

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.10.2020

+ **CRL.A. 43/2017 & CRL.M.A. 1304/2020 & CRL.M.(BAIL)
7736/2020**

MAHIPAL @ LALA

.....Appellant

Versus

THE STATE (GOVT. OF NCT) OF DELHI..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Anwesh Madhukar and Ms Prachi Nirwan,
Advocates.

For the Respondent: Mr Ravi Nayak, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal seeking to challenge a judgment dated 02.08.2016 passed by the ASJ-01, North Rohini Courts, New Delhi, whereby the appellant was convicted for committing aggravated penetrative sexual assault on a child victim – an offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act'). He was also convicted under Section 506 of the Indian Penal Code, 1860 (hereinafter 'IPC'). The appellant also impugns an order on sentence dated 09.08.2016, whereby he was (i) sentenced to rigorous imprisonment for a period of twenty years with a fine of ₹5000/- and in default of payment of fine, to

undergo simple imprisonment for a further period of thirty days, for committing the offence punishable under Section 6 of the POCSO Act; and (ii) sentenced to rigorous imprisonment for a period of one year for the offence punishable under Section 506 of the IPC. All the sentences were directed to run concurrently.

2. The appellant was prosecuted pursuant to registration of FIR bearing no. 881/2014, under Sections 323/376/506 of the IPC and Section 4 of the POCSO Act with PS Shahbad Dairy. The said FIR was registered on 07.08.2014, pursuant to the statement (PW3/D) made by a girl, who was aged about thirteen years at the material time. Her name is concealed and she is hereafter referred to as 'the prosecutrix'. She had alleged that the appellant – who is her step father – had forcibly raped her multiple times and had threatened that he would kill her, if she disclosed the same to anybody. The prosecutrix alleged that on 05.08.2014, the accused had again raped (*galat kaam*) and beaten her.

3. On 07.08.2014, the prosecutrix along with one Ms. Shweta Bhardwaj came to PS Shahbad Dairy, Delhi and reported that the accused, who was her step father had done a wrong act (*galat kaam*) with her. WASI Rajbala, who was on duty that day recorded the DD entry 16A(Ex.PW4/A) and forwarded the same to WSI Urmil for further proceedings. WSI Urmil took the prosecutrix to BSA Hospital for medical examination along with WCt. Rajesh. The prosecutrix was medically examined and the concerned doctors handed over the exhibits of the victim to WCt. Rajesh. She in turn handed over the exhibits to WSI Urmil Sharma, who prepared a seizure memo (Ex.PW6/A) and

seized the said exhibits. She came back to the PS and recorded the statement of the prosecutrix (Ex.PW3/A). On the basis of the said statement, she prepared a *rukka* (Ex.PW18/A) and handed over the same to the Duty Officer for registration of the FIR.

4. The prosecutrix stated that she was residing in her village Farrukhabad, since her childhood, along with her family and had completed her schooling till sixth standard in Farrukhabad. She stated that about three to four years ago, she along with her parents and her younger brother came to Delhi and took up residence in Sultan Puri. She stated that her mother started working in a factory, where she met the accused who used to drive a vehicle (Champion Vehicle) in the factory. She stated that thereafter, the accused started visiting their residence and this resulted in her parents fighting with each-other. She stated that on one day, her father left the house along with her younger brother and returned back to their village. She stated that the wife of the accused also suspected that the accused was having a relationship with her mother and she took both her children and left the accused. She stated that thereafter, the accused and her mother got married and they started residing in a rented house in Mangol Puri. She stated that after their marriage, both of them used to quarrel quite often, which would often be violent (*marpeet hone lagi*). She stated that about four months ago, her mother committed suicide by hanging herself. Thereafter, the accused moved to a rented accommodation at Pansali and took her along as well. She stated that after about one month of her mother committing suicide, the accused started forcibly raping her (*jabardasti galat kaam karna shuru kiya*). She

stated that he continues to rape her since (*lagataar mere saath galat kaam karta aa raha hai*). She also alleged that he would threaten her that if she mentioned the same to anyone, he would kill her. She alleged that on 05.08.2014, the accused had once again raped her. He had also beaten her and she could not leave the house. She stated that on that date (07.08.2014) while the accused was sleeping, she took the opportunity to get out of the house. On the way, she met one Shweta and she informed her about being assaulted by the accused and she brought her to the police station.

5. Thereafter, the IO interrogated and arrested the accused. His medical examination was conducted and his biological samples were collected.

6. On 08.08.2014, the statement of the prosecutrix was recorded under Section 164 of the CrPC. She stated that she wanted her father (the appellant) to be released. She stated that her father used to beat her and therefore, she made a false complaint against him. She stated that her mother had expired four months ago and she had made a false complaint against her father that he used to rape her. In her statement, she repeated thrice that she wanted to get her father (the appellant) released and she had nothing else to say.

7. On 19.08.2014, the biological father of the prosecutrix came to Delhi and handed over the birth certificate of the prosecutrix to the concerned IO. He also secured orders from the Child Welfare Committee

(CWC), whereby the custody of the prosecutrix was handed over to him on his furnishing an undertaking in Form IX.

8. On 01.09.2014, the biological father of the prosecutrix brought her to Delhi and informed the IO that she was pregnant. The prosecutrix was once again produced before the Child Welfare Committee and permission for her medical examination was obtained. With the permission of her biological father, her pregnancy was terminated. The abortus was seized by the IO and sent to FSL. The allelic data of DNA profiles generated from the blood sample of the prosecutrix and the blood gauze of the accused was accounted in the allelic data profile generated from the abortus.

9. The appellant was charged with committing offences punishable under Section 6 of POCSO Act and Section 506 IPC. He pleaded not guilty. He was tried and convicted by the impugned judgment.

Submissions

10. Mr. Madhukar, learned counsel appearing for the appellant submitted that the prosecution's case mainly rested on the testimony of the prosecutrix and it was evident that the same could not be relied upon. He submitted that the initial statement made by the appellant was in variance with her statement made before the Trial Court. Further, she had retracted all the allegations in her statement recorded under Section 164 of the CrPC. He submitted that since the prosecutrix had acknowledged that she had falsely implicated the appellant, he could not be convicted for committing the offences as alleged.

11. Next, he contended that the medical evidence also did not support the prosecution's case. He stated that the prosecutrix's medical examination was conducted on 07.08.2014. The MLC (Ex.PW5/A) indicates that she was not pregnant on the said date. The report (Sexual Assault Evidence Kit Protocol) also indicates that her hymen was not torn. Further, no injuries were found on the prosecutrix. However, when she was examined again on 01.09.2014, it was found that her hymen was not intact. He further submitted that the said MLC (Ex.PW16/A) also did not indicate that she was pregnant. He contended that in view of the above, the only conclusion that could be drawn is that the prosecutrix may have been subject to an assault after 07.08.2014. He contended that the prosecutrix was staying with the appellant only since 1 to 1½ months prior to the registration of the FIR and, therefore, in any event, he could not have committed the offence as alleged because as per the case of the prosecution, the prosecutrix was seventeen weeks pregnant, as on 04.09.2014 (the date of the MTP of the prosecution) and thus, she was staying with the appellant, when she had conceived.

12. Mr. Madhukar referred to the testimony of the biological father of the prosecutrix (PW5). He had deposed that he had received a call on 13.03.2014, informing him that his wife had expired after hanging herself. He stated that he came to Delhi and found that the accused (the appellant) had cremated her. He could not find his daughter and his son and he returned to his village. He stated that he came back after fifteen days and found his son and daughter at the house of the accused. He took them to his native village. He stated that the prosecutrix stayed with him

for about fifteen days and thereafter, she went to her maternal grandmother, where she stayed for fifteen days. He stated that thereafter, she went somewhere without informing anybody.

13. Mr. Madhukar stated that if the said testimony of PW5 is believed, it would be apparent that the prosecutrix had remained in the house of the appellant till about 28.03.2014. Thereafter, she had left his house and had gone with her biological father to his native village. She had remained there till about 13.04.2014 and thereafter, she had gone to the house of her maternal grandmother, where she stayed for a further period of fifteen days, that is, till about 28.04.2014. After that, her whereabouts were not known. The appellant, in his statement recorded under section 313 of the CrPC, had stated that she had come from her native village and had stayed with him for about 1- 1 ½ months and he had informed the prosecutrix's father that she was residing with him. Thus, the prosecutrix was not with the appellant, when she had allegedly conceived.

14. Lastly, he submitted that the FSL Report could not be relied upon as the prosecution had failed to establish that the samples remained intact and were not tampered with. He submitted that the FSL Report mentioned that the envelopes received were sealed with the seal of "MS, MB Hospital Pooth Khurd". However, the name of the concerned hospital was Maharishi Valmiki Hospital and therefore, the seal ought to have been that of "MV Hospital" and not "MB Hospital". He submitted that this indicated that the seals had been fabricated and the same could not be the seals of Maharishi Valmiki Hospital. He also referred to the

testimony of Dr Yudhvair Singh (PW8), who was the Medical Officer at MV Hospital. In his testimony, he also referred to Maharishi Valmiki Hospital as MV Hospital.

15. Mr. Madhukar further stated that the discharge summary, which indicates that the prosecutrix's pregnancy was terminated, has not been brought in evidence and, therefore, could not be relied upon.

16. Mr. Ravi Nayak, learned APP appearing for the State countered the aforesaid submissions. He submitted that the evidence in the present case clearly established that the appellant was guilty of committing the offence for which he was charged. He stated that the MLC of the prosecutrix in respect of her medical examination, conducted on 07.08.2014, did not mention that she was pregnant as the UPT result was negative. He stated that this could possibly be a case of an erroneous result. However, the concerned doctor had noted "*amenorrhea 2 months back*" and "*H/o amenorrhea X 2mo*". He stated that this indicated that the prosecutrix was pregnant even when she was examined on 07.08.2014. He further stated that it is well settled that even if the hymen is found to be intact, it does not necessarily overrule a penetrative sexual assault. He further submitted that the FSL Report clearly indicated that the DNA of the appellant matched with the DNA of the fetus. This clearly established that the appellant had engaged in a sexual intercourse with the prosecutrix and since there is no dispute that she is a minor, it stood established that the appellant had committed an offence punishable under Section 6 of the POCSO Act.

Reasons and Conclusion

17. There can be no doubt that the prosecutrix was a minor at the material time. The Head Teacher of the school, which she first attended (Kanya Prathmik Vidyalaya, Farrukhabad, UP), was examined as PW17. He produced the admission and withdrawal register of the school and testified that one girl child bearing the same name as the prosecutrix was admitted in the first standard on 10.07.2006 and her date of birth mentioned in the register is 05.03.2000. The admission register was seen and returned but a copy of the relevant entry was kept on record as Ex.PW17/A. He also produced the admission form, which was filled by the mother of the prosecutrix (Ex.PW17/B). He stated that the said student had left the school on 31.08.2010 and he testified that the school leaving certificate dated 31.08.2010 (Ex. PW17/C) was issued by him. Thus, the prosecutrix was just over fourteen years of age, at the material time.

18. The prosecutrix was examined as PW3. She stated that her father and her other siblings used to live at his native place (village Burnamo). He was not ready to come to Delhi, in spite of being asked by her mother several times. She stated that her mother had met the accused in the factory where she worked and they started residing together. She stated that her step father (the appellant) used to quarrel with her mother and beat her. He used to beat her as well. She stated that one day, her mother and Mahipal (the appellant) asked her to fetch milk from the market but when she returned, she saw that her mother was hanging and had died. She stated that thereafter, her step father (the appellant) vacated the room

and started residing at Pansali. He took a room in *Peeli Kothi* on rent. She alleged that the appellant would beat her a lot and she used to save herself by going to the premises of the land lady (Sharmila aunty). She alleged that her step father (the appellant) used to often do (*galat kaam*) with her. He used to remove her clothes and also remove his own clothes and then put his urinal part in her urinating organ. She stated that he did that to her many times but she did not remember the dates or the months of the said incidents. She stated that beside informing this to her neighbour (Sansi aunty), she also informed the same to *Shweta Didi*, who took her to the police station. She stated that she was medically examined in the hospital and her statement was recorded by the Police (Ex.PW3/A). She identified her signatures on the said statement. She further stated that her step father (the appellant) was arrested by the police, at her instance. She identified her signatures on the arrest memo (Ex.PW3/B). Thereafter, her statement was recorded by a Judge. She was shown her statement recorded under Section 164 of the CrPC (Ex.PW3/D) and she identified her signatures on the same.

19. She was cross-examined. She stated that she was one of six brothers and sisters and was studying in a private school situated in Fatehgarh. She stated that when the incident took place, she did not disclose it to anybody and she did not recollect the date of the incident. She further stated that she did not disclose the incident to any person, as she was not allowed to come out of the room. She admitted that she had made a false statement before the learned Magistrate, but she had denied that she had done so on the counselling by her father. She stated that she

became pregnant because of sexual abuse by the accused. She alleged that the accused had raped her number of times in a day. She denied the suggestion that she had implicated the accused in connivance with her parent. She stated that her mother had expired on the day of *Holi* in the year 2014 and after her demise, she started residing with her step father (the appellant). She stated that after the demise of her mother, there were only two persons residing in the house in Mangolpuri, which was a rented house. She stated that it was located in the thickly populated area but the accused did not allow her to go anywhere. She stated that he was employed in a factory and used to drive a Champion vehicle. She alleged that he used to go to work after confining her inside the house and locking the same from outside. She stated that the accused was apprehensive that she may disclose the incidents to somebody and he shifted their residence to Pansali. She stated that she did not go to school during the period she was residing with her step father (the appellant) and never attended any school in Delhi. She stated that one day, she got an opportunity to disclose the incidents to Sunita, who was a neighbour at that time. She denied the suggestion that she had deposed falsely, at the instance of her real father.

20. It is apparent from the above that the prosecutrix is not a sterling witness, whose testimony can be relied upon without any further corroboration. It is also apparent that there are numerous inconsistencies between the statement made by her initially, on the basis of which the FIR was filed and her statement made during her examination, before

court. Apart from the above, the prosecutrix had resiled from her allegations in her statement recorded under Section 164 of the CrPC.

21. Her examination-in-chief is also to some extent in variance with the testimony of her biological father, who was examined as PW5. He had testified that he was informed about the demise of his wife and he came to Delhi. He looked for his son and daughter but could not find them. He testified that he returned back to his village and came back to Delhi, after fifteen days and he found his son and the daughter (the prosecutrix). He stated that he took them to his native place and the prosecutrix stayed with him for about fifteen days and thereafter, went to her maternal grandmother's house. He stated that she stayed there for fifteen days but thereafter, went somewhere. The prosecutrix in her statement has not mentioned her brother who, according to PW5, was also living along with the prosecutrix and the appellant. Further, the prosecutrix has not mentioned anything about her biological father taking her to his native village in March, 2014 (after the death of her mother) or her going to her grandmother's residence. The prosecutrix has also not mentioned Sunita aunty or Sharmila aunty in her initial complaint. Even in her cross-examination, she stated that she had not informed about the incident to anybody. Thus, undeniably, there are inconsistencies in her statement(s).

22. In addition, it is also relevant to mention the testimony of Ms. Shweta Bhardwaj, who was examined as PW2. She had stated that she had come to visit her brother in Pansali and her brother had informed her about the prosecutrix being sexually assaulted by her step father. He had

then introduced the prosecutrix to her and the prosecutrix had narrated the incidents of assault to her. She had then called the police helpline and thereafter, she and the prosecutrix had gone to the nearby police station, where the statement of the prosecutrix was recorded. The statements made by the prosecutrix also do not mention anybody introducing her to Ms. Shweta Bhardwaj. On the contrary, in her initial statement, she had stated that she had met Shweta Didi, on the way, after escaping from the accused (the appellant) and on her inquiring, she had (while weeping) narrated the incidents to her.

23. Having stated the above, it is also necessary to note that the prosecutrix is consistent in her allegation that the appellant used to beat her and rape her. She had alleged that he had done so many times and was continuing to do so.

24. The MLC of the prosecutrix (Ex.PW5/A) which was recorded on 07.08.2014, also records that she had stated a history of sexual assault by her own step father. She had also alleged that she had been physically assaulted two days back (that is, on 05.08.2014). Her allegations have been sufficiently corroborated by the forensic evidence brought on record. Thus, even though the prosecutrix may not qualify to be a sterling witness, the allegations made by her against the appellant, stand fully proved.

25. This Court is also of the view that the fact that the prosecutrix had resiled from her allegations in her statement recorded under Section 164 of the CrPC has been explained. The prosecutrix had made allegations

against her own step father, resulting in his arrest. With his arrest, she had found that she had no other place to go but to remain in the care of the authorities. It is understandable that at this stage she desperately wanted her father to be released. If one examines her statement recorded under Section 164 of the CrPC, she is insistent that her father be released and in her brief statement, she had repeated the same thrice.

26. The contention that the medical evidence is inconsistent and does not support the case of the prosecution is unpersuasive. The prosecutrix was medically examined for the first time on 07.08.2014. The MLC (Ex.PW15/A) records that the UPT is negative. In other words, the pregnancy test done that day had yielded a negative result. However, as pointed out by Mr Nayak, the MLC also records the history of amenorrhea of two months. Pregnancy is one of the well-known reasons for the same. Thus, even though the MLC did not report that the prosecutrix was pregnant, possibly because of a false result, it did indicate a condition consistent with the petitioner being pregnant.

27. The contention that the prosecutrix had not been subject to any sexual assault because her hymen was found to be not torn, is also without substance. Merely, because the hymen of the prosecutrix was found not torn, does not necessarily mean that she had not been subjected to a sexual assault.

28. The contention that the MLC with regard to her medical examination conducted for the second time on 01.09.2014, also does not indicate that she is pregnant, is unmerited. The said MLC (Ex.PW16/A)

contains a noting “*Admit in LR for MTP*”. This clearly indicates that the prosecutrix was advised for being admitted for medical termination of her pregnancy. It was also advised that the gestation age and her pregnancy be confirmed urgently. The said MLC also records that the hymen of the prosecutrix was not intact. However, that does not mean that the prosecutrix was subjected to any sexual assault or had engaged in any sexual activity between 07.08.2014 and 01.09.2014 and it is well settled that hymen can be damaged for various reasons.

29. The contention that this Court cannot consider her discharge summary, as the same has not been brought in evidence, is also unpersuasive. The prosecutrix was brought to Dr. Baba Saheb Ambedkar Hospital for her medical examination on 01.09.2014, at 3:00 P.M and was sent to be admitted to Labour room for Medical Termination of Pregnancy (MTP). The discharge summary/slip indicates that she was admitted at 04:02PM. The noting on the top clearly mentions the MLC number as SER – 155/14. The said MLC has been brought in evidence as Ex.PW16/A and the discharge summary is an extension of the same and cannot be ignored. The MLC itself mentions that the prosecutrix be admitted to LR for MTP. Thus, her admission is an integral part of her medical examination and the procedures conducted/treatment provided to her.

30. The said discharge summary indicates that the prosecutrix was admitted on 01.09.2014, at 04:02 pm and discharged on 09.09.2014. It further indicates that the prosecutrix was seventeen weeks pregnant and

the abortus was a female fetus weighing 100 grams. The same also records that the exhibits have been handed over to the IO.

31. The contention that the samples of the prosecutrix or the appellant were tampered with is also unmerited. It was contended that since the said samples were sealed with the seal of “MB Hospital Pooth Khurd”, the same indicated that the seals were fabricated because the seals ought to have been of MV Hospital. The said contention is, plainly, unmerited. The samples of the prosecutrix were seized on 07.08.2014 and a seizure memo (Ex.PW6/A) was prepared. A plain reading of the said seizure memo indicates that the concerned doctors had handed over an envelope, containing the said samples sealed with the seal of “MS, MB Hospital, Pooth Khurd”. It also records that along with the said sample, one seal of “MS, MB Hospital, Pooth Khurd” was also taken into possession. Similarly, the seizure memo (Ex.PW12/B) of the samples of the appellant also indicates that the same was sealed with the seal of “MS, MB Hospital, Pooth Khurd” and the specimen seal was also seized.

32. The seizure memo regarding the samples pertaining to the prosecutrix were also signed by WCt. Rajesh. She was examined as PW6 and had testified that after the medical examination of the prosecutrix, the concerned doctor had handed over the sexual assault collection kit in a sealed condition, along with the sample seal to her. She stated that the same was handed over to the IO and she identified her signatures on the seizure memo (Ex.PW6/A). It is material to note that she was not cross-examined despite opportunity.

33. Ct. Satyavir was examined as PW12 and he testified that after the medical examination of the accused, the concerned doctor had handed over one sealed pullanda with the sample seal of the hospital and he had handed over the same to the IO. He also identified his signature on the seizure memo (Ex.PW12/B). He also testified that on 04.09.2014, he had collected one sealed pullanda containing the abortus from the concerned doctor at Dr BSA Hospital, along with the specimen seal. He had handed over the same to the IO (PW18), who seized the same under seizure memo (Ex PW 12/D). Ct. Satyavir Singh also identified his signatures on the seizure memo relating to the seizure of the abortus. The said seizure memo also indicates that the sealed *pullanda* containing the abortus sealed with the seal of “CASUALTY, DR. BSAH 01-07-12 GOVT. OF DELHI” was handed over, along with the said sample seal.

34. The entry in register no.19 (Ex.PW14/A) indicates that the samples of the prosecutrix sealed with the seal of MS, MB Hospital, Pooth Khurd was deposited in the *malkhana*, along with the sample seal. The relevant entry in the entry register no. 19 (Ex.PW14/B) records that in the presence of the witnesses, after conducting of the MTP of the prosecutrix, the concerned doctor had handed over Ct. Satbir Singh, a sealed pullanda containing abortus vide MLC No. 155/2014, which was sealed with the seal of CASUALTY DR. BSAH 01-07-12 GOVT. OF DELHI, along with the sample seal of CASUALTY DR. BSAH 01-07-12 GOVT. OF DELHI.

35. SI Urmil Sharma (PW18) also testified that on 13.08.2014, exhibits of the victim and the accused were sent to FSL. Ct. Satyavir

(PW12) testified that he was once again called to join the investigation on 13.08.2014 and as per the directions of the IO, he took the sealed case property, that is, one sealed envelope containing the samples of the prosecutrix sealed with the seal of “MS, MB Hospital, Pooth Khurd” and one *pullanda* containing the blood sample of the accused, sealed with the seal of “MS, MB Hospital, Pooth Khurd”, along with the two sample seals of “MS, MB Hospital, Pooth Khurd”, FSL Forms and other relevant documents, from the *malkhana* vide RC No. 225/21/14, from the concerned MHC(M). He stated that the same were deposited in FSL, Rohini. He identified his signatures on the Road Certificate (RC)(Ex.PW12/C). He further testified that during the period the case property remained in his possession, it was not tampered with in any manner.

36. Ct. Nagraj was examined as PW13. He testified that he took the sealed case property – sealed parcel, along with a sample seal of “CASUALTY, DR. BSA HOSPITAL”, along with RC No. 253/21/14 from MHC(M) and the same were deposited in FSL, Rohini. He also identified his signatures on the copy of the RC (Ex.PW13/A). He testified to the acknowledgement receipt (Ex.PW13/B) and he identified his signatures on the same. He also affirmed that during the period the case property remained in his possession, it was not tampered with.

37. It is apparent from the above that the prosecution has established that the sample of the accused and the prosecutrix had been kept in a sealed condition and were not tampered with. The said samples were deposited with FSL and the chain of custody of the said samples was

duly established. It is also relevant to note that Ct. Satyavir (PW12) was not cross-examined on the aspect of collecting the samples in the sealed condition and depositing them with the *malkhana* and thereafter, collecting them from *malkhana* and depositing them with FSL. Ct. Nagraj (PW13) and HC Sanjay Shinde (PW14) were not cross-examined at all. Thus, their testimony that the samples remained intact while in their possession remained unchallenged.

38. The FSL Report (Ex.F-1) indicates that three sealed parcels were received. Two parcels were sealed with the seal of “MS MB Hospital Pooth Khurd”. Parcel No.1 contained exhibits of the victim (prosecutrix – her hair, vulval swab, vaginal swab, mouth swab, anal swab, pubic hair, UPT kit and liquid blood in a tube). Parcel No. 2 contained a brown gauze cloth piece described as the blood sample of the accused Mahipal.

39. The third parcel (Parcel no.3) was sealed with the seal of “CASUALTY DR. BSAH 01-07-12 GOVT. OF DELHI” and contained a fetus along with the tissue, described as abortus of the prosecutrix. The DNA examination was conducted on the blood sample of the victim, blood gauze of the accused, and the fetus. The results of the DNA analysis and the conclusion as recorded in the FSL Report are reproduced below:

“RESULTS OF DNA ANALYSIS

One set, each of allelic data of DNA profiles generated from the source of exhibit ‘1h’ (Blood sample of victim) and source of exhibit ‘2’ (Blood gauze of accused) was

found to be accounted in the allelic data of DNA profile generated from the source of exhibit '3' (fetus).

CONCLUSION

DNA Profiling (STR analysis) is sufficient to conclude that the source of exhibit '1h' (Blood sample of victim) is the biological mother and the source of exhibit '2' (Blood gauze of accused) is the biological father of source of exhibit '3' (fetus)."

40. As is apparent from the above, the FSL Report (Ex.F-1) fully corroborates the allegations made by the prosecutrix. The FSL Report (Ex.F-1) leaves no room for doubt that the petitioner had committed the offence for which he was charged. Thus, the prosecution has established its case beyond any reasonable doubt and therefore, the impugned judgment convicting the appellant for committing the offence punishable under Section 6 of the POCSO Act and Section 506 IPC cannot be interfered with and is upheld.

41. Insofar as the sentence awarded to the appellant is concerned, this Court is of the view that the same does not warrant any interference. The appellant is guilty of committing aggravated penetrative sexual assault, punishable under Section 6 of the POCSO Act. Although at the material time, the minimum punishment for committing the said offence was seven years of rigorous imprisonment, this Court concurs with the Trial Court that this is not a case where any leniency is required to be shown. The prosecutrix was under the care of the appellant and he had committed repeated sexual assaults on the child, resulting in the child becoming pregnant. It is also relevant to note that Section 6 of the

POCSO Act was amended by virtue of the Protection of Children from Sexual Offences (Amendment) Act, 2019, with effect from 16.08.2019 and the minimum punishment for committing an aggravated penetrative sexual assault was increased to rigorous imprisonment, for a term not less than twenty years. Since the offence was committed prior to 16.08.2019, there is no bar for imposing a punishment less than twenty years of rigorous imprisonment, but keeping the legislative intent in mind, the sentence awarded by the Trial Court cannot be stated to be manifestly erroneous.

42. In the facts of the present case, this Court is unable to accept that the sentence awarded to the appellant suffers from any error and requires any reduction.

43. The appeal is, accordingly, dismissed.

44. All the pending applications are also disposed of.

OCTOBER 08, 2020
RK

VIBHU BAKHRU, J