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

+ **CRL.L.P. 407/2024 & CRL.M.A. 24627/2024, 24628/2024**

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Nawal Kishore Jha and Ms.
Meenakshi Dahiya, APPs. with WSI
Sangeeta PS S B Dairy.
(M:9810442918)

versus

JITENDER KUMAR @ JITEN

.....Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

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27.08.2024

1. This hearing has been done through hybrid mode.

CRL.M.A.24628/2024 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CRL.L.P. 407/2024 & CRL.M.A. 24627/2024 (for delay)

Background

3. The present leave petition under Section 378 read with Section 482 of Cr.P.C. has been filed by the State challenging the impugned judgment dated 15th December, 2021 passed by Id. ASJ, (FTSC) (POCSO)(North), Rohini District Court, in Sessions Case No. 59418/2016, arising out of FIR No. 722/2016 PS Shahbad Dairy under Section 376 of IPC and Section 6 of POCSO Act, by which the accused/Respondent has been acquitted.

4. As per the case of the prosecution, the alleged incident involves a four year old minor girl child. The allegation against the accused who is a neighbour of the survivor was that on 6th October, 2016, at around 3:00 pm the accused, took the survivor to a staircase and committed penetrative sexual

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assault upon the survivor. Thereafter, the mother of the survivor allegedly observed blood coming out of the private parts of the survivor and confronted the accused along with his family over the incident. Further, a FIR No. 722/2016 dated 06th October 2016 was registered against the accused on the basis of a complaint filed by the mother of the survivor.

5. *Vide* order dated 30th January, 2017 charges were framed by the Id. Trial Court under Section 376 (2)(i) of IPC and Section 6 of POCSO Act against the accused and the accused pleaded not guilty to the said charges. The prosecution had examined nine witnesses including the formal witnesses. The defence had also examined one witness.

Findings of Trial Court

6. The findings of the Trial Court are that the child/survivor stated in her cross-examination that she has deposed in terms of what her mother had told her to depose. The survivor, as per the trial court has given contradictory testimony. Relevant paragraphs of the Trial Court's judgment are set out below:

“28. However, the victim in her cross examination categorically admitted that no blood came out from her private part and accused did not remove her clothes. Infact, she stated that she is deposing as was asked by her mother.

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33. PW 1 on the other hand introduced an improvised aspect in her cross-examination and stated that it was not her but the survivor had gone to the house of her jethani first, who was residing in the same vicinity. She was confronted with her statement Ex.PW1/A where this fact was not so recorded. She further stated that the victim had narrated the entire incident to the jethani



before telling the incident to her and prior to knowing from the victim, she came to know about the alleged acts of accused from her jethani, whereas she had stated in her earlier statement Ex.PW1/A that the child had come running to her straightway. Even, the victim in her statement under Section 164 Cr.P.C, Ex.PW1/D {collectively) had stated “mein ghar bhag aayi maa ke pass”. Whereas, PW1 mother stated in her cross examination that she had first informed the jethani and had first gone to her jethani. It is pertinent to mention that the said jethani (sister in law of PW1) was never produced as a prosecution witness. If she was the first person to whom the child victim around 04 years of age had first reported the incident, she could have been a material prosecution witness, however, the prosecution has failed to examine her.

34. The fact of the child victim first going to house of her aunt, jethani of PW1 was a material improvisation as such the said fact was not mentioned by her in her original statement Ex.PW1/A and she was accordingly confronted with the same. PW1 had categorically deposed that the doctor who examined the victim had observed blood on her private part but as stated above, the MLC Ex.PX-6 is completely silent on this aspect and infact it is reported that there is no injury on the body of the child and her hymen was found intact. Thus, there are material contradictions in the testimony of PW1 from her earlier statement and also it contradicts the testimony of PW2, the child victim on material aspects.

35. Thus, in the present case, it can be said that neither the testimony of the victim has been that of a sterling quality nor the PW1 i.e. mother of the victim can be solely relied upon owing to the aforesaid material contradictions.”

7. Further, the Trial Court also observed that the medical evidence as per



MLC/Ex. PW-6 did not support the allegation that penetrative sexual assault was committed by the accused/Respondent against the survivor. The relevant paragraph of the impugned judgement is as under:

“44. Accused has admitted under Section 294 Cr.P.C., although without admitting his guilt, the MLC of himself and that of victim vide his statement recorded on 20.02.2017. MLC of the victim which is proved as Ex.PX-6 is also silent on the aspect of any blood coming out from the private part of the victim and infact no injury mark has been reported and the hymen or the child victim is reported to be intact and no fresh injury has been reported even on the private parts.

Condonation of Delay

8. At the outset, Id. Counsel for the Petitioner has been asked to explain the delay of 763 days in filing the present leave petition. It is then submitted that the impugned judgment was rendered during COVID-19 period on 15th December, 2021 and the matter was marked to the Id. APP - Mrs. Meenakshi Dahiya in the second week of March, 2022. However, since she was on maternity leave till November, 2022 and the marking of matters at that time was only happening online, she was not aware of having been marked the present matter to draft the appeal. She submits that the same had come to her knowledge for the first time only in November, 2023. Thereafter, she took steps to draft the appeal and file the same.

9. The Id. APP for the State-Mrs. Meenakshi Dahiya is present before the Court and submits that it was due to her fault that the appeal could not be filed on time.

10. Considering the nature of the matter and the reasons given in the



application, the Court is inclined to condone the delay. The delay is, accordingly, condoned.

11. Considering the medical evidence combined with the fact that the child/survivor had candidly stated during her cross-examination that she was told by her mother to depose in the manner she deposed, the Court is not inclined to interfere on merits, inasmuch as the Trial Court judgment has fully analyzed the evidence on record including consideration of the medical evidence, statement of the accused and the wife of the accused as well, who gave her evidence.

12. Under such circumstances, though the delay has been condoned, the leave petition is dismissed on merits.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

AUGUST 27, 2024/dk/ms/sc