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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 28th August, 2023

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CRL.L.P. 449/2022, CRL.M.A.18613/2022

STATE

..... Petitioner

Through: Ms. Manjeet Arya, APP for State.

versus

SUSHIL@EKKA AND ORS.

..... Respondents

Through: Mr. Manoj Verma, Advocate for
accused Jaiveer and Sushil @ Ekka.
Mr. Gaurav Singh Adhana, Ms.
Varsha Tanwar and Ms. Sadhna,
Advocates for accused Sunny.
Insp. Sanjay Dahiya, P.S. Pul
Prahladpur.

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. 18613/2022 (Condonation of delay)**

1. *Vide* the present application, the petitioner/State seeks condonation of 868 days' delay in filing the present Criminal Leave Petition.
2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 868 days in filing the present Criminal Leave Petition is allowed.
3. Accordingly, the application is disposed of.

CRL.L.P. 449/2022

4. The present **Criminal Leave Petition** under **Section 378(4) of the Code of Criminal Procedure, 1973** (*hereinafter referred to as 'Cr.P.C., 1973'*) has been filed on behalf of the petitioner/State seeking Criminal Leave to Appeal against the Judgment dated 22.01.2020 whereby the



learned Additional Sessions Judge-01, POCSO Act, South-East District, Saket Courts, New Delhi acquitted the accused/respondents Sushil @ Ekka, Jaiveer @ Titu, Lalit and Sunny of the charges punishable under Sections 363/342/506/34/376(g) of the Indian Penal Code, 1860 (*hereinafter referred to as* 'IPC, 1860') registered *vide* FIR No. 181/2011 at Police Station Pul Prahalad Pur, New Delhi.

5. The case of the prosecution in nut shell is that in the month of March, 2010, the respondents Sushil @ Ekka, Jaiveer @ Titu, Lalit and Sunny along with one Aditya (not arrested and not charge sheeted) kidnapped the minor girl Ms. A aged about 17 years in a Swift Car from the lawful guardianship of her parents and thereafter took her to Shooting Range Tughlakabad, where they gang raped her and also criminally intimidated her by threatening to kill her in case she disclosed about the incident to anybody.

6. A **charge sheet** was filed; and the *Charges* for the offence under Section 363/342/376(g)/506/34 IPC were framed to which the accused/ respondents pleaded not guilty.

7. The prosecution in support of its case examined **20 witnesses**, the most material being PW1 Ms. AS the victim, PW2 Ms. PS mother of the victim and PW7 Mr. PS father of the victim. The learned ASJ highlighted the material contradictions and consistencies in the testimony of the victim and the surrounding circumstances and gave benefit to the respondents who were acquitted of all the charges.

8. Aggrieved, the present appeal has been preferred by the State.

9. It is argued by the State wherein it is essentially claimed that the statement of the victim clearly indicts the respondents of having gang raped her. The learned ASJ had also observed that the testimony of the



prosecutrix was consistent despite which the respondents have been acquitted. Hence, the leave is sought to appeal against the judgment of acquittal.

10. Submissions heard.

11. The prosecution's case is of gang rape of the minor girl after being kidnapped by the respondents. According to the prosecution the girl went missing on 03.06.2011 in respect of which a complaint was lodged by her father which was registered vide DD No.17A Ex.PW19/A. The father had stated that the prosecutrix who was about 19 years, was found missing from the house when he woke up at 05:00 A.M. On checking, he found that she had taken with her cash in the sum of Rs.25,000/-, one gold necklace weighing about 5 tolas and had also taken 5-6 pairs of new clothes. He suspected that she may have gone with one Lalit S/o Babu Lal who was residing in the lane behind their house. No FIR was registered by the Police on the complaint.

12. Admittedly, two earlier written complaints had been given to the SHO, P.S. Pul Prahladpur by the victim herself. Her first complaint dated 03.03.2011 Ex.PW1/DB mentioned that she had no complaints and she did not want to keep any connection with any boy and on this matter she had an altercation with her mother. However, in future in case anything wrong happens to her, her family would not be responsible for it. The prosecutrix again had given a complaint dated 27.04.2011 Ex.PW1/DC to similar effect, wherein she had stated that her brother and father suspected that she meets one Lalit W/o Babu Lal Tentwala. Though after her brother and father objected, she has not been meeting him or keeping any connection with him. Lalit also does not try to meet her. On 11.03.2011 her father and brother



had intimidated her to give a complaint against Lalit, but there is no truth in the said complaint. On the said date her brother and father gave her beatings for having gone to meet Lalit and she had suffered scratches on her neck, but she did not want any medical examination conducted. She had further complained that her father and brother tells her to earn own livelihood but the minute she steps out, they suspect her of going to meet Lalit. She did not want to stay with her parents, but is going to stay with her friend who resides in Railway Colony. In case any incident of beating happens, her parents and brother and not Lalit, would be responsible for the same.

13. From these two earlier complaints admittedly made by the prosecutrix in the Police Station in the month of March and April, 2011, it is proved that she was friendly with respondent Lalit which was not acceptable to her parents and brother and they had been raising objections consistently. The prosecutrix for this reason was not inclined to continue to stay with them in her parental home. She in fact, decided to leave the house to stay with her friend on 03.06.2011.

14. The other relevant fact is that she herself returned to Police Station Pul Prahaladpur on 10.06.2011 and S.I. Kishore Kumar recorded DD No.55B Ex.PW19/D. The prosecutrix stated that she had left her parental home on 03.06.2011 on her own as she was upset with her parents. She took cash and jewellery and stayed in the house of her friend. When she came to know that her family members have registered a missing report, she had telephonic conversation with her mother twice i.e., on 05.06.2011 and 09.06.2011. Thereafter, she had come to Police Station on 10.06.2011 where her parents were also called and she told them that she did not want to go with them to the parental home and that none had lured or forcibly taken her



away. She had gone to stay with her friend whose name and address she did not want to disclose for the fear of he also being harassed. No action was thus, taken on the DD entry which was closed.

15. This was the first narration by the prosecutrix in the Police Station recorded on 10.06.2011 after she was found missing on 03.06.2011. She stated categorically that she of her own volition had gone to stay with her friend whose name she did not want to disclose. In addition to this, the prosecutrix had also written one letter dated 10.06.2011 Ex.PW1/DA to SHO P.S Pul Prahaladpur, wherein she again had stated that she had left the house as she was annoyed with her parents who had given her beatings. She also stated that she did not want to return back to her house. In addition she categorically stated that nothing wrong has happened to her. In this letter as well, there was no allegation of kidnapping or gang rape by the accused persons.

16. S.I. Kishore Kumar also recorded DD No.37A on 11.06.2011 Ex.PW19/J wherein it was recorded that the prosecutrix was taken to AIIMS Hospital, where she refused to get her medical examination done. She then expressed her desire that she may be taken to the Police Station and her parents may also be called there. Accordingly, her parents were called to the Police Station where her father started pressurising her to make a false complaint against Lalit so that the money and jewellery could be recovered. The victim persistently refused to make the complaint and thereafter refused to go with the parents. The father of the prosecutrix even threatened the Police that he should write a complaint against Lalit which was resisted by them.

17. This DD entry makes it evident that there was no incident of



kidnapping or gang rape which had happened but the prosecutrix herself had gone to her friend's house whose name she did not disclose as she was disgruntled with her parents. Since March, 2011 till 11.06.2011 various complaints have been made which were recorded vide DD entry wherein the complainant was persistent in saying that she herself had gone to stay with her friend and nothing wrong had happened to her. In this backdrop, it is pertinent to appreciate the missing report lodged by the father on 03.06.2011 wherein he suspected that she has left with respondent Lalit and has taken money, jewellery and clothes from the house.

18. Subsequently, after the matter was closed at the Police Station, after about 18 days a complaint Ex.PW1/A was filed by the father before the learned ACMM, on 28.06.2011. Prior to this, the victim had also given a complaint dated 17.06.2011 Ex.PW1/E to the Police Commissioner on which an endorsement was made and FIR was registered on 09.07.2011. In this formal complaint which became the basis of FIR she had claimed that while she was studying in St. Columbus School, Faridabad, she was being stalked by the accused persons, which compelled her to change her school to Sarvodya Kanya Vidyalaya in Saket in Class 11th. On 03.06.2011 while she was going to her school by bus, the accused Ekka, Jaiveer and one more who is resident of Tughlakabad, stopped the bus by putting their Swift Desire Car alongside and forcibly took her in the car to Shooting Range, Tughlakabad where they kept her confined till 10.06.2011 and repeatedly gang raped her.

19. It is pertinent to note the inconsistencies and contradictions which emerged in her cross-examination wherein she admitted that neither her complaint Ex.PW1/A nor complaint Ex.PW1/E mention the name of



accused “Ekka” and “Jaiveer” to assert that they also used to follow her to the bus stand or come to her school in the morning. She had also not stated in her complaint that after rape, she was left at Mata Ka Mandir, MIG, Pul Prahladpur as was deposed by her in her examination-in-chief recorded on 07.01.2012. It may be noted that as per the DD entry recorded on 10.03.2011, she herself had gone to the Police Station while in her complaint Ex.PW1/E she had alleged that she had been left at Mata Ka Mandir, Pul Prahladpur by the accused persons which again is blatantly in contradiction to her own statement.

20. The entire testimony in the Court was in stark contradiction to her earlier complaints made in March-April, 2011 to the police about her parents resistance to the friendship with Lalit. Not only this, after her return on 10.06.2011, she again reiterated her claim of having left her home on her own. So much so, the father who was aware of her friendship had stated so in his first missing complaint dated 03.6.2011. The inconsistencies in the complaints and her cross-examination clearly create a doubt on her testimony.

21. The learned ASJ has further referred to MLC dated 10.06.2011 wherein while refusing her gynaecological examination, she gave her history to the Doctor as *“according to the victim she left the house on 03.06.2011 and went to her friend Rozy’s house after some conflict at home without the knowledge of the parents and returned to the Police Station today”*. Even at the time of her medical examination, she did not inform the Doctor about the alleged gang rape.

22. Significantly, as observed by the learned ASJ, as per her testimony she had been in touch with her parents on 05.06.2011 and 09.06.2011, but



the CDR records of her mobile phone have not been produced which could have also corroborated the testimony of the petitioner.

23. In the light of the aforesaid discussion, it is evident that this statement/ complaint of the prosecutrix was an afterthought and essentially made under the pressure of her parents with an intent to recover money and jewellery that was evidently taken by the prosecutrix when she left the house on 03.06.2011. Pertinently, after the prosecutrix returned on 10.06.2011, in her statement made in the presence of her parents she did not want medical examination, and the DD Entry was closed. Interestingly, the complaint was then made to Commissioner of Police on 17.06.2011 and also to learned ACMM on 28.06.2011 which ultimately led to registration of FIR on 09.07.2011.

24. The learned ASJ vide detailed judgment dated 22.01.2020 has rightly concluded that the testimony of the prosecutrix was rife with inconsistencies and contradictions which made her testimony wholly unreliable and thus, acquitted the accused persons/respondents.

25. We find no merit in the present Criminal Leave Petition seeking Criminal Leave to Appeal against the impugned Judgment dated 22.01.2020, and the same is hereby dismissed along with pending application, if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2023/va