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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 13th September, 2024*

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CRL.L.P. 182/2023 & CRL.M.A. 9276/2023

THE STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, Id. APP with
Mr. Lalit Luthra, Adv.
Insp. Abhijeet Singh, PS Geeta
Colony.

versus

SHYAM KISHORE ALIAS PUTAN

.....Respondent

Through: Mr. S.K. Sharma, Adv.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (ORAL)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-State under Section 378 of Cr.P.C. seeking grant of leave to appeal challenging the judgment dated 31st August, 2021 passed by the Id. ASJ-01, Special Court, POCSO, East District by which the Respondent-Accused has been acquitted.
3. The alleged incident in the present case dates back to 9th July, 2015 pursuant to which a **FIR No. 418/2015** dated 10th July, 2015 was registered by PS Geeta Colony (East) under Sections 354/354(A) of the IPC and Sections 8/12 of the POCSO Act. The allegation against the Respondent-Accused was that he had committed penetrative sexual assault on the victim child. The complainant was the victim's mother who was examined as PW-3.
4. The Trial Court has acquitted the Respondent on three broad grounds:
 - i) That the medical record *i.e.*, the MLC dated 10th July 2015 (**Ex.**



PW7/A) did not reveal any injury on the survivor despite the fact that the medical examination was conducted on the same day *i.e.*, 10th July 2015, when the mother of the survivor alleged that she found injury marks and bite marks on the survivor;

ii) The second ground on which the Trial Court has acquitted the accused is that the survivor failed to recognize the Respondent-Accused in her testimony before the Trial Court. The Trial Court has made a noting that in the examination-in-chief of the survivor when the Accused shown to the survivor through video conferencing he was having beard and mustache. However, the survivor had claimed that the person who committed the alleged act on her, was a clean shaved man;

iii) The Trial Court also records that there appears to have been tutoring of the survivor by the mother, and that the survivor's '*chachi*', to whom the victim had claimed to have first narrated the incident, was also not examined. The relevant portions of the impugned judgment are set out below:

“38. Ld. counsel for the accused argued that the PW3/mother of the victim deposed that she noticed some bite marks on the chest and near the private part of the victim on 10.07.2015 at about 9/10 am and If it is correct, then it is not possible that the said alleged bite marks which were caused in evening of 09.07.2015 were not noticed by the doctor concerned during medical examination of the victim in the evening of 10/07/2015. Ld. Addl. P.P submitted that the bite marks on the human body depends upon the force used by the person giving the bite. So merely because the bite marks were not noticed by the doctor concerned does not mean that the victim deposed falsely. In support of his arguments, he relied upon the case



'Inspector of Police vs. Dinesh' Crl.Appeal No.41/2021 Madras High Court decided on 12.03.2021.

39. It is pertinent to note that the victim in her complaint Ex.PW1/A and in her statement u/s 164 Cr.P.C. Ex.PW1/B dated 16.07.2015 clearly stated that the accused had given a teeth bite on her chest and private part. The victim was medically examined on 10.07.2015 at about 6 pm vide MLC Ex.PW7/A, the doctor concerned observed in MLC that L/E - no fresh external injury seen and O/E - no sign of external injury noted. It is also recorded on the MLC that the mother of the victim refused for her internal medical examination. So IO again recorded the statement of victim u/s 161 Cr.P.C on 24/07/2015 wherein victim stated that the uncle started sucking her nipples and for this reason, no bite mark was on her chest and this very statement of her, She earlier stated bitten. It is clear from the MLC of the victim and her statement u/s 161 Cr.P. dated 24.07.2015 that there was no bite mark on the chest and private part of the victim. Hence, the testimony of the victim that the accused had bitten on her chest and private part and further the testimony of PW3 that she had seen the said bite marks has no force and therefore can not be relied upon.

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43. Further, according to PW1, she went to the house of her grandmother on the alleged day of the incident and she was playing with her sister namely 'S' when the accused came there and asked her to accompany to his room. PW4 is the grandfather of PW1, he deposed that on the day of incident he and his wife went to Irwin Hospital so they were not present at the time of incident. According to PW3, there are two rooms on the first floor of the building, in one room the accused was the tenant and in another room, her mother & father in law were residing but on that day they were not residing. It is clear from the testimony of PW3 & PW4 that on the alleged day of the incident the



grandparents of the victim were not present in their room. Further, it is pertinent to note that there is no witness of prosecution who deposed that he/ she had seen the victim child who came on first floor to play or was playing there on the alleged day of incident.

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45. In view of the above said discussion, I am of the considered view that the prosecution has failed to establish the foundational facts which are necessary to attract the presumption as defined in section 29 of the POCSO Act against the accused. Hence, the case of prosecution fails. Accordingly, the accused is hereby acquitted for the offences charged i.e u/s 4 of the POCSO Act”

5. The Trial Court also notes that there is no consistency between the survivor’s testimony and her mother’s testimony as the narration of events by the victim and the mother do not match.

6. Mr. Bahri, Id. APP appearing for the State, submits firstly, on the ground of delay of 372 days in filing the present leave to appeal, that the delay happened due to changes in the Id. APP’s office and due to delay in marking of the file.

7. Id. APP further submits on merits that the victim has completely supported the case of the prosecution and the mere fact that she was a 12 years old child who may not have been able to decipher the fact that the accused had grown a beard during the period between the incident and the examination-in-chief, could not have led to his acquittal.

8. On the other hand, on behalf of the Accused-Respondent, it is submitted that in the testimony of the victim child, she fails to even recognize the Accused. Secondly, no injury has been observed on her in the medical examination. Further, Mr. Sharma, Id. counsel submits that the victim has not



been able to identify the accused and that the victim child was tutored before the examination-in-chief took place.

9. Heard and perused the record. The Court has perused the MLC dated 10th July 2015 (**Ex. PW7/A**). The examination of the victim was done at 6:00 p.m. on 10th July, 2015 which is the same day, on which the mother claims to have found injuries on the victim's body. However, the MLC records that there is no fresh external injury to be noted. The MLC completely contradicts the mother's testimony. Further, in the victim's testimony, she has clearly stated that she does not identify the accused. The relevant portion of the testimony is set out below:

*“.....At this stage, accused is taken out from the screened room and shown to the witness through video camera. After seeing the accused, **witness states that she has had no occasion of seeing the accused prior to this day.**”*

10. In the cross-examination also, the victim states that she was told by her mother as to what to say before the Judge. More than anything, the family has also refused to get an internal examination of the victim done as is recorded in the MLC.

11. Mr. Sharma, ld. counsel has alleged that the entire case was fabricated against the Accused as he was the tenant in the complainant's father-in-law's property. He was staying in one room along with his wife and daughter and the incident could not have gone unnoticed by them, considering that the victim child was 12 years old at the time of alleged incident.

12. In the overall facts and circumstances of this case, the Trial Court's conclusion seems perfectly plausible and does not warrant any interference.

13. The petition for leave to appeal is rejected both on the ground of delay



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as also on merits.

14. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

SEPTEMBER 13, 2024

Rahul/ms/pr

Signature Not Verified

Digitally Signed
By: DHIRENDER KUMAR
Signing Date: 17.09.2024
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