

\$~4

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

+ **CRL.L.P. 68/2020**

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for the State
with Inspector Pawan Kumar, SI
Vipin Teotia, PS Khajuri Khas.

versus

REHAN @ MOHD. WAZID

..... Respondent

Through: None.

%

Date of Decision: 21st 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. 1210/2020

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

CrI.M.A.1209/2020

Keeping in view the averments in the application, the delay of 58 days in filing the present petition is allowed.

Accordingly, present application stands disposed of.

CRL.L.P. 68/2020

1. Present criminal leave petition has been filed on behalf of the State challenging the judgement dated 1st August, 2019 passed by Judge, Special

Court (POCSO Act), Additional Sessions Judge-01, North-East, Karkardooma Courts, Delhi arising out of FIR No. 226/2017 registered with Police Station Khajuri Khas, Delhi acquitting the respondent-accused under Sections 363/366/376 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act").

2. Brief facts of the present case, as noted in the impugned judgment, are reproduced hereinbelow:-

"Brief facts as per the case of the prosecution are, that on 18.05.2017, complainant Mohd. A went to the police station and lodged a complaint of his daughter/victim S aged about 17 years 03 months being missing. He alleged that on 16.05.2017 at about 05.00 p.m., his daughter had left home without informing anyone and thereafter, she did not return. He suspected that some unknown person had enticed his daughter and had taken her away. On these allegations, the present FIR u/s 363 IPC was registered.

2. During investigation, on 19.05.2017, one Salman Ansari had informed SI Bishambhar that he was a friend of victim and victim had called him at Dilshad Garden Metro Station. Thereafter, SI Bishambhar alongwith WCT. Ritu went at Dilshad Garden Metro station from where victim was recovered. Victim was counseled and she alleged that when accused Rehan had abandoned her, she made a call to Salman for her help. Victim was medically examined. Victim alleged that Rehan had done wrong acts with her. Thereafter, sections 376 IPC and 4 POCSO Act were added. Thereafter, statement of victim u/s 164 Cr.P.C. was recorded. Thereafter, on 23.05.2017, at the instance of victim and her mother, accused was arrested from gate no. 7, GTB Hospital. After completion of investigation, charge sheet was filed against the accused.

3. On 23.09.2017, charge u/s 363/366 IPC, u/s 376 IPC and u/s 4 POCSO Act was framed against accused to which he pleaded not guilty and claimed trial."

4. The findings of the Trial Court are reproduced hereinbelow:-

“51. In view of my above discussions, I find that first of all, the victim has not been found to be a credible witness due to the fact that she claims to have been raped by the accused in Shalimar Hotel whereas as per the prosecution’s own case, she had been found to be staying alone in one Sharda Hotel, which the victim had categorically denied. Secondly, the prosecution had had opportunities to find the independent witnesses to verify the claim of the victim with regard to the fact that she was with the accused but the prosecution did not do so. Thirdly, the prosecution did not collect any telephone records of either of the victim or of the accused to establish any connection between the victim and the accused during this period. Fourthly, the victim was not recovered from the accused or at the instance of the accused but was recovered with the help of one Salman. At the same time, the role of the IO in this recovery seems to be under a cloud of suspicion. I accordingly find that due to these serious doubts, the prosecution has failed to prove its case beyond reasonable doubts. Accused is thus entitled to benefit of doubt. The accused is accordingly acquitted of all the charges framed against him. His bail bond stands cancelled. Surety stands discharged. File be consigned to record room.”

5. Ms. Aashaa Tiwari, learned APP for the State contends that the prosecutrix had ‘by and large’ supported the case of the prosecution and had specifically named the respondent-accused in her statements. She states that the Trial Court had failed to appreciate that even though the prosecutrix had mistakenly named the wrong hotel, yet in view of the MLC of the prosecutrix which mentions that the *hymen was freshly torn*, it could be inferred that the prosecutrix was not alone in the hotel. She lastly submits that the sole testimony of the prosecutrix can be relied upon to convict the respondent-accused.

6. Having heard the learned APP for the State and having perused the paperbook, this Court is of the opinion that the prosecutrix is the most material witness in the present case. However, her testimony does not inspire confidence as it is in direct conflict with the case put forth by the prosecution. Firstly, the place of incident i.e. 'Hotel Shalimar' as told by the prosecutrix was not found to be in existence. Secondly, the prosecutrix had categorically denied staying at 'Sharda Hotel' – contrary to the prosecution's case and evidence on record. Thirdly, the manner in which the prosecutrix states to have been recovered is contrary to the prosecution's case.

7. No independent witness has been examined by the prosecution to corroborate the story of the prosecutrix. Neither Salman (who helped the police to recover the prosecutrix), nor Mehrunisha (with whom the prosecutrix had allegedly stayed the intervening night of 17th -18th May, 2017) or the sister of respondent-accused (with whom the prosecutrix had allegedly stayed the intervening night of 18th -19th May, 2017) had been examined to establish that respondent-accused was present with the prosecutrix. Consequently, in absence of any evidence corroborating the testimony of the prosecutrix, the same cannot be relied upon to convict the respondent-accused as it is full of contradictions.

8. It is also an admitted fact that when the prosecutrix had left her house of her own volition she was in possession of a mobile phone; yet she did not contact her parents. Even the mother of the prosecutrix had deposed that she had not contacted her daughter/prosecutrix, despite being aware that the prosecutrix had a phone. The relevant portion of the testimony of the mother of the prosecutrix (PW-2) is reproduced hereinbelow:-

“.....The victim had a mobile phone. I do not remember the number of that mobile phone. We did not make any call on the mobile of the victim to know her whereabouts. We had made a call to Salman and he said that he did not know about the victim.”

9. The receptionist of ‘Sharda Hotel’ – Mr. Ravi (PW-14) had specifically deposed that the prosecutrix was not accompanied by anyone, when she stayed the night at ‘Sharda Hotel’ on 16th May, 2017. The relevant portion of his testimony is reproduced hereinbelow:-

“....Whenever a man and woman or a girl and a boy together come to take a room on rent, we obtain the identity of both those persons and the guest register reflects that there were more than one person in that room. I was not present in the hotel on that day, but as per our practice from entry 685 I can say that on that day the guest i.e. the victim was not accompanied by anyone. I was also not present at that time when the guest had checked out.”

10. This Court is of the view that the aforesaid facts and circumstances cast a shadow of doubt on the case of the prosecution.

11. Further, in the opinion of this Court, the prosecution has failed to connect the respondent-accused to the present case inasmuch as no evidence has been brought on record to establish that he was with the prosecutrix on the date of the incident or thereafter.

12. Consequently, despite the medical evidence confirming that the hymen of the prosecutrix had been freshly torn, there is no evidence to link the respondent-accused with the incident.

13. Accordingly, this Court is in agreement with the finding of the Trial Court that the prosecution has failed to establish the case against respondent-accused beyond reasonable doubt and he is entitled to benefit of doubt.

14. Consequently, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JANUARY 21, 2020
KA

