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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 19th September, 2023**+ **CRL.L.P.161/2022**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Tarang Srivastava learned APP
for State with Insp. Sachin Mann and
W/SI Sangeeta P.S. Shahbad Dairy.

versus

DINESH @BALA & ANR.

..... Respondents

Through: Mr. Ritesh Patil, Mr. Surender Kumar
and Mr. Pawan, Advocates for R-1.
Mr. Raj Kumar Chandiwal and Ms.
Natasha Rani, Advocates for R-2.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. An application under Section 378 (iii) Cr.P.C has been filed on behalf of the State for seeking Leave to Appeal against the Order dated 15.09.2020 vide which the learned Addl. Sessions Judge-06, Special Court, POCSO, North, Rohini, while convicting the respondent/ accused Dinesh @ Bala under Section 8 of POCSO Act and respondent/ accused Imran under Section 8 read with section 17 of POCSO Act, acquitted respondent Dinesh @ Bala under Section 328/376D IPC and Section 6 of POCSO Act and respondent/ accused Imran under Section 323/376 (D) IPC and Section 6 of POCSO Act.

2. The case of the prosecution is that a complaint was made by child victim 'N' stating that on 11.03.2018 at about 11 A.M while was going to



her tailor, the accused Imran who was known to her, met her and informed that her sister was being beaten up by her husband and that the victim should talk to her sister on telephone. While talking, Imran pushed her inside the room belonging to the uncle of co-accused Dinesh @ Bala, who was already present inside the room. Imran bolted the door from outside and left. Accused Bala gagged her mouth. The other accused Imran returned to the room with a cold drink which he gave to the accused Bala and left. The victim was forced to consume cold drink by accused Bala after which she lost her senses. When she regained her consciousness, she found herself naked and had some pain in her genitals. When she questioned accused Bala as to what had happened, he informed her that he has done the same thing as a husband does to a wife. He also threatened her not to disclose the incident to anyone or else he would kill her. On her complaint, FIR under Section 323/376/328/506 IPC and 4 POCSO Act was registered. The investigations were done and the Charge Sheet was accordingly filed.

3. **Charges** under Section 328/376D of IPC and Section 6 POCSO Act, 2012 were framed against the accused Dinesh @ Bala and accused Imran.
4. The prosecution in support of its case examined 13 witnesses the most significant witness being victim 'N' who was examined as PW1.
5. The statement of the accused were recorded under Section 313 Cr.P.C where they pleaded their innocence.
6. The respondent/ accused also examined two witnesses in support of their defence, who deposed that it was on account of some dispute between them that they had been falsely implicated in this case. Moreover, the accused and the victim arrived at a settlement Ex.DW1/A which had the thumb impression of the mother and sister of the victim.



7. Learned ASJ in the impugned judgment held that the age of the victim was 14 years 7 months and 1 day on the date of incident as her date of birth was 10.08.2003 as per the School record as Ex.PW4/A to Ex.PW4/D.

8. The learned ASJ further considered the testimony of the prosecutrix to conclude that as per her own testimony, she had become unconscious after taking the drink and was not aware of what transpired. The other piece of evidence was the Medical Report. However, in the MLC though it was found that her hymen was torn but it did not reflect any fresh injury. It was held by learned ASJ that the testimony of the prosecutrix was consistent and the contradictions on which reliance had been placed by the accused, were inconsequential. It was concluded that there was no conclusive evidence either of the prosecutrix or by way of MLC or FSL to prove that there had been penetrative assault committed upon her. Considering her testimony and the MLC Report it was held that the offence under Section 6 POCSO Act and Section 376D was not made out against the accused Dinesh @ Bala and he was convicted under Section 8 of the POCSO Act. Accused Imran was held guilty for the abatement to the said crime and was convicted under Section 8 read with Section 17 of the POCSO Act.

9. The **State being aggrieved** of the acquittal of the two accused under Section 6 POCSO Act and Section 376D/328 IPC, has preferred the present application seeking Leave to Appeal against the impugned judgment.

10. **Submissions heard.**

11. Essentially, the case of the prosecution rests on the testimony of the prosecutrix. She as per her own testimony, has been consistent in stating that after consuming the cold drink she became unconscious and on regaining her senses she found herself naked and felt pain in her genitals.



She had not been able to give any evidence about what had transpired with her while she was unconscious. The MLC as mentioned above, also does not support penetrative assault. There is thus, no ocular testimony or scientific evidence of what had happened.

12. We find that learned ASJ has given a reasoned judgment and rightly given the benefit to the respondent for the evidence under Section 6 POCSO Act as there is no evidence of any penetrative assault having been proved against the respondents. The circumstances as described above may lead to conjectural inferences, but under the criminal jurisprudence, the proof has to be beyond reasonable doubt. It is an unfortunate incident where there is no cogent evidence whatsoever of penetrative assault. In this context it may also be mentioned that learned counsel for the respondents/ accused had stated that the parties had settled their differences and the prosecutrix has already got married to the accused Dinesh @ Bala.

13. We conclude that learned ASJ has rightly convicted the respondents/ accused Dinesh @ Bala under Section 8 of the POCSO Act and accused Imran under Section 8 read with Section 17 of the POCSO Act and there is no ground for granting Leave to Appeal for the offence under Section 6 POCSO Act and Section 376D IPC and the application is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 19, 2023/va