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

Date of decision: 28th January, 2026

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CRL.A. 565/2018

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Ritesh Kumar Bahri, APP with
Ms. Divya Yadav, Adv.

versus

NASEEM

.....Respondent

Through: Petitioner in person.
Mr. Badrinath, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant - State of NCT of Delhi under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter, '*CrPC*') assailing the judgment dated 17th September, 2016 (hereinafter, '*impugned judgment*') passed by the Id. Additional Sessions Judge-01, South West District, Dwarka Courts, New Delhi in ***SC No.63/2/2013***.

Facts:

3. The present case arises out of ***FIR No. 61/2013*** registered at PS Najafgarh for offences under Sections 376/506 of the Indian Penal Code, 1860 (hereinafter, '*IPC*') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, '*POCSO*').



4. The allegations against the Respondent- Naseem *i.e.*, Accused person was that the Respondent had repeated physical relations with the Prosecutrix without her consent.

5. The facts of the present case are that since 2011-12, the Respondent used to live as a tenant in one of the rooms in the premises of the Prosecutrix. It is alleged by the Prosecutrix that during the tenancy, the Respondent maintained physical relations with the Prosecutrix without her consent. Thereafter, there was some dispute between the Respondent and the family of the Prosecutrix in respect of the rent. The Respondent had even moved out of the said premises.

6. However, even after moving out, the Respondent is alleged to have visited the premises of the Prosecutrix on 6th March, 2013 and had physical relations with her on the said date.

7. On the next date *i.e.*, 7th March, 2013, the Respondent went again to the premises of the Prosecutrix where a relative of the Prosecutrix was present due to which the Respondent is stated to have left the place.

8. On 8th March, 2013, the Prosecutrix is stated to have informed her mother about the physical relations of the Prosecutrix with the Respondent, who thereafter, made a PCR call. The FIR *i.e.*, ***FIR No. 61/2013*** was registered at Police Station Najafgarh for offences under Sections 376/506 of the IPC and Section 4 of the POCSO Act.

Proceedings before the Trial Court

9. During the course of the trial, on behalf of the prosecution, evidence of PW-1 *i.e.*, the Prosecutrix and PW-6 *i.e.*, mother of the Prosecutrix was recorded. PW-11 *i.e.*, Dr. Rajeev Solanki, CMO, RTRM Hospital who had



prepared the Medico-Legal Case record (hereinafter, 'MLC') of the Prosecutrix and PW-5 *i.e.*, Dr. Shruti Joshi Dabral, Gynae Specialist, RTRM Hospital were also examined. The remaining witnesses *i.e.*, PW-2, PW-3, PW-4, PW-7, PW-8, PW-9, PW-10 and PW-12 are all police officials, magistrates and officers of the municipal department.

10. The statement of the Prosecutrix was recorded on four occasions. Firstly, the statement under Section 161 of the CrPC was recorded on 8th March, 2013. Thereafter, the statement under Section 164 of the CrPC was recorded on 18th March, 2013 which was incomplete, and on 21st March, 2013 a complete statement was recorded. The Prosecutrix also gave evidence on 16th January, 2014 before the Trial Court. The statement of the mother of the Prosecutrix *i.e.*, PW-6 was also recorded.

11. During the course of trial, the statement of the defence witness *i.e.*, Rashida Alam who is the mother of the Respondent was also recorded.

12. After considering the entire evidence, the Trial Court came to the conclusion that the guilt of the Respondent had not been established beyond reasonable doubt and accordingly, the Respondent was acquitted. The observations of the Trial Court are set out in paragraphs 15 to 17 of the impugned judgment which are extracted below:

"15. I have heard the arguments at bar, perused the record and analysed the evidence brought and examined by the prosecution. The prosecution case is based upon the testimony of the child victim. It is an admitted fact herein that the accused was earlier the tenant of the mother of the child victim. She had got vacated the suit property. The case of the prosecution is that the child victim had been sexually assaulted and raped by the accused and even after vacating the suit property, accused made continuous physical relation



continuously with the child victim. Even, one day, accused had been seen entering in the house of the child victim by the neighbour and then the child victim had gone to complain about the conduct of the accused and accused had started quarreling, as such the case has been registered. It is an admitted fact that the statement under Section 164 Cr.PC of the child victim was twice recorded ie., one on 18.03.2013 and another on 21.03.2013. Prosecutrix itself had admitted in her cross examination that her statement dated 18.03.2013 before the Ld. MM is incorrect statement and the statement dated 21.03.2013 is a correct statement.

16. If we peruse the testimony of the child victim and her mother, then it appears that the child victim had never made any complaint about the continuous sexual harassment to her parents or anybody else. In the testimony of the mother of the child victim, then it has come on record that there are certain other persons who had seen the accused entering the house of the child victim but those witnesses have not been examined by the prosecution nor their statement are on record. If we peruse the testimony of PW 12, the investigating officer, then it is revealed that the mother of the child victim did not tell her in her statement that the child victim was raped by the accused. He did not make enquiry from Happy and Brijesh whose name were revealed by the child victim in her statement recorded under Section 164 Cr.PC. Even the IO did not prepare the site plan of the spot where the offence took place. He did not make enquiry from any neighbour. He did not ask the child victim to produce her undergarments worn by her at the time of commission of the offence.

17. In view of the above discussion, I am of the view that the testimonies of the child victim and her mother does not inspire confidence to convict the accused. Their testimonies are full of inherent contradictions. Defence is probable because the quarrel had admittedly started on 08.03.2013 because the investigating officer and



defence witness had stated so. Mother of the child victim had also admitted about going to the house of the accused.”

13. According to the Trial Court, the testimony of the Prosecutrix and her mother did not inspire confidence to convict the Respondent and hence, the Respondent was acquitted.

Submissions

14. Mr. Ritesh Kr. Bahri, Id. APP has relied upon the various statements made by the Prosecutrix to argue that this is a fit case where the Respondent ought to have been convicted especially bearing in mind the fact that in the MLC it was proven that the hymen was ruptured.

15. Moreover, Id. APP submits that the Trial Court completely ignored the date of birth of the Prosecutrix which would have shown that she was a minor at the time when the Respondent established physical relations with the Prosecutrix. Reliance is placed upon the birth certificate issued by the Government Authority which is placed on record. Thus, even if the Prosecutrix had consensual relationship, acquittal could not have been done as she was a minor.

16. In addition, it is argued by Mr. Bahri, Id. APP that the quality of the evidence of the Prosecutrix cannot be completely discarded as the Trial Court has not discussed the MLC and other relevant evidence at all and hence, the acquittal is not tenable.

17. On the other hand, Mr. Badrinath, Id. Counsel appearing for the Respondent through legal aid has vehemently argued that the statement of the Prosecutrix lacks credibility and, therefore, the Trial Court has rightly not believed the testimony of the Prosecutrix. Moreover, the inconsistencies are



evident even from comparing the evidence of the mother of the Prosecutrix *i.e.*, PW-6 and the Prosecutrix *i.e.*, PW-1.

18. Ld. Counsel for the Respondent places reliance upon the decision of the Supreme Court in *Nirmal Premkumar v. State, 2024 SCC OnLine SC 260* to submit that the Respondent deserves to be acquitted.

Analysis and Findings

19. This Court has considered the matter and has also perused the evidence of the PW-1 and PW-6. The said evidence on record would reveal that the case of the Prosecutrix is that the Respondent had established repeated physical relations with the Prosecutrix. There are, however, references to certain neighbours and other witnesses who could have been examined in the matter, for example, one Ms. Rekha Yadav, who is mentioned by the mother of the Prosecutrix as having the knowledge of the Respondent having visited the house of the Prosecutrix. However, no evidence of Ms. Rekha Yadav has been recorded.

20. Moreover, there is also no examination of the siblings of the Prosecutrix, who appear to have been present on most occasions in the house itself. The testimony of the mother of the Prosecutrix itself has some contradictions with the testimony of the Prosecutrix regarding when the PCR call was made and as to when the FIR was registered.

21. All these aspects have not been discussed by the Trial Court at all. In addition, the credibility and genuinity of the evidence given by the Prosecutrix in all her statements ought to have been analysed to see whether there were inconsistencies and what was the nature of the inconsistencies *i.e.*, whether they were major or minor.

22. According to the Respondent, there was an altercation in respect of



some rent amounts, etc. between the families of the Prosecutrix and the Respondent which led to acrimony between the family of the Prosecutrix and the accused. This aspect has also been completely ignored by the Trial Court.

23. Finally, in light of the evidence the Trial Court ought to have also considered the age of the Prosecutrix which is attempted to be established through Ex.PW-9/A *i.e.*, birth certificate of the Prosecutrix.

24. None of these documents and evidence is discussed in the impugned judgment. The Trial Court has acquitted the Respondent in summary manner which ought not to have been done in a case involving allegations of rape against a minor.

25. Under these circumstances, this Court is of the view that the matter deserves to be remanded for re-consideration by the Trial Court. Before the Trial Court, both the Parties are permitted to produce any further evidence/additional evidence, if so deemed fit. Thereafter, the above issues shall also be considered by the Trial Court and the matter shall be independently adjudicated once again.

26. It is made clear that the matter has been remanded under unusual circumstances as there has been some lapse in the evidence which has been led by the prosecution and all the issues which have been raised above have not been duly considered by the Trial Court.

27. The Respondent is stated to be working in a brick kiln as a labour. Accordingly, the Respondent shall remain on bail while the matter is pending adjudication before the Trial Court.

28. The Respondent shall furnish the requisite bail bonds and the surety as may be directed by the Trial Court.

29. List before the Trial Court on 10th March, 2026. The Respondent shall



remain present before the Trial Court.

30. Needless to add, this Court has not opined on the guilt or otherwise of the Respondent.

31. The present appeal is disposed of in above terms. Pending applications, if any, are also disposed of.

32. Copy of this order be communicated to the concerned PDJ, South West District, Dwarka Courts for being placed before the concerned Court for further proceedings.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

JANUARY 28, 2026/prg/ck