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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 33/2023, CRL.M.A. 1690/2023 & CRL.M.A. 1691/2023**
STATEPetitioner

Through: Mr Ritesh Kumar Bahri APP with
Mr.Lalit Luthra Adv.

versus

ANKIT & ANR.Respondents
Through: Ms. Ambareen, Advocate

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

ORDER
% **25.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 378(3) of the CrPC has been filed seeking leave to appeal has been filed on behalf of the State challenging the impugned judgment dated 12th October, 2020 passed by Id. ASJ, Special Judge (POSCO), Karkardooma Courts, in *Sessions Case No. 759/2016*, arising out of *FIR No. 853/2014* registered at P.S. Nand Nagri, North-East dated 30th August, 2014, under Sections 376/377/506 and Sections 6 of POCSO Act. *Vide* the impugned judgment the Accused/Respondent has been acquitted.
3. The allegations in the FIR are as under: -

“2. The written complaint of the prosecutrix was in Hindi, the English Translation of the same is as follows:

I, victim, D/o X R/o Y, Delhi is residing there, On January 2012 accused enticed and called me to him and Started taking generally and asked me why I



had come There (Gagan School). I replied him that I had come there to take Xth class exam. On that day the accused took my photo from his mobile and threatened me that if I did not obey him he would show my photograph to everyone and would defame me. By these threats he started forcing me to come to his house at night. I got very scared after thinking about me and on June 3, 2014 after being forced again and again I went to his house in the night. I was very scared, I was not able to understand as to what I would do. Then at night, at his home the accused without my permission after showing me knife took my porn photos and made natural and unnatural sexual relations with me. Again he was threatening me that he would put those photos on net and with these threats he forced me to come to his house where he could kept raping me. The accused also threatened me that if I told about it to anyone he kill my family and would put all my objectionable photos on net, also, he would paste photocopy of my photos in streets. I was very scared because of which I did not tell about it to anyone and continuously the accused kept on taking the advantage of my helplessness and started putting pressure on me to marry him. The accused after threatening me also got few letters written from me. He used to dictate and I used to write. Now, the capacity in me to bear these things has depleted. The accused is threatening me, my father and my uncle (chacha). He is putting pressure again and again to force me to marry him. Please take stern action against the accused and I and my father be saved and helped from predator (darinde).”

4. There are two aspects in the petition seeking leave. One is the aspect of delay in institution of the petition and second on merits. Insofar as the delay in filing is concerned, the impugned judgment was passed on 12th October,



2020 and the present petition was initially stated to be filed on 11th January, 2022, and thereafter, it was refiled after clearing objections on 22nd December, 2022. The delay in terms of the order dated 10th January, 2022 of the Supreme Court in *In Re: Cognizance for Extension of Limitation Suo Moto, Writ Petition (C) No. 3 of 2020*, was condoned for the period between 15th March, 2020, to 28th February, 2022. Thus, the delay in the present matter would be from February to December 2022 *i.e.*, about eight months.

5. In so far as merits are concerned, the Trial Court has found two important aspects, firstly, that the survivor and the accused knew each other and used to attend the same school. Secondly, there were several improvements and contradictions in the testimony given by the survivor. The same has been analysed by the Trial Court in paragraph 36 of the impugned judgment which reads as under:

“36. Of the cross-examination of the prosecutrix is analysed it comes to the fore that the prosecutrix knew the accused very well before the incident as the accused was the next-door neighbour and studying in the same school as that at the prosecutrix and not only that the prosecutrix remembered the mobile phone number of the accused regarding which the victim deposed before the Court. Because of the feature in most of the phone of saving the telephone number by name, people don't remember the telephone number of even their dear and near ones but here was the victim who was allegedly raped by the accused and whose telephone number was committed to the memory of the victim. The prosecutrix in her cross-examination admitted that the victim had made call to the accused on 2-3 occasions only and the victim did not make any phone call to the accused after the day of incident. (as per cross-examination of the



prosecutrix dated July 26, 2016) however, it is not clear from the deposition of the prosecutrix if she did not call the accused from the moment when she was allegedly raped for the first time i.e. on June 3, 2014 or from the last time i.e. July 15, 2014 when the accused had committed rape upon the victim. When the prosecutrix was again cross-examined on October 1, 2016 the prosecutrix deposed that the prosecutrix had made a call to the accused from mobile number belonging to the father of the prosecutrix and the prosecutrix did not remember how many times she had made calls to the accused but it was on number or occasions. During recording of testimony on the same day the prosecutrix admitted that she had handed over the Clothes which she was wearing at the time of incident to the police however the prosecutrix in her cross-examination on November 6, 2015 had deposed that the prosecutrix did not give any of her clothes either to the doctor or to the IO as the same were already washed and numbers of days had passed after the incident, The inconsistencies in the deposition of the prosecutrix on different dates indicate that the prosecutrix is inventing the facts by her own and is not deposing regarding the facts as might have actually occurred. The prosecutrix has further admitted that conversation on phone between the victim and the accused used to be lengthy conversation. The prosecutrix also admitted that she did not make any attempt to run away either at the time when accused showed her knife and look her towards his house or when he opened the lock of his house or when he went to first floor. The victim further admitted that she did not make or show any resistance inside the house when the accused was committing sexual assault upon her and further failed to give any reason for the said non resistance. She further admitted that she never



made any complaint to the mother or the sister of the accused. The prosecutrix also admitted that the houses of the accused and the prosecutrix are located in the congested area and there used to be number of neighbours present on the roof even at the time of incident (as per cross-examination the PWI dated October 1, 2016). The conduct of the witness seemed to be just opposite to what has been portrayed through the present case. Hence, due to the contradictions and improvements in the deposition of the prosecutrix and the lack of any corroboration the court is of the opinion that the prosecutrix cannot be relied upon for the proof of culpability of the accused.”

6. The Trial Court then came to the conclusion that the prosecution could not prove its case beyond reasonable doubt. In addition, there is a reasonable doubt as to the age of the survivor, which is discussed in paragraphs 23 and 24 by the Trial Court, and which read as under:

“23. On the issue of age the victim the deposition of the investigating officer, PW-8 is also very damaging to the case of the prosecution. At the same time it indicates that perfunctory manner in which the investigating officer carried out the investigation into the present case, invoking such a heinous offence, even after arresting the accused, without giving a single thought to the consequence what if the allegations of the prosecutrix is found to be false or that he accused may be innocent. Minority of the victim for the offences coming under provisions of POCSO Act is one of material fact regarding which there ought to be proper investigation by the investigating officer and to ensure it supervision by the superior officers of the police department from SHO onwards and same appears to be lacking in the present case. PW-8 in her cross-examination deposed that, “I did not ask for birth certificate of the victim child issued by MCD to the effective date of birth or affidavit submitted to the



school. I did not make any inquiry from any authority including initial school on the basis of which the subsequent school leaving certificate was issued to the victim. It is correct that victim had told me her age as 18 years at the time of making complaint. I do not record the statement of official of MCD or other authority regarding date of birth of victim. It is correct that I did not make any inquiry from school authority regarding date of birth of victim therefore I have not recorded their statement. I did not record the statement of parents of victim regarding her date of birth.

24. On the basis of discussion herein above it could be held that prosecution failed to prove beyond reasonable doubt that at the time of incident of alleged rape and buggery of prosecutrix was minor i.e. 17 1/2 years of age therefore the defence of the accused has to be accepted that the time of alleged incident the age of the victim was more in years. Therefore the charge under section 6 of POCSO Act fails against the accused."

7. On the overall consideration, since there is a doubt as to the date of birth of the survivor, and the Trial Court has held that she was more than 18 years of age at the time of the incident, the acquittal under Section 6 of the POCSO Act does not deserve to be interfered. Further, in view of the improvements and contradictions in the testimony of the survivor, on merits also prosecution is unable to make out their case.

8. In view of the above discussion, the present leave petition is dismissed and disposed of accordingly.

9. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 25, 2024/tp/ms