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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. L.P. No.43 of 2010 & Crl. M.A. No.1814 of 2010

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15.07.2010

STATE

..... Petitioner

Through: Mr. Sunil Sharma, Advocate.

Versus

SHRI ANIL

.....Respondent

Through: None.

Date of order: 15th July, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

S.N. DHINGRA, J. (ORAL)

1. This petition seeking leave to appeal against an order of acquittal has been made by the State through Public Prosecutor on the ground that the trial court wrongly disbelieved the testimony of Prosecutrix, who was raped and trial court wrongly acquitted the accused (respondent herein).

2. A perusal of judgment passed by the trial court dated 22nd August, 2009 shows that the trial court has not passed order of acquittal in a reckless and arbitrary manner. The trial court had discussed the evidence of the witnesses and then came to conclusion that there was no sufficient evidence to convict the accused. The prosecutrix in this case had alleged that she was raped by her tenant on 8th November, 2007 at about 4:30 p.m. On that day her husband was at work and the tenant called her inside the room. She was

holding her 1 ½ year child in her lap at that time. The accused forcefully dragged her in and in the process, her son fell down from her lap. Later her clothes were torn and despite her cries and resistance, she was raped.

3. The trial court found that MLC of the prosecutrix and the accused did not show any injury on her person or on the person of the accused. The FSL report also did not indicate detection of any semen of accused on any of her clothes or on any bed sheet etc. in the room. Nothing incriminating was recovered from the room of the tenant. No pubic hairs, no semen stains, no broken bangles. No sign of rape was found there. The clothes allegedly torn by tenant were not produced before the court. Looking at all the facts and circumstances, the trial court considered that it was not a case of rape. The other factor which weighed with the trial court was that no F.I.R. was lodged when the husband of the prosecutrix came back at about 8 p.m. and the F.I.R. was lodged after more than 24 hours; no one from neighbourhood heard her cries, no marks of resistance were there on body of prosecutrix or accused.

4. Taking into consideration the entire evidence and the judgment delivered by the trial court, I consider it is not a fit case where this court should grant leave to appeal.

5. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA
[JUDGE]

JULY 15, 2010
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