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

% *Date of decision: 16th August, 2023*

+ **CRL.L.P. 263/2023**

STATE

..... Appellant

Through: Ms. Manjeet Arya, APP for State with
S.I. Neeraj, PS Dwarka South & S.I.
Prabhakaran, PS Dabri.

versus

VIKAS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 13278/2023 (Condonation of delay)

1. *Vide* the present application, the applicant/appellant seeks condonation of 346 days' delay in filing the present appeal.
2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 346 days in filing the present appeal is condoned.
3. Accordingly, the present application is dismissed.

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4. The present Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 has been filed on behalf of the State/appellant against the Judgment dated 01.04.2021 passed by the learned Additional Sessions Judge (FTSC) (POCSO)-01, South West, Dwarka Courts, Delhi in SC No. 441525/2016, wherein the accused/respondent was acquitted of the offence



punishable under Section 6 read with Section 5(m) of the POCSO Act, 2012 registered *vide* FIR No. 477/2016 at Police Station Dabri, Delhi.

5. **The facts in brief** are that the FIR No. 477/2016 under Sections 4 and 6 of the POCSO Act, 2012 was registered at Police Station Dabri, Delhi on the Complaint dated 03.06.2016 of Complainant 'T', wherein she stated that the child victim 'M', who is a Burmese Refugee registered with UNHCR, was physically assaulted on 06.05.2016 at about 08:00 to 08:30 A.M. by her neighbour who stays with his brother on the first floor in the same building. The respondent took the child victim 'M', who was 3 years old, to his room and behaved inappropriately and the child victim was forced by the respondent to touch his private, kiss it and the respondent made her drink the liquid from his private part. She further alleged that the respondent applied oil on her private part but when she saw the private part of child victim 'M', she did not see any injury marks on it. On the basis of said complaint, the present FIR No. 477/2016 under Sections 4 and 6 of the POCSO Act, 2012 was registered.

6. The learned Additional Sessions Judge took cognizance of the offences punishable under Sections 4 and 6 POCSO Act, 2012 on 27.03.2017. On the basis of charge-sheet, the offence under Section 6 read with Clause (m) of Section 5 of the POCSO Act, 2012 was made out against the accused/respondent.

7. The Prosecution examined total 16 witnesses. The child victim 'M', who had turned 5 years of age, appeared as PW1 and deposed about the entire incident, but she failed to identify the accused/respondent as the culprit in the present case. She was cross-examined by the learned Additional Public Prosecutor for State, but she was still not able to identify



the accused/respondent.

8. Likewise, the mother of the child victim 'M' appeared as PW2 who deposed that on 06.05.2016, when she went to the first floor in search of the child victim, she found that the child was in the house of one Nepali on second floor where she was watching TV. She testified that she took the child victim in her room at third floor and as she gave bath to her, the child victim complained about pain in her private part. On enquiry, the child victim revealed about the incident and she made a Complaint dated 03.06.2016 Ex.PW2/A on the basis of which FIR No. 477/2016 was registered. The child victim was medically examined *vide* MLC Ex. PW2/B. A statement under Section 164 Cr.P.C., 1973 Ex. PW2/C was also recorded.

9. The learned Additional Sessions Judge, considered the entire evidence of the Prosecution and observed that the Prosecution had miserably failed to establish the identity of the accused and thus, accused/respondent was acquitted.

10. Being aggrieved, the present Appeal has been preferred on behalf of the appellant/State, wherein the main ground agitated for seeking leave to appeal is that prior to her testimony in the Court on 04.06.2018, the child victim had correctly identified the accused/respondent on every occasion as the person who had committed the offence upon her. The learned Additional Sessions Judge erred in concluding that the identity of the accused/respondent had not been established. The testimony of the child victim as well as her mother has not been appreciated in the correct perspective and, therefore, the accused/respondent has wrongly been acquitted of the offences punishable under Section 6 read with Section 5(m)



of the POCSO Act, 2012.

11. Submissions heard.

12. It is a settled proposition of law that the Prosecution has to prove its case beyond reasonable doubt. Though, as per the Prosecution, the child or her mother may have identified the respondent, but the evidence has to be led during the trial to be made a basis of conviction. The child victim while deposing in the Court had categorically failed to identify the accused/respondent as the perpetrator of the crime. No other prosecution witness has deposed about the accused/respondent being the culprit of the crime.

13. Accordingly, in the absence of there being any evidence led by the Prosecution in the Court to prove the identity of the accused/respondent/perpetrator of crime, the benefit of doubt has rightly been extended to the accused/respondent.

14. In view of above, we find no infirmity in the impugned Judgment dated 01.04.2021 and, therefore, the present Leave to Appeal is held to be without any merit and the same is hereby dismissed.

SURESH KUMAR KAIT, J

NEENA BANSAL KRISHNA, J

AUGUST 16, 2023

S.Sharma