

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 116/2019, CRL.M.A. 2939/2019, CRL.M.A. 2940/2019

STATE Petitioner

Through: Mr. Tarang Srivastava, APP for State.

versus

CHANDAN KUMAR Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

08.02.2019

The petitioner seeks leave to appeal against the order of acquittal dated 12.09.2018 under sections 363/366/376(2)(i)/392/468 IPC as well as sections 4 & 6 POCSO Act. He has further convicted for the offence punishable under section 479 IPC. It is the petitioner's case that the impugned order has erred in considering the complainant as a minor. He relies upon the statement of the father of the prosecutrix who had stated that she was 14½ years on the date of the incident.

The learned Trial Court however took into consideration the said evidence and found it unreliable because apart from the said statement there was nothing on record to show that she was a minor. It has referred to the school records of the prosecutrix and has reasoned as under:-

“9. As far as the date of birth of the victim is concerned, the prosecution has completely failed to prove the date of birth or that victim was minor at the time of incident. Though PW-2 has placed on record the school admission record of

class 1st of the victim where her date of birth was recorded on the basis of admission from and the affidavit filed by the father of the victim but the father appearing as PW-7 has stated not only in his examination in chief but also in the cross examination that victim child is presently 20 years of age (date of examination 19.07.2016). The alleged incident of kidnapping and rape is of 10.08.2014 which means that as per testimony of father of the victim she was major at the time of incident.

Further in the cross examination of the father, it has come that he is illiterate and does not know the date of birth of the victim and as per estimation she is 20 years old and in the school record, date of birth was mentioned as per affidavit taken from him by the principal. This proves that victim was major at the time of incident and further her date of birth in the school record is mentioned only on the asking of the principal of the school and not by the father at his own accord. No reliance can be placed on school record in view of testimony of the father of the victim. The prosecution therefore has not proved that victim was minor at the time of incident”.

Furthermore, the learned Trial Court took into consideration that the prosecutrix left her residence on her free volition and she did not raise any alarm when she was taken by the accused from her home; her relationship with the latter was out of her free volition. In the circumstances, no case was made out under sections 4 & 6 POCSO Act and under section 376(2)(i) IPC.

In view of the above, the Court finds no reason to interfere with the impugned order. The petition is without merits and is accordingly dismissed.

NAJMI WAZIRI, J

FEBRUARY 08, 2019

RW