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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 18th October, 2023***+ **CRL.L.P. 1/2022**

STATE NCT OF DELHI Petitioner

Through: Mr. Tarang Srivastava, APP for State.

versus

DABLOO KUMAR @ PANDIT Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The present Petition under Section 378(1) 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 Leave to Appeal against the Judgment dated 05.02.2020 passed by the learned Additional Sessions Judge, North-06, Special Court, POCSO, Rohini District Courts, Delhi, whereby the respondent/accused was acquitted of the offences registered under Section 376 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as "POCSO Act, 2012"*) vide FIR No. 446/2014 at Police Station Swaroop Nagar, Delhi.

2. The case of the prosecution is that the FIR No. 446/2014 under Section 376 of IPC, 1860 and Sections 3 and 4 of POCSO Act, 2012 was



registered at Police Station Swaroop Nagar on the Complaint dated 13.09.2014 made by the victim/prosecutrix “P”. The Complaint stated that in the intervening night of 12-13.09.2014 while she was sleeping on the terrace of her house, she was raped by the respondent/accused in the night at about 01:00 A.M.

3. The investigations were carried out and the statements of the witnesses were recorded. The respondent/accused was arrested. The victim/prosecutrix “P” was medically examined and her samples were sent to FSL for DNA profiling.

4. On completion of the investigations, the **Charge Sheet under Section 376 of IPC, 1860 and Sections 3 and 4 of POCSO Act, 2012**, was filed.

5. **The charges under Section 376(2)(i) of IPC, 1860 and under Section 6 read with 5(m) of POCSO Act, 2012** were framed against the respondent/accused were framed by the ASJ, to which he pleaded not guilty.

6. **The prosecution in support of its case examined total 14 witnesses**, the most material ones being the victim who appeared as PW1, her Sister who appeared as PW2 and her mother as PW3 respectively.

7. **The statement of the respondent/accused** was recorded under Section 313 of Cr.P.C., 1973 on 27.02.2017 wherein he pleaded his innocence.

8. **The learned Additional Sessions Judge** considered the material contradictions in the testimony of the victim/prosecutrix and concluded that the incident as narrated by her was highly improbable and gave the benefit of doubt to the respondent/accused and consequently, acquitted the accused of all charges.

9. Aggrieved by the Judgment dated 05.02.2020, **the petitioner/State**



has preferred the present petition seeking Leave to Appeal against the Judgement dated 05.02.2020.

10. Submissions heard of the learned counsels for the parties and the documents and evidence perused.

11. The star witness of the prosecution was PW1/victim/prosecutrix “P”. she was proved to be around 12 years of age on the date of incident, which fact has not been challenged or refuted by the respondent/accused.

12. The other aspect for consideration is that whether the commission of the offences was proved beyond reasonable doubt. PW1/victim/prosecutrix “P” deposed that in the intervening night of 12-13.09.2014 at about 01:00 A.M. while she was sleeping on the terrace of her house with her sister who was also sleeping along side, the respondent/accused forcibly opened her *Salwar* and committed sexual assault on her by putting his urinary part in her vagina. Her sister woke up and raised an alarm and called their mother. Thereafter, the police was called but the respondent/accused absconded.

13. The statement of the victim/prosecutrix was recorded under Section 161 Cr.P.C Ex.PW1/A. Thereafter, the statement under Section 164 of Cr.P.C., 1973 was recorded by the learned Metropolitan Magistrate Ex.PW1/B.

14. Essentially, in her examination-in-chief, the victim/prosecutrix had been consistent with her statement given to the Police under Sections 161 and 164 of Cr.P.C., 1973. However, certain glaring admissions were made by her in the cross-examination. The most significant admission made by the victim/prosecutrix in her cross-examination is that about 15 days prior to the date of incident, the husband of her elder sister, Munni along with his brother had a fight with the respondent/accused. The quarrel on an earlier



date again raises a suspicion about the genuineness of the incident and gives a motive for false implication.

15. The victim/prosecutrix asserted that she along with her sister who is married but whose husband was away, went to the terrace of their room in the night to sleep. The victim/prosecutrix clarified that there is no staircase to the roof, but they climbed up the water pipe to reach the terrace.

16. It was also explained by her that all the houses were close by and “*a person can easily climb up there from the adjacent plot which is lying vacant*”. It was further admitted that any of the tenants residing in the property could come and sleep on the terrace.

17. To comprehend the place of occurrence, it is pertinent to refer to the site plan Ex. PW1/C. The complaint’s house is shown at ‘Point B’ on one end of the row of houses/rooms while the house of the respondent/accused on the terrace of which the offence is alleged to have been committed, is perpendicular, located at the end of the row of rooms with a gallery in between. The room of the prosecutrix is at a distance from that of the respondent/accused. They are not adjacent to one another and had a gallery in between making it not convenient for a person to cross from terrace of the house of the complainant to the terrace of the accused/respondent.

18. If the testimony of the victim/prosecutrix was to be believed, then she should have been sleeping on the terrace of her own room, not on the terrace of the house of the respondent/accused where allegedly the offence was committed.

19. Significantly, as per the testimony of the victim/prosecutrix, by the time she raised an alarm and her sister woke up, the respondent/accused was able to abscond. On hearing her cries, the mother came to the roof and the



police was called. An aspect of immense importance is that according to her testimony, her sister was sleeping nearby when the respondent/accused allegedly removed her *Salwar* and committed rape on her. It is difficult to comprehend how a person can commit such a crime like rape with another person sleeping nearby and not getting to know about the offence. According to the victim, her sister woke up only after the commission of offence when she made a noise. The entirety of circumstances seem to be highly improbable. When the respondent/accused had approached her, she had ample opportunity to raise an alarm, especially when her sister was sleeping next to her, but she failed to do so.

20. The victim/prosecutrix explained that she was not able to raise any alarm or noise when the crime was being committed as the respondent/accused had gagged her mouth with his hand, while he used the other hand for commission of offence. Furthermore, she remained gagged by the respondent for about an hour. The exaggeration by the victim/prosecutrix is blatantly evident from her cross-examination.

21. As observed by the learned Additional Sessions Judge, it is difficult to comprehend how a person can gag the mouth of a victim with one hand and commit this offence with his other hand. The testimony that she remained gagged for an hour makes the entire incident highly implausible and improbable.

22. It is inescapable that the MLC Ex.PW6/A dated 13.09.2014 also records that there was no sign of sexual assault upon the victim/prosecutrix. Her hymen though was found torn, but there was no indication that it was a fresh rupture. No fresh external injury was found on the body of the victim/prosecutrix.



23. Further, her samples/exhibits that were collected at the time of medical examination which were sent for FSL examination, also did not support the version of the victim/prosecutrix, as no semen could be detected on the exhibits.

24. Learned Additional Sessions Judge after considering all the aspect has rightly given the benefit of doubt to the respondent/accused.

25. For the foregoing discussion, we find no merit in the present petition seeking Leave to Appeal against the Judgement dated 05.02.2020, which is hereby dismissed along with pending application, if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 18, 2023
S.Sharma