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

+ **CRL.L.P. 199/2023**

THE STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Luthra & Ms. Divya Yadav,
Advs.
SI Sanjay, PS Bhajan Pura.

versus

SURAJ SRIVASTAVA

.....Respondent

Through: Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **03.12.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the State of GNCT of Delhi, seeking leave assailing the impugned judgment dated 11th December, 2019 in **FIR No. 15/2019**, PS Bhajanpura under Section 376AB of the IPC and Section 6 of POCSO Act, 2012.
3. The brief background is that the victim/ survivor aged about 10 years and her mother were produced before the police on 17th January, 2019. A statement was recorded that after she returned from school on 16th January, 2019 she had gone to meet her mother on the roof of her house who then sent the victim downstairs for food and at that time the accused had come downstairs. The accused is stated to have then forcibly taken her to a room and committed sexual assault on her. The allegations were recorded by the police and the victim was sent for medical examination.



4. Statement of the victim under Section 164 was recorded on 18th January, 2019. Thereafter Chargesheet dated 29th April, 2019 was filed. The prosecution had produced 10 witnesses out of which the two main witnesses were the victim, PW-2 and her mother, PW-4. The Trial Court, after assessing the evidence on record, acquitted the accused.

5. The primary ground on which the acquittal was premised was that the initial statements of the victims and the mother and the testimony given in Court were inconsistent and contradictory. The Trial Court also found that the status of the accused itself was in doubt as, initially, both the mother and the victim had stated that he was residing in the premises, however, a new version was given in the testimony before the Court. The Investigating Officer (IO), on the other hand, mentioned that the accused was a vagabond and that his address could not even be verified. The Trial Court then found that the statement of the victim and the mother that the accused was residing in the same house was completely unverified and the testimony of the IO had belied this fact.

6. The nature of the act was also doubted by the Trial Court as there was contradiction between the initial statements in comparison with the testimonies given in the Court. The Trial Court observed that as per the testimony given in Court, the victim's clothes were not taken off and on this issue, the Trial Court observed as under:-

“41. Accused has also been charged with the offence of committing penetrative sexual assault upon the victim, as according to the initial statement of victim, accused had not only kissed on her lips, chest and vagina but had also licked her vagina and tried to insert his penis in her vagina.

42. However, while appearing as PW1, victim did not



state that accused had even taken off her clothes. She deposed that accused had touched her chest and then started to lick her vagina over her jeans and then kissed on her lips. Meaning thereby, accused had not taken off her clothes. She was specifically asked, whether accused had done anything and she stated that apart from what she had stated in her examination in chief, accused had done any other thing or act with her.”

7. The Trial Court also noticed that the testimony of the daughter did not corroborate any of the allegations. The Trial Court observed that there was some enmity between the family of the accused and the victim in the past. In view of the said contradictions and inconsistencies, the Trial Court had acquitted the accused. Paragraphs 51 and 52 of the Trial Court judgment are set out below:-

“51. It has been admitted by victim as well as her mother that the relationship between accused and victim's family was inimical. Victim during her cross examination admitted that on the day of incident, accused and her mother had a quarrel because he would always come to their house in drunken condition and use filthy language. Victim's mother also admitted that accused was a drunk and that accused had taken money from her husband and had not returned it. She also admitted that she had quarrel with the accused because he made her husband consume alcohol with him. Although both victim and mother had denied that because of this animosity, accused had been falsely implicated but a probable motive has been clearly established by the accused. 52. In the light of the aforesaid probable motive, the contradictions in the testimony of victim with regard to whether accused was present in that house or he had followed her from his alleged room on the first floor, the fact that accused being a vagabond could neither have been residing in that house nor could have come in the house without victim's mother noticing it, the delay in lodging the FIR, the



contradictions between the testimonies of victim and her mother on account of delay in lodging the FIR and the impossibility of accused being present in that house as he was a vagabond raise serious doubts about the credibility of the prosecution witnesses and therefore, accused is entitled to benefit of doubt. Accused is accordingly acquitted of all the charges framed against him. His bail bond stands cancelled. Surety stands discharged. File be consigned to record room.”

8. The Court has perused the testimony of the victim and a perusal thereof would also clearly show that the victim states that her clothes were not taken off. Moreover, the delay in lodging of the FIR was also doubted by the Trial Court.

9. Under these circumstances, the Court is of the opinion that there is no ground which warrants interference in the Trial Court judgment. This would not be a fit case for grant of appeal for leave.

10. In addition, it is noticed that there is a delay of over 500 days in filing of the petition itself. In the opinion of this Court the delay also does not deserve to be condoned. Application is disposed of.

11. Petition is dismissed on grounds of delay as also on merits and disposed of accordingly.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 03, 2024

dj/sn/ks