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

+ CRL.L.P. 310/2018

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam, APP with
SI Ritika Choudhary, PS New Ashok
Nagar.

versus

LAL BABU

.....Respondent

Through: Not given.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

25.02.2025

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1. This is an application filed under section 378(3) of the Code of Criminal Procedure, 1973 seeking grant of leave to appeal against the impugned judgment dated 31.01.2018 passed by the learned Additional Sessions Judge-01, (Designated Special Court under the POCSO Act, 2012) East District, Karkardooma Courts, Delhi in Sessions Case No. 132/2013 titled "*State Vs. Lal Babu*", whereby the respondent has been acquitted of the offences under section 8 of the POCSO Act on the ground of inconsistency in the evidences.

2. The findings of the learned Additional Sessions judge are contained in para nos. 33, 33 and 34 of the impugned judgment dated 31.01.2018 and the same reads as under:

"33. I have carefully gone through the testimony of all the



prosecution witnesses. I have also considered the contradictions pointed out by Ld. Defence Counsel. The contradictions pointed out are very material. One of the material fact of the case as per the prosecution story is that accused was already apprehended by one lady, who resided in front of under construction house of the complainant and said lady is examined by the prosecution as PW-4, however, she has denied the prosecution story and turned hostile and has further deposed that she never gave statement to the police. This witness has only admitted that house of the victim is in front of her house and she did not know anything about this case. This is a material witness because, she also happens to be the mother of “Didi” who gave permission to the victim to visit her house when the incident took place. Hence, it is quite surprising to note that the witness who the prosecution is claiming to have arrested the accused has completely denied having apprehended the accused on the date incident. Hence, she has cast a serious doubt on the prosecution story.

34. Another material contradiction pointed out by the defence is that while PW-2/victim in her deposition has categorically deposed that mother of Didi (landlady), her father and his friends had caught Lai Babu and he was beaten, however, PW-3/mother of the victim has deposed that accused had already been apprehended by one lady namely Charanjeet Kaur who is residing in front of house No. C-59, New Ashok Nagar, Delhi. Even PW-1, the complainant and father of the victim has



deposed that accused was caught by the public persons who was identified by the victim on the spot. These contradictions are also material and are reasonable grounds to create a doubt on the prosecution case.

35. Further, another important piece of evidence which would have supported the story of the prosecution is the Rs. 5/- note which was allegedly given by the accused to the victim. However, even IO failed to seize the Rs. 5/- note and hence, it is a serious lapse on the part the IO which further casts a doubt on the story of the prosecution.”

3. In the present case, to my mind, the prosecution has failed to advert to the testimony of the complainant i.e. father of PW-1, as well as the prosecutrix i.e. PW-2, which is clear, cogent and there are no contradictions in the same. The contradictions in the testimony of the other witnesses have to be weighed and reconciled with the testimony of the prosecutrix as well as her father i.e. the complainant.

4. The same has not been done in the impugned judgment.

5. The respondent was present on the last date, however, no one is present on behalf of the respondent today.

6. For the said reasons, the petitioner is granted leave to appeal to challenge the impugned judgment dated 31.01.2018 passed by the learned Additional Sessions Judge-01, (Designated Special Court under the POCSO Act, 2012) East District, Karkardooma Courts, Delhi in Sessions Case No. 132/2013 titled “*State Vs. Lal Babu*”.

7. The application is disposed of accordingly.

CRL.A. _____/2025 (To be numbered)



8. Since the leave to appeal has been granted, the Registry is directed to number the appeal.
9. Since, the appeal is pending from the year, 2018, list this appeal for hearing on 11.08.2025.

JASMEET SINGH, J

FEBRUARY 25, 2025/pk

Click here to check corrigendum, if any