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

DECIDED ON: 01.12.2011

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CRL.L.P. 189/2009

STATE

..... Petitioner

Through: Mr. Sanjay Lao, APP.

versus

CHANDER SHEKHAR & ANR

..... Respondents

Through: Mr. Sudhanshu Palo and
Mr. Bhavesh Sharma, Advocates for R-1.
Mr. Ashish Virmani, Advocate for R-2
with R-2 in person.

CRL.REV.P. 434/2009

RAGHUBIR SINGH YADAV

..... Petitioner

Through: Mr. Anil Soni, Advocate.

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Sanjay Lao, APP for State/R-1.
Mr. Sudhanshu Palo and Mr. Bhavesh
Sharma, Advocates for R-2.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MS. JUSTICE PRATIBHA RANI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The State seeks leave to appeal against the judgment and order dated 26.02.2009 whereby the learned Additional and Sessions Judge acquitted the respondent-1 Chander Shekhar of the charges of having committed offences punishable under Sections 363/366/342/354/34 and 376 IPC and also acquitted respondent-2 Lalita of similar charges except Section-376, IPC with which she was not charged.

2. According to the prosecution, SI Raghbir Singh Yadav went to 20/8, Shahbad Dairy on 01.10.2002, and found a crowd gathered there. The prosecutrix (referred to as P) recorded her statement alleging commission of various offences. In that statement, P alleged that on 30.09.2002 around 03:00 PM, Lalita who was her parents' neighbour together with Chander Shekhar (known previously to her) came to her jhuggi at ITO i.e. her matrimonial home. She was alone at that time. Lalita told P that her daughter was missing and since she was friendly, she ought to help in tracing her. It was alleged that P accompanied the accused to Model Town and at around 8:00 PM, they took her to Chander Shekhar's office, which is located at Shahbad Dairy. P asked the accused why they had taken her there. The accused forcibly took her to the first floor; three girls were already there i.e. Sunita, Aarti and Bitoo (who deposed during the trial as PW-5, PW-6 & PW-9). Lalita allegedly shut the door and both the accused started slapping and beating up P, trying to elicit the whereabouts of Janki, Lalita's daughter. P, the prosecutrix stated that

she was not aware of the whereabouts of Janki; Lalita threatened her. It was alleged that at around 02:00 AM, after consuming alcohol, the accused locked the other three girls in the toilet besides the staircase. Lalita removed P's clothes and Chander Shekhar raped her and threatened her with dire consequences in case she revealed anything to anyone else. She was made to sit in the corner of the room and other girls were called in. It was alleged that Lalita asked her to take a bath; she complied with the demand. She was asked to leave her clothes and given Janki's clothes by Lalita. All the four girls were sitting in the room. At around 04:00 AM, one of the girls, Aarti, managed to get out and raised an alarm as a result of which, people gathered. The accused quietly slipped away from the office. On the basis of these allegations, FIR No.254/2002 was registered at PS Bawana.

3. The accused were arrested and after conclusion of investigation charged with committing the offence mentioned previously. They claimed to be innocent and sought trial.

4. In the course of the trial, the prosecution relied upon testimonies of 14 witnesses and several materials including the Medico Legal Certificates and other documents. After considering all these, Trial Court acquitted the respondents/accused.

5. It is argued that the Trial Court placed undue importance on the minor contradictions and variations to acquit the respondents/accused. It was argued that since all the witnesses were victims of abduction,

the police had ensured that their statements had recorded under Section-161, Cr.P.C. Broadly, each one corroborated the other as to the abduction and confinement as well as the rape committed upon P. In that sense, there was ample material to substantiate and corroborate the prosecutrix version about the abduction, confinement and her rape. Each one of the witnesses PW-5, 6 & 9 had heard the prosecutrix crying out and had even heard her telling them about the assault on her. The medical evidence in the form of MLC as well as the Doctor's testimony supported the version about the rape. Having regard to all these, the Court ought not to have given undue importance to minor contradictions in regard to location or the sequence of events or the kind of clothes that was worn by them or the prosecutrix. Since the identity of the assailants i.e. Chander Shekhar and Lalita was known to each one of the victims who deposed i.e. PW Nos.5, 6 & 9, the respondents' acquittal was not justified.

6. Learned counsel for the petitioner in Crl. Revision petition-434/2009 submits that the directions contained in the impugned judgment to the concerned police authorities to hold a departmental enquiry against the SHO and the IO is contrary to law. It was argued in that regard that the police did not exceed their jurisdiction in this case as was erroneously understood by the Trial Court. Learned counsel urged that the testimonies of PWs-5, 6 & 9 amply corroborated the version given by P, the prosecutrix. That the Court chose to disbelieve them did not imply that these witnesses had

perjured themselves. Further, argued the counsel, the MLC also established sexual contact with P. However, the Court applied the known standards and held that the prosecution was unable to prove rape. These, *ipso facto*, did not constitute abuse of process so as to warrant the extraordinary direction by the Trial Court in this case to the concerned police authorities to initiate departmental action.

7. We have carefully considered the submissions as well as Trial Court's records.

8. In this case, the Trial Court disbelieved the MLCs observing as follows: -

27. Now let us examine MLCs of four girls Ex.PW-8/A to Ex.PW-8/B. The first is of prosecutrix "P". The date mentioned as 02.09.02 time: 12.45 a.m. However, there is cut but there is no explanation on change of date to 02.10.02 with different pen and ink. The MLC Ex.PW-8/B mentioned the date 2nd September, 2002 time 12.55 a.m. However, there is another examination of Dr. M.G. Kalyanpal. It is on 02.10.02 time: 2.10 a.m. No explanation regarding two dates. MLC of Arti Ex.PW-8/C mentioned the date 02nd September, 2002 time: 1.14 a.m. MLCs of Bitto Ex.PW-8/D at one column has not mentioned the date of examination but at other column D - 1st October, 2002 at 1.45 a.m. Other date of examination by Dr. M.G. Kalyan Pal mentioned the date 02nd October, 2002, 1.45 a.m. in the night. All MLCs contend contradictory to the testimony of PW-11 and PW-14. Three MLCs stating the date 2nd September, 2002. The half of the examination on

02nd September, 2002 and the remaining examination on 02nd October, 2002 at early hours of the morning. The initial handwriting has not mentioned the history which is different from the other handwriting. The 2nd September, 2002 date and examination suggests that it was for bonne-x-ray of all the four girls. Then how it is possible that on 02nd September, 2002, the same MLC has been prepared and how investigation officer seized the pulandas and medical samples on 02nd October, 2002 when four girls are under medical examination. The bonne-X-ray report of all four girls also mentioned the same date of 02nd September, 2002.

28. The medical examination of four girls, seizure memo Ex.PW-11/B and MLCs PW-8/A and PW-8/B completely demolishes the prosecution story. There is no explanation or believe how four girls examined on 02nd September, 2002 when they were brought after alleged recovery on 01.10.02.

The Trial Court further recorded as follows: -

“57. Now in the examination of MLC Ex.PW-8/A to PW-8/D of four girls and Ex.PW-8/E of Chander Shekhar, some important factors erupted. PW-8/A of prosecutrix is having number 15457. PW-8/B of Sunita is having number 15458, PW-8/C of Arti 15459. The Ex.PW-8/D of Bitto is number 07294 and Ex.PW-8/E of accused Chander Shekhar is 07295. All the four girls examined in the night intervening night of 1/2.10.02 then how MLC number of Bitto chased the serial from 15000 to

07295 when examined by the same doctor. It is pertinent to mention that this MLC number matches with the MLC number of accused Chander Shekhar i.e. 07295. This strange numbering of MLCs further establishes the untrustworthiness of medical evidence proved by prosecution.”

9. The Trial Court also noticed that the material witnesses PWs-2, 5, 6 & 9 contradicted themselves in relevant particulars. PW-2, the prosecutrix contradicted herself in the statement made under Section 161 and Section 164 IPC. In Section-164 statement Ex.PW-1/C, she mentioned that only Lalita had visited her jhuggi, however, in the Court she improved upon this and mentioned the names of both persons. Similarly, there was a variation in her account in going to Model Town. The police statement under Section-161 was silent as to whether she was interviewed by the police officers when they were looking for Janki; in the statement recorded under Section-164 Ex.PW-1/C, she stated that the accused took her to PS Model Town where some policemen had recorded her statement. The Trial Court observed in this regard as follows: -

“38. XXX
The appreciation of this portion prosecutrix statement again reflects material contradiction. According to Ex.PW-2/A she went to Lalita and Chander Shekhar in a three wheeler at police station Model Town. As per statement under section 164 Cr.P.C. she was taken by Lalita only to police

station Model Town. According to testimony in the court she remained at police station prior to 8.00 p.m. The investigation officer has not enquired from police station Model Town regarding this aspect although in the charge sheet one line is written. No effort is made by IO to join the police officials from police station Model Town to further explain and corroborate this fact. No documentary filed on record regarding any FIR is pending at police station Model Town and what inquiries conducted by police officials from prosecutrix "P" at police station Model Town. However, Ex.PW-14/A DD No.16 SI Narender Yadav made some inquiries from girl which was taken by parents from police station Model Town. However, investigation officer did not make any effort to join SI Narender Yadav during investigation.

39. Statement of prosecutrix "P" Ex.PW-2/A further states that at about 8.00 p.m. in the night, Lalita and Chander Shekhar both forcibly took her to first floor, C Block office, there three girls namely PW-5 Bitto, PW-6 Arti and PW-9 Sunita were already sitting there. The door was shut. Thereafter both accused started slapping and giving fist blows on all the four girls and asking about missing Janaki. At about 2.00 a.m., Chander Shekhar after drinking liquor along with Lalita confined all the three girls in a latrine outside room at staircase. Then closed door of the office.

40. In statement 164 Cr.P.C. prosecutrix states that Lalita taken her C Block Office by dragging from the staircase. There she saw three more girls Arti, Sunita and Bitto already confined there. Both

accused gave beating to three girls. Thereafter three girls were confined in bathroom. When prosecutrix as PW-2 she testified that Lalita took her dragging on first floor office of Chander Shekhar, she saw there three girls were already confined one or two days prior to her. Lalita again made inquiries about missing daughter Janaki. In cross-examination she states that she never went to office of accused Chander Shekhar. She also revealed before Magistrate that she said that Lalita threatened her to put on her chilly powder and teab. Three girls were confined in a bathroom close to her. Latrine and bathroom were combined where she was confined.”

10. Commenting on the wide variations between the statement of all the witnesses including ‘P’ - each one of them had recorded the further statement under Section-164 Cr.P.C. - the Trial Court observed as follows: -

“45. The statements of all the four witnesses PW-2 prosecutrix, PW-5 Bitto, PW-6 Arti and PW-9 Sunita on the aspect of their meeting with both accused persons and how they were brought to the office C Block, Shahbad Dairy are contradictory. The conduct as alleged of accused Lalita and Chander Shekhar how mismatched. The story of confinement also differs from each witness. How new and new facts are introduced. Everything is happening in a small room but how they were depicted and then reproduced while under examination for statement under section 164 Cr.P.C. and finally before this court. PW-9 Sunita introduced son of Lalita who consumed liquor and

gave beating to them. PW- 5 Bitto states that Lalita compelled prosecutrix "P" to take Sharab. PW-9 also introduced new facts regarding the teasing, touching and undressing her. PW-5 Bitto in cross-examination stated a story of visiting police station Model Town, Adarsh Nagar and Jahangir Puri. These are the material contradictions of all the four girls' testimony among themselves, among statements under section 164 Cr.P.C. and each other's statement under section 164. Similarly, the testimonies recorded all the four girls in the court are contradictory to each other on all material aspects. The analysis and appreciation of PW-2 prosecutrix, PW-5 Bitto, PW-6 Arti and PW-9 established that prosecution case now further grows but element of truthfulness is diminishing at a very fast speed in respect of wrongful confinement, threat and outraging modesty and kidnapping. It is pertinent to mention here that how it can be believed that four girls missing from their house but their parents or husband never approached to the police."

11. The Trial Court also disbelieved the circumstances in which the alleged escape took place by the four girls and observed as follows: -

"56. The last part of the prosecution story regarding escape of PW-6 Arti is contradictory to each other of the witnesses PW-5, PW-6 and PW-9 and also to the statements under section 164 Cr.P.C. Each witness has given her own story of escape. The common fact is that public persons gathered there. They called police officials there. The investigation officer has not proved any DD entry which was registered on the information of

any public person of the locality or the neighbourhood. No public person joined the investigation proceedings by the investigation officer. The story regarding arrest of accused as stated by four girls and police officials are also contradictory to each other. Some say they were escaped. Some say they were apprehended by public. However, according to PW-13 HC Rattan Lal they were arrested when they were sitting in front of their Jhuggi B-19. PW-14 investigation officer SI Raghubir Singh simply stated that they were arrested and proved their memos PW-13/A and PW-13/B and PW-11/C and PW-11/D. According to Ex.PW-13/A time of arrest is 11.10 p.m. on 01.10.02 and this is witnessed by HC Rattan Lal and prosecutrix PW-2. PW-2 has not proved this arrest memo. The memos of Lalita are Ex.PW-11/C and Ex.PW-11/D. According to these memos, accused Lalita was arrested at 11.40 p.m. half an hour of the accused. PW-2 is the witness but she failed to prove these memos. According to PW-13 both were present in front of B-19 but however, there is difference of half an hour. MLC of accused Chander Shekhar Ex.PW-8/E suggests that he was medically examined at 8.50 a.m. at same BJRM Hospital. There is a gap of nine hours from the arrest time to the medical examination. During this nine hours custody period investigation officer had no time to record disclosure statement of any of the accused. There is no explanation for not recording of disclosure statement by the investigation officer.”

12. We further notice that the MLC of the prosecutrix P does not

bear any sign of forcible sexual intercourse as is sought to be made out by the prosecution. The evidence on record establishes that she was married even though at a young age. All that the medical evidence suggests is that she has normal sexual intercourse. So far as the others are concerned, there is no allegation nor is there any hint of medical evidence or otherwise in this regard.

13. The standard which the High Court has to adopt while considering petition for leave to appeal against the orders of acquittal is to satisfy itself that the judgment appealed from discloses some substantial or compelling reasons to admit an appellate review. The substantial and compelling reasons would mean gross mis-appreciation of evidence, overlooking and misapplication of material provision of law etc. On an overall conspectus of the circumstances in this case, it cannot be said that the impugned judgment contains any elements or reasoning and fits that description. Therefore, we do not find any merit in the petition; it has to fail.

14. So far as the revision petition filed by the police officer Raghubir Singh Yadav is concerned, we are of the opinion that the official acted within the scope of his duties in recording the statement of prosecutrix and the other witnesses. At that stage of investigation, he could not have known the veracity or otherwise of the allegations. Although, the discrepancy in the documents was considered serious enough as to impact the judgment and add up to the reasoning for acquittal of the accused, we are of the opinion that by itself such

circumstance was inadequate for the Trial Court to have adopted the extreme approach and directing departmental enquiry. For these reasons, we are of the opinion that the observations and directions made by the Trial Court in this regard in the impugned judgment i.e. in paragraph-60 & 61 of the impugned judgment cannot be sustained. They are accordingly set aside.

15. For the above reasons, the petition - CrI.L.P.189/2009 has to fail; it is accordingly dismissed.

16. Criminal Revision Petition-434/2009 is allowed in terms of the above directions.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATIBHA RANI
(JUDGE)**

DECEMBER 01, 2011
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