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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 1st October, 2024*+ **CRL.L.P. 477/2023 & CRL.M.A. 25478/2023****THE STATE (GNCT OF DELHI)**

.....Petitioner

Through: Mr. Aman Usman, APP for State SI
Neeraj Chaudhary PS Patel Nagar.

versus

SATISH KUMAR & ANR.

.....Respondents

Through: Mr. Abhishek Varma Advocate,
Amicus Curiae for respondent (M:
9891312312).**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 seeking leave to appeal has been filed by the Petitioner-State of GNCT of Delhi under Section 378 of the Cr.P.C. assailing the judgment dated 7th January, 2021 passed by the Learned ASJ-01 (West), POCSO, Tis Hazari Courts, Delhi, by which, the Respondent-Satish Kumar has been acquitted for the offences punishable under Sections 363/366 of the IPC and Section 6 of POCSO Act (in alternative, section 376 of the IPC).
3. A brief background of the present case is that a complaint bearing FIR No. 453/2014 was lodged by the father of the survivor, Ms. 'X' on 4th July, 2014 under Sections 363 IPC in PS Patel Nagar. As per the said complaint, the complainant's daughter had gone missing on 4th July, 2014 and various efforts were made to recover her. During the investigation, Ms. X was



recovered by her relatives. After being recovered, the statement of Ms. X was recorded under Section 164 of the Cr.P.C., according to which, offences under Sections 366/376 of the IPC and Section 4 of the POCSO Act, were added in the aforesaid FIR. Thereafter, chargesheet was filed and the charges were framed against the Accused. The prosecution led evidence of various witnesses including the survivor herself, the Social Science (TGT)/Vice Principal from the Govt. Girls Sr. Secondary School, West Patel Nagar, New Delhi, the father of the survivor and the Nana of the survivor. The defence did not lead any evidence.

4. *Vide* the impugned judgment dated 7th January, 2021, the Trial Court came to the conclusion that firstly, age of the prosecutrix was not established by the prosecution beyond reasonable doubt and it could not be held that the prosecutrix was under 18 years of age during the time of the incident. In addition, the Trial Court came to the conclusion that the girl had consented to the relationship.

5. The present appeal challenging the judgment dated 7th January, 2021 has been filed on 5th August, 2023 and thus, there is a delay in filing of the appeal in terms of Section 378 of the Cr.P.C.

6. Mr. Aman Usman, Id. APP appearing for the State submits that the condonation of delay application being **CRL.M.A. 25478/2023** states that there is a delay of 401 days. However, in fact, the period of covid till 28th February, 2022 would deserve to be excluded. In the application, it is submitted that the movement in the file from the offices of various authorities, i.e., the Chief Prosecutor to the Director of Prosecution and finally to the APP, etc. was the cause for the delay.

7. The Court has examined the documents which have been led in



evidence. Mr Aman Usman relies upon the School Leaving Certificate issued by the first school (Ex. PW2/C), i.e., *MCD Primary School, S block-1, West Patel Nagar, Delhi* and the Elementary Education Certificate issued by the second school, i.e., Govt. Girls Senior Secondary School, West Patel Nagar, New Delhi which was placed on record by PW2 and PW3. It is his submission that under Section 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter, '*JJ Act*'), the said documents would have to be read in evidence, which would show that the survivor was a minor at the time of the incident. He relies upon the aforesaid School Leaving and the Elementary Education Certificate which has been placed on record by the prosecution.

8. On the other hand, Ld. Counsel for the Respondent relies upon the marriage certificate which records the age of the prosecutrix as 19 years. He also relies upon the statement given by the survivor before the Magistrate where she categorically states that she went on her own violation with the full knowledge of her mother.

9. The Court has considered the matter. The Trial Court has in the impugned judgment come to the conclusion that records of the first school which the survivor attended, i.e., *MCD Primary School, S block-1, West Patel Nagar, Delhi* has not been corroborated by any witnesses from the said school by the prosecution. The date of birth of the survivor mentioned in the school records of the second school, i.e., Government Girls Senior Secondary School, West Patel Nagar, New Delhi (in which the survivor got admitted in class 6 as per the testimony of PW2) was on the basis of school leaving certificate of the previous school, i.e., *MCD Primary School, S block-1, West Patel Nagar, Delhi*. The Trial Court records that could be the categorical



evidence of the date of birth in the absence of a birth certificate issued by the municipality. It is the second school's documents which are sought to be relied upon by the prosecution when admittedly the school's Social Science (TGT)/Vice Principal, i.e., PW2 who had appeared for deposition, relied upon the school leaving certificate issued by the MCD Primary School.

10. In view thereof, it is the finding of the Trial Court that the prosecution has failed to establish the actual date of birth of the survivor that the prosecutrix was a minor at the time of the incident. The relevant portion of the impugned judgment is set out below:-

“19. Therefore in view of the above discussion, in order to prove the age of Ms. 'X', the prosecution had to place on record the first attended school certificate of Ms. 'X', however, testimony of PW2 clearly shows that Ms. 'X' got admitted in class 6th in Government Girls Senior Secondary School, West Patel Nagar, Delhi. The said school was not the first attended school of Ms. 'X'. In fact, PW2 has deposed in her examination in chief that the date of birth mentioned in the school record is on the basis of school leaving certificate issued by the Principal of MCD Primary School, S block-1, West Patel Nagar, Delhi. This clearly shows that the date of birth mentioned in the copy of the school certificate placed on record was based on the school leaving certificate issued by the first attended school by Ms. 'X'. The said certificate could have been proved only from the records of MCD Primary School, S block-1, West Patel Nagar, Delhi which was the first attended school of Ms. 'X'. However, prosecution neither arrayed any witness from the said school nor called any witness from the said school to prove the date of birth as mentioned in the school leaving certificate issued by the said school. Further, father of Ms. 'X' has been examined as PW3. He has admitted in his testimony that they do not have any birth certificate of Ms. 'X' and he does not



remember her date of birth. He has further admitted that the date of birth as mentioned in the school record is given by mother of Ms. 'X'. In fact, during cross examination, PW3 has admitted that Ms. 'X' was born in native village and date of birth of 05.09.2000 furnished in the school was by approximation. This clearly establishes that the date of birth of 05.09.2000 was not the correct date of birth of Ms. 'X'. Mother of Ms. 'X' who has furnished the date of birth in the school has not been examined and therefore, her source of information of date of birth is not proved.

21. Hence, the testimony of PW2 merely proves that the copy of school certificate placed on record is the correct copy. However, in order to prove the date of birth, the prosecution had to prove the source of information of the said date of birth as mentioned in the school record. The same has not been proved by the prosecution in the present case. In fact, in the present case, the age is not proved as per the requirement of Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 which mandates that the age has to be proved by the school record of the first attended school. **In these circumstances, it is not established that Ms. 'X' was under the age of 18 years at the time of alleged incident. In fact, accused has stated that Ms. 'X' has represented herself to be aged about 19 years and solemnized marriage with the accused out of her consent. Ms. 'X' who has been examined as PW 1 has admitted in her cross examination that an affidavit was prepared for the purpose of solemnizing her marriage in which her age was mentioned as 19 years. Though PW1 has stated that she was forced to get married with the accused but she has nowhere stated that the age in the affidavit has been mentioned wrongly or by force by the accused. In view of this discussion, it is not established that Ms. 'X' was under the age of 18 years at the time of alleged incident.**

22. As prosecution has failed to prove that Ms. 'X' was



under the age of 18 years at the time of alleged offence, therefore, no offence is made out under section 6 of Prevention of Children from Sexual Offences Act 2012.”

11. The Court also notices that in the statement of PW3, the father of the survivor, clearly states that he does not remember the date of birth of the daughter. He also states that the date of birth which is relied upon by the prosecution *i.e.* 5th September, 2000 was furnished to the second school, *i.e.*, Government Girls Senior Secondary School, West Patel Nagar, New Delhi by approximation. It was in fact, the mother of the prosecutrix, who had got her admitted into the said school and further had furnished this date of birth to the school. The father/PW3 also states categorically that he does not know the survivor/her daughter's correct date of birth. The extract from the statement of PW-3 are also set out below:-

“1. I have two children. The prosecutrix Ms. X is my younger child. At present, the prosecutrix is aged about 17 years. I do not remember her date of birth. It is mentioned in her school record.

XXX

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XXX

1. It is correct that I do not have any birth certificate of my daughter issued by Municipal authorities or government authorities. My daughter was born in the native village at home. The date of birth of my daughter 05.09.2000 was furnished to the school by approximation. Her mother had got her admitted in the school and she has furnished this date to the school.

2. It is wrong to suggest that my daughter was above 18 years of age at the time of commission of alleged offence.

3. It is correct that I do not know her correct date of birth.”



12. A perusal of the impugned judgment would also show clearly that apart from the date of birth which has not been proved by the prosecution, Id. Trial Court also comes to the conclusion that the prosecution has not established the relationship of the survivor with the accused beyond reasonable doubt.

13. The Court has perused the Trial Court's judgment as also the documents which are on record and the reasons given in the application by the Appellant/State for condonation of delay.

14. In the present case, in the considered opinion of this Court, this would not be a fit case for granting leave to appeal.

15. The present leave petition is dismissed on the ground of delay as well as on merits with all pending applications, if any.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

OCTOBER 01, 2024

MR/bsr/RKS/Pc

(corrected & released on 4th October, 2024)