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

+ **CRL.L.P. 187/2022**

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Mr. Lalit Luthra, Advocate.
SI Pardeep, PS Mehrauli.

versus

DASHRATH & ORS.

.....Respondents

Through: Mr. Thakur Virender Pratap, Mr.
Charak, Ms. Shubra Prashar and Ms.
Nasreen, Advocates for R-2.
Mr. Pawash Piyush and Mr. Mayank
Singh, Advocates for R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **10.12.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the State under Section 378(3) Cr.P.C. for seeking leave to appeal against the judgment of acquittal dated 15th October, 2020 passed by Id. Additional Sessions Judge, (POCSO) South District, Saket Courts, Delhi in SC No. 6847/2016 in FIR No. 866/2014 registered under Sections 451/376D/511/354/3548/323/509/506/34 IPC and Sections 8/12 POCSO Act at PS Mehrauli.
3. The incident in the present case dates back to 5th June, 2014. On 6th June, 2014 a complaint was received at P.S. Mehrauli by survivor 'B' who stated that she was 17 years of age. Further, it was stated by her that her father had been apprehended by the police on 5th June, 2014 and seizing this opportunity, the Accused attempted to rape her. However, at the moment she



raised an alarm and her bua who was residing nearby reached the spot. It is further alleged by the survivor that the Accused attacked her bua and when her bua tried to save herself, the Accused chewed the thumb of her right hand. It is also the case of the survivor that the Accused tried to offer her brother a certain sum of money and in that process, again, an attempt was made to rape her. The accused in this case were 3 persons. The complaint was lodged on 6th June, 2014, however, the FIR was registered on 7th June, 2014.

4. There were three accused in the present case i.e. Dasrath-Respondent No.1, Prahlad-Respondent No.2 and Hemraj-Respondent No.3. The complaint was lodged by the survivor on 5th June, 2014. However, the FIR No. 856/2014 was registered on 6th June, 2014 at PS Mehrauli, South Delhi, Delhi. Thereafter, investigation commenced in the case and pursuant to the completion of investigation, charges were framed by the Id. Trial Court against Respondent No.1 under Sections 376D/511/354/354B/323/34 of the IPC and Section 10 of the POCSO Act, vide order dated 4th September, 2014. Respondent No.2 and 3 were charged under Sections 451/376D/511/354/354B/509/506/323/34 of the IPC and Sections 8/12 of POCSO Act vide order dated 12th October, 2017.

5. The prosecution examined a total of 10 witnesses. The primary witnesses were the survivor (PW-1), her bua (PW-2) and her mother (PW-3) alongwith other police officials. The statements of the witnesses were also recorded.

6. The Trial Court has, after perusing the evidence, come to the conclusion that:

- (i) There was family discord and enmity between the family of the survivor and that of the Accused



(ii) In view of the fact that there was enmity between the two families, public witnesses ought to have been examined. However, no public person was examined in this case.

(iii) The prosecution had claimed that the Accused had fled away upon seeing the neighbours, however, no such neighbours were examined before the Id. Trial Court.

(iv) The survivor's *bua* had claimed that the police were called immediately when the incident took place *i.e.* 5th June, 2024, however, the complaint is dated 6th June, 2014 and the FIR was registered thereafter on 7th June, 2014 6th June, 2014.

7. The Trial Court has further expressed serious doubts as to the manner in which the photographs of PW-1 and 3 were clicked in a studio with torn clothes. According to the Trial Court these photographs were not genuine and there existed a doubt with regard to the credibility of the same. The Trial Court was of the opinion that the 3 witnesses, i.e., PW-1, 2 and 3 were material witnesses who lack credibility. There is also no independent material or evidence on record that corroborates the testimony of the said witnesses. Hence, the Accused were acquitted.

8. The Court has heard Mr. Bahri, Id. APP for the State and Id. counsel for Respondents No. 2 and 3. The Court has been informed that Sh. Dhashrath-Respondent No.1 has expired during this period. Both Respondents No. 2 and 3 are represented before the Court. The Court has heard the matter.

9. One of the most important documents in this case is the Medico-Legal Certificate ('MLC') of the survivor which shows that there was no injury on her at all except a bite on the left middle finger. She was also not willing to



undergo any internal examination. There is no injury even on the *bua* as per the MLC (EX. PW-3/A). This is contrary to the statements made by the survivor on record as she states that during the scruffle on 5th June, 2014 she and her *bua* sustained injuries which were inflicted by the Accused. Further, if there was any attempt to rape or any scruffle, some injuries would have been visible, however, they were no serious injuries found on the survivor.

10. The father of the survivor in this case was also convicted *vide* judgment dated 17th January, 2017 in case ***FIR No. 856/2014***, registered under Sections 354/323/34 of the IPC, at P.S. Mehrauli.

11. The Trial Court's finding that there was a family enmity between the parties therefore, appears to be correct. The present case is not a fit case for granting leave to appeal, in the opinion of this Court.

12. The present petition is dismissed and disposed of accordingly.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 10, 2024/sn/pr/rks