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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04.04.2019

CRL.L.P. 632/2018 & CRL. M.A. 33303/2018

STATE

..... Petitioner

Through: Mr. Tarang Srivastava, APP for State
with SI Janak Singh, PS Okhla
Industrial Area.

versus

MAHENDER PAL

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

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CRL. M.A. 33303/2018

Exemption allowed subject to just exceptions.

Application stands disposed of.

CRL. L.P. 632/2018

1. By this petition under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter as '**Cr.P.C**'), the petitioner/State seeks leave to appeal against the judgment dated 23.07.2018 passed by learned Additional Sessions Judge, Special Court (POCSO), South East, Saket Courts, New Delhi whereby the accused/respondent was acquitted of the charges punishable under Section 354-A of the Indian Penal Code, 1860 (hereinafter as '**IPC**') & Section 8 of POCSO Act in FIR

No.210/2013 registered at Police Station Okhla Industrial Area.

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under: -

“Brief facts of the prosecution case, as per final report, are that on receiving DD No.6A dated 22.04.2013, SI Sanjeev Kumar along with Constable Deepak had met complainant ‘P’, minor girl aged about 14 years along with her father Shri ‘R’ {(The names/particulars of child victim and her family member are being withheld to protect their identity as per Section 33(7) of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act))} and she complained she has studied up to class 7th and came to Delhi two years ago along with her parents and they are residing in a tenanted premises and her Mausi is also residing in her neighbourhood and on 22.04.2013 at about 11.00 am she had gone to the roof of her Mausi’s house for drying clothes and accused, Mahender, who is known to her and he is brother-in-law (sala) of Mr. Guddu called her and when she went to him the accused had caught her hand and taken her in a room and closed the door. It was further complained that she raised the alarm and got her hand freed thereafter she came out of the room and raised alarm. Thereafter, public persons and her mother and Mausi gathered there and called the police. On the basis of said complaint, FIR No.210/2013 was registered at PS OIA U/s 354-A IPC and Section 8 of POCSO Act and the matter was taken up for investigation.

3. During the course of investigation, the victim was got medically examined and her statement under section 164 Cr.P.C. was also recorded. Statements of witnesses were also recorded by the police and accused Mahender Pal was arrested and after completion of investigation, charge sheet was filed against the accused under Sections 354-A IPC and Section 8 of POCSO Act.
4. After taking cognizance of the offence, the accused was provided copy of charge sheet and documents. Thereafter, arguments on the point of charge were heard and based upon the material on record, charges were framed for the offence punishable under Sections 354-A IPC and Section 8 of POCSO Act, to which the accused pleaded not guilty and claimed trial.
5. In order to bring home the guilt of the accused person, the prosecution has examined 08 witnesses in all.
6. On completion of the prosecution evidence, the statement of the accused was recorded under Section 313 of Cr.P.C wherein he claimed innocence and stated that he has been falsely implicated as there was a fight/quarrel between his sister and mother of the prosecutrix and when he had tried to resolve the matter, mother of the prosecutrix threatened him to implicate in a false case. The accused examined one witness in his defence i.e. DW-1.

7. The learned Trial Court, upon analysis, examination and evaluation of the prosecution evidence and after considering the rival submissions recorded acquittal in favour of the accused for the charged offences.
8. Mr. Tarang Srivastava, learned counsel for the State, opened his submissions by contending that the impugned judgment dated 23.07.2018 is based on conjectures and surmises and has disregarded the cogent evidences, and needs to be set aside. Learned APP further stated that conviction can be held on the sole testimony of PW-1(Victim); statement of the PW-1 (Victim) is consistent and trustworthy and has not been considered by the learned Trial Court in the correct perspective.
9. Mr. Tarang Srivastava further contented that the age of the prosecutrix was 14 years at the time of marriage and she falsely deposed in the court regarding her age to save her marriage and in fact, the offence should fall within the purview of POCSO Act.
10. I have given my anxious consideration to the submissions advanced on behalf of the counsel for the State and also perused the material available on record.

AGE OF THE VICTIM

11. In the present case, the prosecution has failed to prove the actual age of the victim at the time of the incident. The prosecutrix in her complaint to the police stated her age to be

14 years. She reiterated the same fact in her statement under section 164 Cr.P.C. However, in her cross-examination she deposed that:

“I was 18 years of age when the incident had occurred”

In addition to the same she further deposed that:

“It is correct that I had wrongly stated to the Magistrate at the time of recording of my statement u/s 164 Cr.P.C that my age was 14 years. It is correct that at the time of incident I was 18 years of age.”

12. From the perusal of the record, it transpires that the complainant herself deposed her age as 18 years at the time of commission of crime. The father of the victim (PW-4) claimed her daughter (PW-3) was more than 19 years at the time of commission of offence. Further no school records have been brought on record by the prosecution to prove the actual age of the victim.
13. In view of the testimonies of PW-3 (Victim) and PW-4 (Father of the Victim) and in absence of any other cogent evidence, the prosecution has failed to prove the charges punishable under Section 2 (d) of the POCSO Act against the accused.

TESTIMONY OF THE PROSECUTRIX

14. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault and if the evidence of the prosecutrix inspires confidence, it must be

relied upon without seeking corroboration of her statement in material particulars. At the outset, we deem it appropriate to examine the testimony PW-3 (Victim). PW-3 (Victim) during her examination-in-chief deposed as under:-

“I had gone to the roof of the house of my mausi for drying clothes. On that day the accused called me. When I went to the accused, he caught my hand and took me in his room and bolted his room. I unbolted the room and came out and raised alarm. Hearing my voice, my mother, mausi and other persons collected on the spot. The landlord called the police.”

15. From the perusal of the testimonies of PW-3 (Victim) at different stages, it transpires that there are various contradictions and inconsistencies in the statement of these material witnesses.
16. PW-3 (the Victim) during her statement under Section 164 Cr. P.C. deposed that the accused had called her to his Jhuggi and on refusal, **the accused caught her hand and dragged her inside** his Jhuggi, to the contrary, in her deposition before the Court, she deposed that **‘On that day the accused called me. When I went to the accused, he caught my hand and took me in his room and bolted his room.’**
17. Further, the victim under her deposition before the Court deposed that **‘I unbolted the room and came out and raised**

alarm. Hearing, my voice, my mother, mausi and other persons collected on the spot', to the contrary, in her statement under Section 164 Cr. P.C., she deposed that due to her shouting, her mother and mausi rescued her.

18. Further, during her cross-examination she deposed that 'The accused met me when I was coming down from the stairs', however, in her examination-in-chief, the Victim deposed that the accused called and dragged her inside his Jhuggi.
19. Moreover, PW-3 (Victim) deposed in her examination-in-chief and cross-examination that her statement was recorded by the Investigating Officer at the Police Station, however, the case of the prosecution is that the statement of the Victim was recorded on the spot. It is further on record, the important witnesses, whose testimonies would have been relevant to prove the guilt of the accused, namely, the mother, the mausi as well as the landlord, who has informed the police, has not been examined by the prosecution. The MLC of the prosecutrix further does not suggest injuries at the instance of the accused person as in her MLC she stated that 'On asking informant S and that the cut mark on her K happened accidentally by mother today morning.'
20. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidences on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities. There are considerable inconsistencies and

discrepancies in the statement of the witnesses, which consequently makes it fabricated and unreliable. Therefore, the prosecution has failed to disclose the true genesis of the crime and establish the charges against the accused.

21. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favor's the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.
22. Having regard to the principles laid down by the Apex Court in the case of **Ghurey Lal vs. State of U.P.**, reported at **2008 (10) SCC 450**, I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses.
23. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

APRIL 04, 2019/afa