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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 137/2020 & CRL.M.A. 2705/2020 (delay)**

STATE

..... Petitioner

Through Ms Meenakshi Chauhan, APP for State.
Insp. Pavan Kumar, ASI Surender P.S. Khajuri
Khas present.

versus

MD. CHAND @ FURKAN & ORS.
Through

..... Respondents

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

% **ORDER**
06.02.2020

CRL.M.A. 2706/2020

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.L.P. 137/2020 & CRL.M.A. 2705/2020 (delay)

3. The present petition has been filed by the State seeking leave to appeal against a judgment dated 13.09.2019 passed by the learned Additional Sessions Judge, in a case arising from FIR No. 464/2017, under Sections 323/354-D/509/34 of the IPC and Section 12 of the Protection of Children from Sexual Offenders Act, 2012 (hereafter POCSO Act), registered with Police Station Khajuri Khas.

4. The respondents were prosecuted pursuant to the aforementioned FIR.

The same was lodged on a report of an incident that had taken place between the respondents and certain family members of the victim (name withheld), on 01.08.2017. The family of the victim and the respondents are neighbours.

5. The victim, a girl aged about sixteen years at the time of the alleged incident, had levelled allegations of harassment against respondent no.1 (Mohammad Chand @ Fukran). She had deposed that after summer vacation, Fukran (respondent no.1) used to follow her when she used to go to her school and would pass lewd comments on her. She testified that he had told her that he liked her and had offered to carry her school bag. She stated that on 01.08.2017, at around 4.00 p.m., when she was going for tuition classes, Furkan had thrown a piece of paper on her. She had picked up that paper and thrown it in the drain. She stated that she reached the tuition class and started crying. Her teacher enquired from her as to the reasons for the same and she informed him about being harassed by Furkan. Till that time, she had not told her parents about the same. The teacher called the victim's father who took her home. She stated that thereafter, the victim's father went to Furkan's house and after some time, she heard a commotion and saw that Furkan's father and brother, respondent nos. 2 and 3 respectively, beating her father. The victim's mother cried for help and her *foofa* (husband of her father's sister) called the PCR. She stated that at about 11.00 or 12.00 at night, she along with her maternal aunt (*bua*) went to the police station. Her father was already present there.

6. The prosecution examined eleven witnesses to establish its case which included the victim, as well as victim's father. The victim's father, Rahis

Ahmed, testified as PW 4. He deposed that victim was sixteen years of age as on 01.08.2017. He had received a phone call, at around 4.45 p.m., from the tutor of his daughter who had called him to the tuition centre. He stated that he reached there after thirty minutes and found that the victim was crying. The victim's teacher informed him that Chand @ Furkan(respondent no.1), a resident of the locality had followed her and had made obscene comments at the victim. He stated that he and the victim had returned back to the house. When he reached near house of Furkan, Furkan's father, Hasan Ali, was present outside the house. He stated that when he started talking to Furkan's father (Hasan Ali – appellant no.2), his sons (Gulfam and Furkan – respondent nos. 3 and 1) started beating him. He stated that he received injuries on his head. He further stated that on hearing the commotion, his nephew (Danish) came there and was also beaten by them.

7. The Trial Court evaluated the evidence obtaining in this case, which also included testimony of four witnesses for the defence.

8. Dr Ankit Gupta, who was a Casualty Medical Officer from JPC Hospital deposed as DW1. He deposed that he had prepared emergency registration cards of Hasan Ali (respondent no.2), Smt Nazma, Salman and Mohd Gulfam Ali (respondent no.3). All the said persons had come to the hospital with a history of physical assault.

9. DW 2 deposed that a quarrel had taken place between respondent no.2 and his family members on one side and the victim's family on the other.

10. Salman, son of Hasan Ali (respondent no.2), deposed as DW3. He stated that when he returned to his house, the victim's father along with six-

seven persons entered into his house and caught hold of him by hand and asked if he was Furkan. He informed the victim's father that he was not Furkan. He stated that thereafter, the victim's father entered another room to apprehend his brother Furkan, and Rahis (victim's father) had beaten him. He stated that Furkan was driven outside the house and was taken towards the victim's house. He also went there to save Furkan but they beat him up as well. He alleged that they tried to stab him but he caught hold of the knife and suffered a cut on his left palm. He also deposed that his mother also suffered injuries. DW 4 (the mother of respondent nos.1 and 3 and wife of respondent no.2) also deposed to a similar effect. She testified that she was preparing for Namaz at about 7.00 P.M., Rahis had knocked on the door and when she opened the door, he pushed her and entered their house along with about seven other persons. She testified that they assaulted her and had dragged Furkan from their house.

11. The Trial Court after examining their evidence concluded that the victim's father had approached the family of accused, along with the victim's mother, niece and had entered their house and the same had led to a scuffle and a fight between the two groups. He concluded that both the groups had suffered injuries. In view of the aforesaid conclusion, the Trial Court held that the prosecution has failed to prove beyond reasonable doubt that the accused persons (respondents), pursuant to their common intention, had caused injuries to the father of victim and his nephew (Danish). The said accused were thus given the benefit of doubt and were acquitted. However, respondent no.1 was convicted of the offences punishable under Section 354 of the IPC and under Section 12 of the POCSO Act.

12. The Trial Court observed that there was no material on record to indicate that as to what comments had been made by respondent no.1 and there was no testimony to the aforesaid effect. Accordingly, respondent no.1 was acquitted for the offence under Section 509 of the IPC.

13. It is apparent from the testimonies of various witnesses that there was a scuffle between the family members of the victim and the respondents. It is expected that the victim's father would be incensed on being informed that Furkan had been harassing his daughter. It would be natural for him to accost Furkan and complain to his parents.

14. In the given circumstances, the testimony of the witnesses for the defence that family members of the victim had entered their house for searching Furkan, is not difficult to believe. The respondents, as well as the family members of the victim had suffered injuries and the prosecution's case that the victim's father had merely met Furkan's father outside his house and had talked to him, is doubtful. It is difficult to accept that the respondents had turned aggressive without any reason as is suggested by the testimony of PW4 (the victim's father). It is more likely that the victim's father and his family members had taken an aggressive stand on account of the victim being harassed by Furkan (respondent no.1).

15. The Trial Court examined the evidence and acquitted respondent nos.2 and 3 of the offences for which they were charged. The said view is a plausible view and warrants no interference by this Court.

16. Respondent no.1 was also acquitted for committing an offence under Section 509 of the IPC, as there was no material as to the comments that

were allegedly made by him. The victim had neither deposed as to what the offending comments were nor was the piece of paper thrown by him to her, recovered.

17. In the absence of any material to indicate as to what comments had been made by respondent no.1, he could not be convicted of the offence punishable under Section 509 of the IPC.

18. In view of the above, this Court finds no reason to interfere with the impugned judgment.

19. The petition is, accordingly, dismissed. The pending application is also disposed of.

20. However, it is clarified that nothing stated in this order shall preclude respondent no.1 from impugning his conviction and sentence.

VIBHU BAKHRU, J

FEBRUARY 06, 2020

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