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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.L.P. 583/2011

STATE Petitioner

Through: Mr. Manoj Ohri, APP

versus

RAM KUMAR AND ORS Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

% **ORDER**
16.12.2011

Crl.M.A. 19471/2011

Exemption allowed subject to all just exceptions.

Crl.M.A. 19470/2011

For the reasons stated in the application the delay in filing the present
leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 583/2011

1. By the present leave to appeal petition, the Petitioner seeks setting aside of the judgment dated 25th March, 2010 acquitting the Respondents.
2. Learned APP for the State contends that the impugned judgment is not

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sustainable in the eyes of law and is based on conjectures and surmises. Learned Trial Court has returned a finding of acquittal ignoring the factual matrix of the case and has not properly appreciated the evidence placed on record. Learned Trial Court has erred in observing that the accused persons were justified in refusing the TIP proceedings and not appreciated the fact that the third accused namely Anil @ Sunil @ Mukesh was not arrested and could not be traced in the present case. Learned Trial Judge has failed to appreciate that the testimonies of witnesses and the evidence on record clearly create a chain of events which lead to the conclusion that the accused persons are guilty of offences punishable under Section 366/376(g) IPC. It is contended that acquittal solely on the basis of DNA Report is bad in law. The impugned judgment cannot stand scrutiny of law and is liable to be set aside.

3. I have heard learned APP for the State.

4. Briefly, the facts of the case as stated are that on 20th July, 2005 on receiving DD No. 6A SI Bhoop Singh along with Const. Bane Singh reached at the spot i.e. Mayapuri Road pavement near Punjab Steel. There two ladies namely Anita and Rabri Devi met S.I. Bhoop Singh and told him that while, they along with prosecutrix were present on the pavement of the drain and

were easing themselves, three persons came in a white colour car and gave beatings to them and thereafter they lifted the prosecutrix and took her along with them in the said car. The police personnel recorded the statement of the prosecutrix wherein she stated that she is a housewife and on the date of incident at about 4:30 a.m. she along with her neighbour Anita and Rabri Devi had gone to Mayapuri road pavement towards Hari Nagar drain to ease themselves and at about 4:40 p.m. three persons came there in a white colour car. One person amongst those was thin, of dark complexion and medium height. The other was fat, tall and of fair complexion and third person was fat having dark complexion. The said three persons gave beatings to them and forcibly lifted her and made her sit in the said car, at the rear seat. Two persons amongst them, sat at the rear seat and one of them who was thin, started driving the car. Age of all the three persons was between 25-30 years. All the three persons, forcibly committed rape with her in the running vehicle, one by one and later on accused persons, left her at the Prembari Bridge, Ring Road Red Light. After some time, police from Police Station, Saraswati Vihar, reached there and took her to police station Maya Puri. She further stated that she was medically examined and she can identify those three accused persons, if they are shown to her. Legal action be taken



against them.

5. On the basis of the statement of prosecutrix case under Sections 366/376(g)/34 IPC was registered. During investigation, the accused persons were apprehended and further proceedings were carried on. After completion of investigation, charge-sheet under Section 366/376(g)/34 IPC was filed against the accused persons. After recording the statements of prosecution witnesses and the accused persons under Section 313 Cr.P.C. learned Trial Judge acquitted the Respondents.

6. In the present case the prosecution has examined as many as 36 witnesses. PW1, the prosecutrix has stated that on the day while she was present at the spot, the accused persons reached their in a Maruti Van whereafter she was forcibly taken inside the car and rape was committed on her in the moving car. She continuously raised alarm and banged her feet with the glass and the door so that the same might be broken. The accused persons gave beatings to her and also caught hold of her hands. This witness in her cross-examination has admitted that she was shown the accused persons outside the Court and was asked to identify them in the Court. The name of accused Niranjana was disclosed to her by the police. This witness pointed towards Ram Kumar and stated that his name is Niranjana. PW 13

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Rabri Devi has stated that she was present along with prosecutrix at the time of incident and on the day when they reached Mayapuri on the main road one black car came and stopped by the side of road. Two persons got down from the car, slapped her and pushed her due to which she fell down. They then caught the prosecutrix and made her sit in the said vehicle. She stated that she made efforts to save the prosecutrix and caught hold of the window of the said vehicle, however the vehicle started moving and dragged her for some distance. A blow was given on her hand and she fell down losing her grip. This witness in her cross-examination has stated that only once she met the accused persons at the police station but thereafter she did not meet them. PW10 Anita has also stated that the prosecutrix was forcibly taken inside the car. But as regards the identification of the accused persons she admitted that police officials had shown her the accused persons in the police station and their names were already in the newspaper.

7. A perusal of the testimony of these witnesses show that the accused persons were shown to the witnesses at the police station itself and their names were flashed in the newspapers and other medium due to which these witnesses have identified them. The refusal of the accused persons in not joining the Test Identification Parade is justified as the very purpose of Test

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Identification Parade stands defeated in the present case.

8. The features of the accused persons as stated by the prosecutrix in the FIR do not match to that of the accused persons arrested. Also the blood samples of the accused persons were sent to the FSL for DNA test along with the clothes of the prosecutrix. The DNA test report concluded the presence of biological fluid(semen) on the Petticoat and Saree of the prosecutrix but the same did not match with that of the accused persons. In the absence of the link evidence connecting the Respondents to the crime and the discrepant testimony of the witnesses, the prosecution has not been able to prove the case beyond reasonable doubt against the Respondents.

9. Keeping in view the facts and circumstances of the case where the accused persons have not been properly identified nor they are connected to the crime by the FSL report, the benefit of doubt has been rightly extended to the Respondents. I find no infirmity much less any perversity in the impugned judgment. The petition is dismissed being devoid of any merit.



MUKTA GUPTA, J.

DECEMBER 16, 2011

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