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

% ***Date of decision: 21.07.2023***

+ CRL.L.P. 213/2022

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Tarang Srivastava, Additional
Public Prosecutor for State with SI
Vandana, PS Hari Nagar

Versus

ASHISH KUMAR & ANR.

.... Respondents

Through: Mr. Rajiv Mishra, Mr. Sazeem Khan
& Ms. Suruchi Yadav, Advocates

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. The present appeal has been preferred by the petitioner-State against the judgment and order dated 26.11.2019 passed by the learned court of Sessions in FIR No.109/2012, registered at Police Station Hari Nagar, Delhi for the offences under Sections 376 (2)(g)/506/34 IPC, whereby respondents-accused have been acquitted of the offences charged with.
2. The facts of the present case, as enumerated in the petition, are that on 20.03.2012, the complainant (prosecutrix) filed a complaint in the police



station that on 19.03.2012 at around 05:00 pm in the evening while she was standing at Sagarpur Bus Stand a boy, namely, Ashish offered her to accompany him to the market and thereafter, took her to his house, i.e. C-4, Janakpuri, where no one was present. Respondent No.1-accused made physical relations with her and also called his friend respondent No.-2-accused to his house. The complainant stated that respondent No.2 reached on a motorcycle and she along with respondents No.1 and 2 went to Gurugram on his bike, from where they took her to Chanakya Hotel, Gurugram. She was forced to drink liquor, thereafter both of them committed wrong acts upon her. Complainant further stated that thereafter the respondents left her on railway track from where two boys and two girls lifted her and took her to the hospital in unconscious condition. She further stated that she told her name, however, could not tell her father's name and residential address. She also stated that she could identify both the accused-respondents as well as the flat where they had committed wrong acts upon her. On the complaint of the prosecutrix-complainant, who was aged 17 years old on the date of incident, her medical examination was conducted at AIIMS Trauma Centre and FIR No.109/2014 for the offence under Section 376/506/34 IPC was registered at Police Station Hari Nagar, Delhi.

3. After completion of the investigation, the case was committed to the Court of Sessions and charges against the accused persons were framed for the offences punishable U/s 376 (2) (g) IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined 18 witnesses in support of its case. PW-2 (Victim); PW-3 Neha Chauhan, PW-4 Anjali Tiwari, PW-5 Deepak and



PW-6 Ankit were the public witnesses who had picked up the prosecutrix in an unconscious state from the railway track and got her admitted to Charak Palika Trauma Centre, from where she was first referred to AIIMS and then to Safdarjang Hospital. PW-7 is the father of victim. Besides these witnesses some official witnesses, Const. Rajender Kumar (PW-1), HC Sanjay Kumar (PW-8), Sandeep Sharma (PW-9), Constable Ashok Kumar (PW-10), Constable Vikram Yadav (PW-11), HC Rajiv Kumar (PW-14), SI Ashwani Kumar (PW-15) and IO Inspector Usha Sharma (PW-18) were examined. Thereafter, statement of accused persons/respondents under Section 313 Cr.P.C. was recorded wherein they pleaded innocence and stated that they had been falsely implicated in this case. However, no evidence was led by them in their favour.

5. Learned Trial court vide impugned judgment and order on sentence dated 26.11.2019 acquitted the accused persons-respondents herein from all the offences charged with by giving them benefit of doubt.

6. The present petition has been preferred by the petitioner-State against the impugned judgment and order dated 26.11.2019 on the ground that the Trial court has acquitted the accused persons-respondents on the basis of imagined inferences and by drawing wrong conclusions which were not based on the factual matrix of the case. Petitioner-State has averred that the Trial court has wrongly come to the conclusion that the accused persons were not guilty of offences charges with despite the fact that there is ample material on record to establish that the respondents/accused had committed the offence.



7. During the course of hearing, learned APP for State submitted that during her examination-in-chief, the prosecutrix had supported the allegations against the accused persons. However, in her cross-examination, she turned hostile, based upon which the benefit of doubt has been given to the respondents, whereas the trial court should have borne in mind that the evidence and testimony of other prosecution witnesses and documentary evidence, including the medical evidence on record, proved the case against the respondents-accused persons beyond reasonable doubt.

8. Learned APP for State further submits that at the time of incident the prosecutrix was minor and her non-resistance could not be made a ground to acquit the respondents-accused persons. Hence, impugned judgment and order dated 26.11.2019 has been sought by the petitioner, to be set-aside.

9. To the contrary, learned counsel for respondents-accused submits that there are serious infirmities in the case of prosecution and the learned trial court has rightly acquitted the respondents by giving them benefit of doubt.

10. During the course of hearing, learned counsel for respondents has drawn attention of this Court to the statement of victim recorded under Section 164 Cr.P.C., her examination-in-chief and cross-examination, to argue that victim had changed her statements and so, her testimony is doubtful and not trustworthy. There are material contradictions, improvement and later denial of the allegations leveled against respondents. Even the independent witnesses produced by the prosecution were not known to the victim; the FSL report did not support the case of



prosecution and at the time of alleged incident, the victim was more than 16 years of age and so, respondents have been rightly acquitted in this case. Hence, the present petition deserves to be dismissed.

11. Upon hearing learned counsel for the parties and on perusal of impugned judgment dated 26.11.2019 and trial court record placed before this Court, we find that on 20.03.2012, SI Ashwani Kumar, police station Vasant Kunj received MLC in respect of prosecutrix from AIIMS Trauma Centre and he along with the prosecutrix and her parents reached Sagarpur crime spot and thereafter, she made a complaint (EX. PW2/A) to SHO Hari Nagar for having been raped by respondents-accused on the previous day i.e. 19.02.2012. On her complaint, FIR under Sections 376/506/34 IPC was registered against the respondents/accused.

12. Submissions heard. We have gone through the testimony of witnesses recorded before the learned trial court.

13. Upon analyzing the statements of afore-noted witnesses, this Court finds that with regard to age of prosecutrix (PW-2), her father, PW-7, has not been able to bring on record any document issued by MCD to prove the age of his daughter/ prosecutrix. However, he stated that he had filed an affidavit at the time of her admission in the school. He also stated that she was less than 17 years of age. PW-13, witness from the school, in his evidence has stated that the date of birth of prosecutrix as per records was 01.01.1996. So, on the date of alleged incident i.e. 19.03.2012, she was 16 years and 02 months of age. The learned trial court on this aspect has rightly held that prosecution has not been able to prove the right age of the



prosecutrix and though she was less than 18 years of age but more than 16 years of age. In the absence of any documentary evidence on record, the possibility of prosecutrix above 16 years of age cannot be ruled out and so, provisions of Section 375 IPC (sixthly), which was in force in 2012, shall hold the field and would rescue the respondent/accused in this respect.

14. On perusal of testimony of the other witnesses, we find that the primary witness i.e. the prosecutrix (PW-2) has resiled from her allegations made in earlier statements before the learned MM as well as before trial court during her examination-in-chief. This Court is conscious that neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and even if the primary witness turning hostile, but if the medical evidence and other corroborative evidence on record, do not substantiate the prosecution case, the Court has no option but to take a contrary view.

15. In the present case, though the MLC of the prosecutrix suggested sexual intercourse, but as per FSL report (Ex. PW18/H), DNA of Dinesh @ Monu was not found on the exhibits of the prosecutrix and as such, the scientific evidence brought on record did not corroborate the prosecution case. Further, statements of public witnesses, namely Neha Chauhan (PW-3), Anjali Tiwari (PW-4), Deepak (PW-5) and Ankit (PW-6) as well as official witness HC Rajiv Kumar (PW-14) did not support the prosecution case.

16. In view of aforesaid, finding no fault in the opinion rendered by the trial court, the judgment and order dated 26.11.2019 in FIR No.109/2012,



registered at Police Station Hari Nagar, Delhi, is hereby upheld. The present petition is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 21, 2023
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