, 2012) was registered and the matter was taken up for investigation.

5. The statement of Ms R was also recorded under Section 164 of the Cr.P.C. In her statement, she stated that on 04.02.2013 at around 04:00 p.m. her mother had sent her to purchase certain vegetables. While she was near Bharat Bhojanaliya, two boys who reside in the rear lane of the same colony, approached her and stopped her. The respondent who was one of the boys stopped her and told that he loved her and could not live without her. He told her to accept her offer failing which he would kill her as well. She stated that both the boys made obscene comments. Ms R stated that she objected to the same and asked the boys to go away failing which she would raise an alarm (*shor machaungi*). At that stage, one of the boys (RJN) who was accompanying the respondent took out a knife to scare her. At that stage, the respondent restrained RJN and stated that if Ms R did not accept his offer then he could use the knife. RJN then told Ms R that if she informed anyone about the said incident, he would kill her. Ms R stated that she returned back home without purchasing any vegetable and upon returning back home, she started crying. Ms R stated that she did not inform

her mother at that time, but related this incident to her mother after two days. Ms R's mother informed the police thereafter. She stated that she informed her mother after two days because she was standing on the rooftop of house when the respondent climbed the roof of an adjoining house and started laughing at her. According to Ms R, this prompted her to tell her mother.

6. In her testimony, Ms R deposed about the incident and stated that she came to home and narrated the incident to her mother who then called the police. Ms R (PW2) resiled from her earlier statement recorded under Section 164 of the Cr.P.C. and even denied her signatures on the said statement (Ex.PW2/A). Since Ms R had resiled from her earlier statement, the Trial Court permitted the learned Additional Public Prosecutor to cross-examine her. In her examination, she denied the suggestion that the accused had spoken to her obscenely and with any sexual overtones. She also denied that she had made any complaint regarding the accused making any obscene comments. In her examination, Ms R denied the suggestion that she had not informed her mother regarding the incident on the same date. She deposed that she had narrated the incident to her mother on returning to her house on 03.02.2013. Ms R did not mention any incident of the respondent laughing at her on a subsequent date. It is relevant to note that in her statement recorded under Section 164 Cr.P.C., she had stated that the said incident of respondent laughing at her few days later, had prompted her to narrate the incident to her mother.

7. The Trial Court also noted that the alleged incident had taken place at 04:00 p.m. at around 03.02.2013 in the area where a number of residential

houses are present, however, the prosecution had not examined or produced any public witness.

8. In view of the material contradictions as noted by the Trial Court, the Trial Court held that the prosecution had failed to establish the charge beyond reasonable doubt.

9. Mr Amit Gupta, learned APP for the state submitted that although there may be irregularities in the statement made by Mr R. However, there is no inconsistency in her narration of the incident and therefore, the same could not be discarded. This Court is not persuaded to accept the above. The prosecutrix (Ms R) had resiled from most of the accusations made by her earlier. The time of the incident is material. In her testimony, Ms R had deposed that she had narrated the incident to her mother immediately on returning home and her mother had then lodged a complaint with the police immediately. This was in variance with the statement record under Section 164 of the Cr.P.C. In her testimony, Ms R had deposed that she had gone to purchase vegetables in the morning on 03.02.2013. She stated that she had come back home and informed her mother who had then called the police. In view of the inconsistencies, even the time as to the occurrence of the alleged event cannot be fixed with any certainty.

10. It is also important to note that there is no dispute that the place of occurrence of the offence is stated to be surrounded by hotels and residential units. However, no public witness had been examined. Ms R (PW2), who was effectively the only witness as to the incident had also resiled from her earlier statement and had denied that the accused had talked to her “sexually

and obscenely”.

11. Clearly, the respondent could not be convicted in view of such material inconsistencies and this Court finds no infirmity with the decision of the learned Trial Court.

12. It is also material to note that Ms R had also confirmed that the parties had resolved their disputes.

13. In view of the above, the present application is dismissed. The pending application is also disposed of.

AUGUST 26, 2019
RK

VIBHU BAKHRU, J