



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

% **Reserved on: July 12, 2023**

Pronounced on: September 20, 2023

+ **CRL.L.P. 210/2021**

STATE NCT OF DELHI

..... Petitioner

Through: Ms. Shubhi Gupta, Additional Public
Prosecutor for State with
Inspector/SHO Gurmail Singh &
SI Prakash Kashyap

Versus

PAWAN RAM

..... Respondent

Through: Mr. C. Shekhar Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. Present petition has been filed on behalf of the State seeking setting aside of the impugned judgment dated 30.10.2019 passed by learned court of Sessions whereby the respondents were acquitted in Sessions Case No.8722/2016 pertaining to FIR No.47/2014, registered at police station Inderpuri, Delhi for the offences punishable under Sections 363/366/376 of the IPC.
2. The facts giving rise to the present petition are that on 26.02.2014, a PCR call vide DD No.52A was made at about 11:44 PM by the complainant,



that his daughter had gone to the market and she was missing since 8 PM on the said day. The complainant father stated that despite best efforts and inquiring from relatives and persons known to him, he could not trace his daughter. On his complaint, FIR in question was registered for the offence under Section 363 IPC.

3. The investigation originated and during the course of investigation, the complainant father revealed that his daughter was in talking terms with a boy, who earlier resided in the neighbourhood and drove indigo car bearing registration no.UP-14-BQ-4939 and has now shifted to Todapur, Dehi. The complainant's father informed the police that employer of the boy resided in New Rajender Nagar, Delhi. The police reached New Rajender Nagar and recovered the victim from the said car which was in the possession of the boy/accused.

4. The statement of the victim under Section 161 Cr.P.C. was recorded and she revealed that she was raped by respondent/accused-Pawan Ram. Her medical examination was conducted on 27.02.2014 wherein in the history given to the doctor, the victim alleged forcible sexual intercourse by a known person in a car in the parking area.

5. On the next day, i.e. on 28.02.2014, statement of the prosecutrix under section 164 Cr.P.C. was recorded before the learned Metropolitan Magistrate wherein the victim alleged that respondent/accused had established physical relations with her against her wishes. The respondent/accused was arrested and his medical examination was also conducted. To establish the age of the victim, investigation was made from her school wherein as per school record, her date of birth was 14.09.1997 which showed that the victim was 16 years of age on the date of alleged



incident. On completion of investigation, chargesheet under Sections 363/366/376 IPC and Section 4 of Prevention of Children from Sexual Offences Act, 2012 (POCSO), was filed. The charge under Section 4 of POCSO Act and under Sections 363/366/376 was framed against the respondent-accused, to which he pleaded not guilty and claimed trial.

6. The prosecution examined 20 witnesses to substantiate its case. The respondent-accused, in his statement recorded under Section 313 Cr.P.C., denied all the allegations and examined one witness in his defence.

7. After completion of the trial, learned trial court vide impugned judgment dated 30.10.2019 acquitted the respondent-accused of the charges framed with.

8. Aggrieved against the acquittal of respondent-accused vide judgment dated 30.10.2019, the present petition has been filed by the State seeking leave to appeal against thereof.

9. To manifest case of the prosecution, learned Additional Public Prosecutor for State submitted that the judgment passed by the trial court is not sustainable in the eyes of law, as the same is been based upon presumption, conjectures and surmises. He further submitted that the learned trial court has not properly appreciated the evidence on record which led to acquittal of the accused.

10. Learned Additional Public Prosecutor for State also submitted that the respondent/accused was 16 years of age at the time of offence, which has been duly proved by the school record placed before the trial court and that the school certificate is the best evidence on record to prove the age of the victim/prosecutrix. On this aspect, the prosecution has further relied upon the statement of the complainant, who is father of the prosecutrix, who



submitted that he got married in the year 1996 and his first child (prosecutrix) was born after one year of his marriage and mentioned her date of birth as 14.09.1997.

11. He also submitted that in her statement recorded under Section 164 Cr.P.C. as well as before the trial court, the prosecutrix has supported the case of prosecution, which establishes that the respondent-accused had kidnapped the minor girl and so, the offence punishable under Section 366 is clearly made out.

12. Also, the as per FSL report, human semen was detected on the vaginal secretion and cervical mucus of the prosecutrix. Even the DNA generated was similar to the DNA generated from the blood sample of the accused. which is in favour of the State and thus, the trial court has erred in ignoring the FSL report which proves sexual intercourse and since the prosecutrix was below 16 years of age, offence punishable under Section 4 of POCSO is clearly made out.

13. Lastly, learned Additional Public Prosecutor for State submitted that based on minor discrepancies in the prosecution case, the learned trial court has erroneously acquitted the respondent-accused and the present petition seeking leave to appeal against the impugned judgment deserves to be allowed.

14. Upon hearing, we find that the issue for consideration before this Court is as to whether at the time of alleged incident, the prosecutrix was minor or not. The complainant/ father of the prosecutrix, in his in his cross-examination has stated that he got married on 21.04.1996 and his first child i.e. prosecutrix was born after one year of his marriage. Thus, *prima facie* date of birth of the prosecutrix is 14.09.1997, however, has not been relied



upon by the learned Trial Court.

15. In our view, the deposition of father of prosecutrix is sufficient to grant leave to appeal.

16. The present petition is allowed and accordingly disposed of.

Crl. A. No...../2023 (to be registered)

17. Admit.

18. Notice issued.

19. Learned counsel for respondent accepts notice of the admission of the appeal.

20. Registry is directed to assign number to the appeal, prepare e-paper book and provide its copy to learned counsel for respondent-accused before the next date of hearing.

21. Respondent shall appear before the learned Joint Registrar on 03.10.2023 and be admitted to bail on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount.

22. Renotify for final hearing on 31.10.2023.

23. Parties are directed to file written submissions not exceeding five pages, with copies of relevant judgments/decisions relied upon by them within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 20, 2023/r/rk

CRL.L.P. 210/2021

Page 5 of 5