



\$~21

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

+ **CRL.L.P. 82/2023 & CRL.M.A. 3952-53/2023**

STATE

.....Petitioner

Through: Mr. Aman Usman, APP with SI
Krishna PS Binda Pur.

versus

CHAND BABU

.....Respondent

Through: Mr. Ayush Kaushik, Mr. Deepanshu
Sharma, Mr. Kartik Kaushik and Mr.
Jatin Sharma, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **28.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition for leave to appeal under Section 378(3) of CrPC has been filed challenging the impugned judgment dated 28th November, 2019 passed by Id. ASJ (POCSO), South West, Dwarka, in ***Sessions Case 440413/2016*** arising out of ***FIR No. 477/2014*** registered at P.S. Binda Pur, under Section 376 of IPC. *Vide* the impugned judgement the Respondent has been acquitted under Section 6 read with Section 5(m) of POCSO Act.
3. The alleged incident took place on 26th May, 2014. The allegation was that the survivor was five years of age at the time of the incident and while she was attending to nature's call, the Respondent had performed an unnatural act with her. The survivor is stated to have narrated the incident to her aunt - 'bua' and thereafter, the complaint was filed and the FIR being ***FIR No.***



477/2014 dated 26th May, 2014 was registered at P.S. Binda Pur. In the trial, 11 witnesses were examined by the prosecution. The survivor herself gave evidence as **PW-1** and in the statement given by her, the survivor stated as under:-

“I do not know anything about the present case. I do not know as to why I was called here.”

4. From the testimony of the survivor, it also appears that the aunt told the survivor what to say in the Court. The Id. Trial Court has given the benefit of doubt to the Accused-Respondent on three grounds:-

- i) that the survivor’s testimony was not of sterling quality.
- ii) the place where the incident took place *i.e.*, the washroom near the survivor’s home, was not an accessible area to the Accused-Respondent.
- iii) the aunt *i.e.*, *bua* has also tutored the survivor.

5. After having considered the evidence given by the **PW-1**, **PW-3** and **PW-4**, the Id. Trial Court has given the following findings:-

“27. From the testimony of PW-1, PW-3 and PW-4, it is clear that when the alleged incident had taken place the child victim was alone in the toilet. The accused was not apprehended at the spot but he was identified after about five-ten minutes from the incident at the juice shop, where he was working. PW-1, child victim deposed in her cross-examination that her Bua had tutored her outside the court room that the accused was the person, who had put his penis into her mouth. PW-1 further admitted that she had given her statement to the police and before the Ld. Metropolitan Magistrate at the instance of her Bua.

28. The child victim was only 5 years old. The testimony of child victim that she was tutored outside the court by



her bua that the accused had put his penis into her mouth and further that she had given her statement before the police and before the Ld. Metropolitan Magistrate at the instance of her Bua creates serious doubt in the story of the prosecution.

29. As per FSL result, neither blood nor semen was detected from the exhibits /samples of the child victim, therefore, the FSL result is not of any help to the prosecution. The question arises whether the testimony of a 5 years old child should be relied upon, who had deposed that she was tutored by her Bua all the times before her statements. I am of the considered view that the testimony of such a child, who gave different statements cannot be relied upon in the absence of any other corroborative evidence on record. Reliance can be placed on the following rulings:

XXX XXX XXX

38. In view of the above discussions, the testimony of PW-1 does not inspire confidence of the court as she deposed that she was tutored by her Bua before giving her every statement. PW-3, the Bua of child victim and PW-4, mother of child victim were not present when the alleged incident had taken place. All other prosecution witnesses are formal in nature, therefore, no purpose would be served to discuss their testimony in detail. The child victim was 5 years old at the time of alleged incidents and a special statue POCSO Act was enacted by the Legislation to curb the incidents of sexual offences against the children and punish the culprits however, the testimony of the child must be reliable to prove the case of the prosecution. The minor discrepancies and contradictions in the testimony of a child can be overlooked but the major discrepancies and contradictions, which go to the root of the matter cannot be overlooked, as it would amount to injustice to the accused.”



6. Finally, the accused has been acquitted in light of the above findings.
7. The present petition seeking leave to appeal has been filed with substantial delay of 672 days. The Court has examined the evidence of PW-1, PW-3 (bua of the survivor) and PW-4 (mother of the survivor). The evidence of the survivor itself raises some doubt as to its veracity. Moreover, there is also substantial delay in filing the present matter.
8. It is noticed that the survivor in this case was a five-year old child at the relevant time, whose evidence has been recorded in English and from the terminologies used in the evidence, the same does not convey the complete impression that the child may have wanted to convey. In such cases, the POCSO Courts may also consider recording the evidence of the survivor in the vernacular language, if required.
9. Considering the aforesaid, the Court is of the view that this is not a fit case for grant of leave to appeal.
10. Accordingly, the leave petition is dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 28, 2024

MR/MS