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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 408/2024, CRL.M.A. 24630/2024 & CRL.M.A. 24631/2024

STATE NCT OF DELHI

.....Petitioner

Through: Mr. Aman Usman, APP for the State
with W/SI Sangeeta, P.S. S.B. Dairy.

versus

RIZWAN

.....Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

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09.10.2024

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 378(3) of the CrPC has been filed by the State seeking leave to challenge the impugned judgment dated 15th July, 2022 passed by the Id. ASJ, Special Fast Track Court (POCSO), North District, Rohini Courts, Delhi, in *Sessions Case No. 59212/2016* arising from *FIR No. 459/2016* registered at PS Shahbad Dairy, under Section 376 of IPC and Section 4 of POCSO Act. *Vide* the impugned order the Trial Court has acquitted the Respondent.
3. It is stated that *FIR No. 459/2016 (Ex. PW-10/A)* was registered on 7th June, 2016 against the Accused/Respondent wherein the allegation was that he had committed penetrative sexual assault against the minor survivor on 5th June, 2016. The case of the prosecution is that the survivor was 13 years old at the time of the alleged incident, and during her summer vacations she used to visit the house of one Ms. Laxmi to learn stitching. On the date of the



said incident, it is stated that when the survivor reached the said house, Ms. Lakshmi was present there and after a while the Accused/Respondent also reached the said house. Thereafter, it is alleged that Ms. Lakshmi left for the market after having spoken to the Accused/Respondent. The Accused/Respondent is alleged to have come physically proximate to the survivor and molested her. According to the survivor, she resisted the Accused/Respondent but he threatened her and allegedly committed rape upon the victim.

4. The case of the prosecution is that further the survivor had informed her aunt *i.e.*, ‘*Mami*’, about the incident, and thereafter, a call was made to the PCR and the aforesaid FIR was registered. The MLC of the survivor was conducted on the same day *i.e.*, 7th June, 2016.

5. The date of birth of the survivor is found to be 6th April, 2002 and there is no dispute regarding the same. The prosecution examined 20 witnesses including the survivor and her *Mami*, whereas, Ms. Laxmi to whose house the survivor is stated to have gone on the date of incident, was however, not examined by the prosecution. The Id. Trial Court holds that the MLC of the survivor did not support the case of the prosecution. The finding of the Id. Trial Court is set out below:

“65. **The doctor who examined the child- PW9 stated that there was no sign of sexual assault on the victim.** Although PW9 also added that the victim had already washed her private parts and changed her clothes by then, still the MLC Ex PW2/A reflects that there was no inflammation or tenderness on her labia majora. The victim was very young- 14 years at the time of the alleged offence and the accused was a 40 years old married man. **The victim has deposed that she experienced immense pain during the penetration (which happened twice) and her MLC was conducted on the very next day. Yet there is no abrasion or**



contusion on the perineum or labia majora of the victim.”

6. The Id. Trial Court then examined the defence of the Accused/Respondent which revealed that there was some dispute between the survivor's family and the Accused/Respondent, as the case of the Accused was that he was wrongly implicated. The Id. Trial Court has come to the conclusion that the statement of the survivor (**PW-1**) is not of sterling quality, and in fact, the finding of the Id. Trial Court is that the child witness may have been tutored to settle personal scores. The findings of the Id. Trial Court are set out below: -

“72. Resultantly, this Court finds that the statement of "N" is not corroborated with any of the evidence or witnesses relied upon by the prosecution. **Rather, the accused has been able to show this is probably a case where the child witness has been tutored to settle personal scores between the family of the victim and the accused.** In these circumstances, it would be dangerous to return a finding of conviction only on the basis of uncorroborated testimony of the child "N".

73. Taking an overall view of lacunae in the case of the prosecution and the lack of a meaningful investigation by the police, I find that the prosecution has not established that "N" was subjected to penetrative sexual assault by the accused. The prosecution has failed to establish any of the allegations made against the accused.

74. Consequently, accused Rizwan is acquitted for the offences under Sections 376(2)(i) of the IPC and Section 4 of the POCSO Act.”

7. The present petition has been filed by the State challenging the impugned judgment of acquittal. There is a delay of more than 633 days in filing of the present leave to appeal itself. The impugned judgment is dated 15th July, 2022 and the present leave to appeal was filed on 31st July, 2024.

8. This Court has examined the grounds for condonation of delay which



is sought. This Court has also examined the merits of the matter and has perused the evidence of the survivor (PW-1) as also her *Mami* (PW-20). Clearly, Ms. Laxmi, who could prove the case of the prosecution, has not been examined.

9. On the strength of the testimony as also on delay, this Court is not inclined to grant leave to appeal. Accordingly, the petition is dismissed and disposed of.

10. Pending application(s), if any, also stands disposed of.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

OCTOBER 9, 2024/bsr/ms