



\$~1

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

% ***Date of decision: 10th April, 2024***

+ **CRL.L.P. 126/2024, CRL.M.A.6823/2024 & CRL. M.A. 6822/2024**

STATE NCT OF DELHI

..... Petitioner

Through: Mr. Tarang Srivastava, APP for State
with SHO/Insp. Rajesh Kr. And W/SI
Anita

versus

RAHUL @GAGAN DEEP SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CRL.M.A.6823/2024

1. For the reasons stated in the application and in the interest of justice, application is allowed and delay is hereby condoned.

CRL.L.P. 126/2024

2. Present appeal has been filed under Section 378(1) Cr.P.C. with the prayer that the impugned order¹ be set aside.

3. It, thus, needs to be evaluated whether State is entitled to leave to appeal or not.

¹ Judgment dated 07.09.2021 passed by learned Addl. Sessions Judge-01(West), Special Judge under the POCSO Act, Tis Hazari Courts, Delhi whereby respondent has been acquitted.



4. Since the case pertains to sexual assault, the victim in present case, who was alleged to be minor at the relevant time, would be referred to as 'K'.
5. Police swung into action when 'K' along with her mother came to police station on 19.05.2016 and lodged a report.
6. She claimed therein that she was student of 10th class and in the month of September, 2015, on one day, when she was going to her school on foot, respondent stopped his motorcycle to give her lift to her school. She boarded his motorcycle as she knew him already, being her neighbour. However, he, instead, drove her to some *kothi* situated in Palam area. There was a guard outside such *kothi* and when the guard questioned them, respondent showed him some x-ray and told him that he was sick. Said guard then permitted them to enter inside said *kothi*. There was one more person inside said *kothi*. Respondent, thereafter, forcibly removed her clothes and raped her. The other person, who was already present there, clicked photographs of both of them claiming that he would share the same on Facebook and would send the same to her parents and brother. Respondent then told her that he would get the same deleted, provided she makes physical relation with that person also. Thereafter, the other person also raped her. Such photographs were deleted and she was eventually dropped at her place same afternoon.
7. Fact remains that she did not apprise about the incident to anyone for around eight months.
8. On 19.05.2016, since she felt some movement inside her belly, her mother took her to DDU Hospital where it was learnt that she was carrying



child of eight months. It was in the aforesaid backdrop that she came to police station and lodged report claiming that she was raped by respondent and his friend.

9. 'K' was got medically examined. Her statement under Section 164 Cr.P.C. was also got recorded. Respondent was arrested but since the name, address or requisite description of his co-accused were not available, he could not be apprehended.

10. After compliance of Section 207 Cr.P.C., respondent/accused was charged for commission of offence under Section 6 of The Protection of Children from Sexual Offences Act (POCSO Act) and in alternate under Section 376D IPC. He was also charged for committing offence of criminal intimidation punishable under Section 506 IPC. He pleaded not guilty and claimed trial.

11. Prosecution was directed to adduce evidence and it examined four witnesses viz. PW1 (K), PW2 (mother of K), PW3 (Principal of concerned school) and PW4 (SI Anita/IO).

12. Various prosecution documents were admitted during the trial by accused under Section 294 Cr.P.C.

13. Accused, in his statement under Section 313 Cr.P.C., claimed that he had been falsely implicated at the instance of two boys, namely, Himanshu and Nishu who were friends of 'K' and whose behaviour he did not approve. According to him, he had also called police on several occasions on account of their misconduct and the scuffle which they had with him. He stated that even the police had been apprised about the role and involvement of said two friends of 'K' and about his being falsely implicated herein at their



behest. Though they were called at the police station but were let off, without any reason.

14. Learned Trial Court, after analyzing the evidence led by the prosecution, acquitted the accused. It observed that prosecution had failed to establish that victim was less than 18 years of age at the relevant time. It also observed that there were various loopholes in the story of prosecution and the story of victim looked improbable. It also strongly relied upon DNA report which rather demonstrated that respondent was not the biological father of the child whom 'K' had eventually given birth on 21.06.2016.

15. Such order is under challenge before us.

16. Learned Addl. P.P. has contended that there was no reason to have discarded the testimony of 'K' who had been gang-raped by respondent and his friend who could not be traced. It is also argued that learned Trial Court has given unwarranted weightage to DNA report and that there was no contradiction or improvement in the testimony of 'K' which could be said to be detrimental to the case of prosecution. It is also contended that delay in reporting the matter cannot be said to be fatal as, normally, in such type of matters, keeping in mind the prestige at stake, concerned victim or her family members are reluctant and hesitant to report the matter.

17. We have given our thoughtful consideration to the above contentions and gone through the e-trial court record.

18. After careful perusal of the evidence led by the prosecution and in view of the totality of the facts and circumstances of the case and the story as propounded and projected by the prosecution, we also do not find any



reason to come to any contrary view.

19. Testimony of 'K' does not seem to be credible and inspiring enough and she cannot be said to be a witness of sterling quality.

20. Incident had happened somewhere in the month of September, 2015 but there is nothing which may even remotely suggest as to why she reported the matter as late as on 19.05.2016.

21. According to her, it was only on account of fear and threat of accused that she did not tell anyone about the aforesaid incident. If she is to be believed, when she felt some movement inside her after 6-7 months of the incident, she was taken to a doctor where she learnt that she was carrying pregnancy of about eight months. Then, her mother inquired from her about the same. Curiously, she deposed that she had forgotten about the incident and got busy in her routine life and then she remembered as to what accused and his friend had done to her and, therefore, they went to PS for lodging report. Such type of incidents, where one is forcibly sexually assaulted, would always remain etched in the mind of the victim but here 'K' had, very surprisingly, become totally oblivious of the incident in question.

22. The purpose of insisting upon prompt lodging of the report is to obtain early information about the circumstances in which the offence was committed and to reach the real culprit. Any delay in filing could lead to embellishment, coloured versions, exaggerated accounts resulting from consultations and afterthought. Thus, delay in filing must be supported with satisfactory explanation. There is no strait-jacket formula and in a given case, at times, delay of one or two days may become fatal whereas if properly explained, Court may not give any significance to the delay of



period of even more than a year. Admittedly, any such incident of sexual assault comes with lot of trauma and stigmatization. Any such victim or family members of victim would always be hesitant in reporting such matter to the police as they remain apprehensive that it might bring them disrepute. However, nothing in this regard has been uttered by 'K'. Delay needs to be explained by the prosecution as delay in lodging FIR is bound to give rise to suspicion, which can put the court on guard to look for extra assurance and deeper scrutiny of evidence.

23. 'K' was studying in 10th class at the relevant time and there is distance between her house and the area of Palam where she was alleged to have been taken. She was taken on a motorcycle on the pretext that she would be dropped at her school but despite the fact that accused kept on driving his motorcycle for around 45 minutes, with her on pillion seat, it is not explicable as to why she never resisted in any manner whatsoever and did not even attempt to draw attention of anyone that respondent was taking her away at some unknown place with some ulterior motive. As per prosecution story, there was a guard in that particular *kothi*. She did not even bother to confide in him, either at the time of entering inside the *kothi* or after the alleged rape. She again sat on the motorcycle of the respondent who dropped her at her school. It took them two hours in returning back. Even during that journey period, she never raised any alarm. She did not tell anything to anyone, not even to her own brother or parents.

24. It is also little unbelievable that she came to know about pregnancy only when she was examined by the doctor. She was already pregnant by eight months and the signs must have been visible to her and her parents but



for reasons best known to them, they remained mum.

25. Her mother has also entered into witness box. She has no personal knowledge of the incident in question and claimed that her daughter had never told her about the alleged incident prior to their visit to the hospital when they learnt about the pregnancy.

26. We also fail to understand as to why investigating officer did not make any endeavour to ascertain the mobile numbers of 'K' and respondent and why Call Details Record (CDR) of such mobile numbers were not collected and evaluated.

27. In her cross-examination, IO admitted that she had not prepared any site plan either of the spot from where victim was allegedly picked up or of the spot where she was allegedly sexually assaulted. She admitted that she did not visit the place of incident and it was not shown to her either by the victim or the accused. These were obviously important aspects of the case which were given no significance.

28. We may also note that the accused, right from the day one, is very consistent in his stand and even in his alleged disclosure statement, he claimed that he was never in touch with 'K' and had not taken her anywhere. He claimed that 'K' was friend of one Himanshu. According to him, there were frequent quarrels between him and Himanshu and a false case has been fastened upon him at the instance of 'K'. IO did admit that she had made inquiries from Himanshu but there is nothing in the charge-sheet which may indicate as to what kind of statement was made by Himanshu. He is not even cited as witness in the present case.

29. One more puzzling aspect of the present case is DNA report.



30. Eventually, a baby boy was delivered by 'K' which she did not keep with her as such child was left at *Nirmal Chhaya*. According to 'K', she had been raped by respondent and when she was taken for medical examination, she reiterated the same. As regards the other accused, she claimed that such other person might have used condom at that time. Thus all in all, the moment she learnt about the pregnancy, she connected accused with the same. However, when blood sample of child of victim, blood sample of victim and blood sample of accused were examined for generating DNA profile, it came to fore that respondent was not biological father of the child in question. There is no explanation, much less a plausible one, to the aforesaid outcome of DNA analysis. It becomes all the more important in view of the huge delay in reporting the matter to the police which also remains unexplained.

31. As regards age of 'K', learned Trial Court has analyzed the matter in the right perspective and rightly came to the conclusion that her exact age had not been proved by the prosecution. If testimony of 'K' is to be believed then she was attending regular school at the time of alleged incident and was studying in 10th class. It is totally inexplicable as to why police did not attempt to contact the concerned official of said school. Nobody knows the name of her such school and it is not explained as to why the record regarding her age was not collected from said school. Of course, record of one previous school was collected wherein her date of birth is recorded as 25.06.2002 but it is merely based upon one declaration given by her mother. There is no other proof of any kind which may give clear-cut indication about her real date of birth. Moreover, such declaration of her



mother was never got corroborated from her when she entered into witness box.

32. In view of our foregoing discussion, we do not find any merit in the application seeking leave to appeal. Same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 10, 2024/dr