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

+ **CRL.L.P. 63/2020**

THE STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State.

versus

RAMJI RAM

..... Respondents

Through: None.

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Date of Decision: 20th January, 2020.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

CrI.M.A. 992/2020 (exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

CRL.L.P. 63/2020

1. Present criminal leave petition has been filed on behalf of the State challenging the judgement dated 25th October, 2019 passed by Additional Sessions Judge/ Special Judge (POCSO), West, Tis Hazari, Delhi acquitting the accused in FIR No. 83/2013 registered with Police Station Hari Nagar, Delhi under Section 363/366/376 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

2. The relevant facts as noted by the Trial Court are as under:-

“1. The allegation against the accused is that on 20.02.2013 at about 1:00 pm at H. No. 88 A Block, Hari Nagar, Delhi, he kidnapped the minor victim with the intent that she might be forced to illicit intercourse. He also raped the minor victim during the period from 20.02.2013 to 12.03.2013”

3. The trial court by way of its impugned judgement acquitted the Respondent-accused. The relevant portion of the impugned order is reproduced hereinbelow:-

“36. As has been observed, it could not be proved that the victim was a minor at the time of incident. As per the victim, accused had established physical relations with her even prior to lodging of instant FIR yet she left the house of her parents and went with the accused by train. The statement of the victim that she stayed locked in the said room and someone used to provide food to her is vague. There is no explanation as to why the victim did not disclose about her circumstance to that someone. The cross-examination of PW10 ASI Kalam Singh shows that when he reached the spot at Gauda alongwith the police team, the victim was found inside the room and the room was not locked from outside. PW10 also admitted that he did not collect the call details of the father of the victim and the call details of the mobile phone of the victim were not received. PW10 also deposed that he heard from the local people at Gauda that the victim and the accused had moved an application on 12.02.2013 before local SDM/Marriage Registration Office for registration of their marriage. This fact, however, could not be confirmed by the IO. His testimony, however, belies the testimony of the victim that she stayed locked in a room for the entire period of about a month while she stayed with the accused. It further shows that it was within the knowledge of the neighbours that victim and accused wanted to get married.

37. The circumstances as are veiled from the testimonies of PW3 & PW10 show that the victim had accompanied the accused

willingly and was residing with him willingly. Further, they both wanted to marry each other. From such a circumstances, it cannot be deducted conclusively that the victim was taken away by the accused by deceitful means and that the sexual relations between them were forcible. The allegations of offence punishable u/s 366 IPC & 376 IPC, therefore, could not be proved beyond reasonable doubt.”

4. Ms. Aashaa Tiwari, learned APP for the State states that the trial court had erred in concluding that the Respondent-accused had established physical relations with the consent of the prosecutrix. She points out that the prosecutrix in her statement had emphatically stated that the Respondent-accused had forcefully established physical relationship with her. She emphasises that the prosecutrix in her deposition had stated that she had been confined in a room by the Respondent-accused.

5. Learned APP for State also submits that the consent of the Prosecutrix was immaterial as the Prosecutrix was a minor at the time of commission of the offence. In support of her submission she relies upon the school Admission Register wherein the Prosecutrix' date of birth is recorded as 12th May, 1997 as well as the School Leaving Certificate issued by the Directorate of Education in which the date of birth of the Prosecutrix is 20th January, 1999.

6. Learned APP for the State further contends that the Respondent-accused established a physical relationship with the Prosecutrix on the false pretext of marriage.

7. Having perused the leave petition as well as accompanying documents, this Court finds that the prosecutrix in her cross-examination had admitted that she was eighteen years old on the date of the incident. The

relevant portion of the testimony of the Prosecutrix (PW-3) is reproduced hereinbelow:-

“The accused was doing the work of labour in subordination of my father. I know the accused one year prior to the registration of the present case.....When the occurrence has taken place, I was about 18 years of age.

xxxx xxxx xxxx xxxx
.....I was induced away by the accused as he had told me that he would marry with me.....

xxxx xxxx xxxx xxxx
....He had also made physical relation with me prior to the present complaint....”

(emphasis supplied)

8. Further, the prosecution was not able to establish the age of the prosecutrix beyond doubt as it itself produced two contrary documents. It is pertinent to mention that no ossification test was carried out in the present case by the prosecution. Consequently, in view of the admission in cross-examination, the prosecutrix will have to be treated as eighteen years old on the date of the incident.

9. The Prosecutrix had admitted that she had been known to the Respondent-accused for more than one year and they had had physical relations prior to the present complaint being filed by her. ASI Kalam Singh (PW 10) has in his deposition also stated that he found the Prosecutrix in a room that was not locked from the outside. The relevant portion of the testimony of ASI Kalam Singh is reproduced hereinbelow:-

“.....When we reached the spot which was a room at Godda, the victim was inside the room and the room was not locked from outside.....”

(emphasis supplied)

10. Accordingly, the allegation that physical relations were made by the Respondent-accused without the consent of the prosecutrix or that she had been detained forcefully by the Respondent-accused is not correct.

11. Consequently, this Court is in agreement with the finding of the trial court that the testimonies of the Prosecutrix (PW 3) and ASI Kalam Singh (PW 10) prove that the Prosecutrix had voluntarily accompanied the Respondent-accused and was residing willingly with him.

12. Additionally, the version of the father of the prosecutrix (PW-2) that the prosecutrix had been taken away by the Respondent-accused from the demolition site is not correct inasmuch as Jaldhar Kumar (PW-5) in his testimony had categorically deposed that on the day of the incident, the Prosecutrix was not present at the demolition site.

13. This Court is also of the view that to establish whether “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established namely that the prosecution proves beyond doubt that the Respondent-accused had established sexual relations with the Prosecutrix on the basis of a false promise of marriage given in bad faith and with no intent of being adhered to at the time it was given. Further, the false promise itself must be of immediate relevance, or bear a direct nexus to the Prosecutrix’s decision to engage in the sexual act. (See ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr., 2019 SCC OnLine SC 1073***).

14. ASI Kalam Singh (PW 10) has deposed in the present case that it was brought to his notice by the neighbours of the Respondent-accused that the Prosecutrix and the Respondent-accused had moved an application before the local SDM for registration of their marriage. Consequently, this Court is of the view that the condition precedent of physical relationship having been

established on the false pretext of marriage is not made out.

15. Keeping in view the aforesaid, this Court is of the opinion that the impugned order calls for no interference. Accordingly, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JANUARY 20, 2020

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