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

+ **CRL.L.P. 557/2018**

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Hirein Sharma, APP for
State.

versus

RAM KISHAN & ANR.

....Respondents

Through: None.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

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ORDER
28.08.2018

Crl.M.A. 30861/2018 (exemption)

1. Allowed, subject to all just exceptions.

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2. The State seeks leave to appeal against the judgment dated 2nd June, 2018 passed by the Additional Sessions Judge, Special Fast Track Court, Patiala House Court, New Delhi in SC No.78/2017 arising out of FIR No.466/2016 registered at Police Station ('PS') Sarojini Nagar, Delhi acquitting the Respondents no.1 and 2 for the offence under Section 376D IPC.

3. The charge against the Respondents was framed by the trial Court by order dated 7th March 2017 that on the afternoon of 19th November, 2016, they had committed gang rape of the prosecutrix (PW-1), punishable under Section 376D IPC at a Jhuggi No. RJ-54, East Kidwai Nagar, New Delhi. According to PW-1, she along with Respondent no.1 i.e Ram Kishan (A-1), around 15 years prior to the incident, had come to Delhi from Jhansi in search of A-1's nephew.

4. Despite their best efforts, the said nephew could not be traced. Thereafter, she started residing with A-1 in Delhi itself. On account of this, the husband of PW-1 left her. Thereafter, she had called her children to Delhi to reside with her. According to PW-1, around three years prior to the incident, A-1 had left her and started living with another woman.

5. Thereafter, PW-1 and her three children started residing separately. On 18th November, 2016 at 9.30 pm, A-1 came to her *jhuggi* and after talking for some time started abusing her and her children. Therefore, they threw A-1 out of their *jhuggi* at the time. On the following day i.e. 19th November, 2016 at 9 am, when the son of PW-1 had left for his work, A-1 along with Ram Swarup @ Lallu (A-2) came to her *jhuggi* and apologized for his misconduct on the previous night.

6. According to PW-1, A-1 told her that he would get her employed and asked her to accompany him to which PW-1 agreed. When they reached near Sindhia Pottery, Sarojini Nagar, A-1 supposedly told her

that one of his relatives who was residing in the nearby *jhuggi* was seriously ill and that A-1 wanted to meet him. Thereafter, PW-1 along with A-1 and A-2 went to see the said relative. At around 12 noon, when they were entering into the *jhuggi* of the said relative, A-1 pushed PW-1 inside the *jhuggi* and raped her whilst A-2 was standing at the gate of the *jhuggi*. Thereafter, A-1 called A-2 inside and A-2 also raped her. She somehow managed to escape from the clutches of the accused and reached the Police Station to lodge a complaint.

7. The statement of PW-1 was recorded before the learned Metropolitan Magistrate under Section 164 Cr.P.C. where she reiterated the allegations made by her in the complaint dated 19th November, 2016. PW-1 thereafter underwent medical examination. The vaginal swabs of PW-1 and blood samples of the two accused were sent for examination. A DNA report was sent by the FSL.

8. The trial Court has in a very detailed analysis of the evidence come to the conclusion that PW-1 was neither truthful nor reliable. The reasons given by the trial Court for this conclusion in the impugned judgment can be summarized thus:

- (i) In her initial complaint there is no mention by PW1 about her younger daughter accompanying her and the accused persons to the *jhuggi* where the rape took place whereas in her deposition in Court she introduced this version for the first time. She further added that A2 handed over Rs.10/- to her younger

daughter asking her to remain outside the *jhuggi* while he and A2 committed rape upon PW1.

- (ii) In the trial Court for the first time PW1 introduced a version that there were four persons in the *jhuggi* where she was raped; and that all four of them had consumed liquor, whereas there was no whisper of this either in her initial complaint or in her statement u/s 164 Cr.PC. When confronted with these contradictions PW1 simply stated that she was deposing in court whatever she had said earlier in her complaint which obviously was not correct.
- (iii) The owner of the *jhuggi* where the rape took place i.e. PW2 deposed that he knew A1 from before as they used to work together in one 'OM' band and on one day, A1, A2, PW1 and one girl had come there to visit him as he was unwell and had not been going to work. When the said persons had come to visit him, the family of his tenants who were residing in his *jhuggi* were also present. At the time, PW1 had not raised any hue and cry about any incident. The evidence of PW2 made it clear that there were no men having liquor in his *jhuggi* and since his tenants were living in the *jhuggi* itself, the allegations of PW1 that she was raped inside the *jhuggi* by A1 and A2 were clearly untrue. The trial Court noted that the deposition of PW2 in-fact corroborated what A1 and A2 had stated in their respective statements u/s 313 Cr PC namely that on 19th November, 2016 all of them had merely gone to the *jhuggi* in question to inquire about the health of PW2.

- (iv) Although in the complaint PW1 stated that A1 had come to her *jhuggi* at about 9.30 pm on 18th November, 2016 and had a fight with her, pursuant to which she had thrown him out of her *jhuggi*, in her deposition in the Court she stated that one day in the winter of 2016, A1 along with his friend had come at 10 pm; her daughter-in-law had served them dinner and immediately thereafter A1 had told her that he can provide PW1 with a job. While deposing in the Court PW-1 made no mention of any quarrel having taken place between her and A1 on the night of 18th November, 2016 or his being thrown out of her *jhuggi*. In fact, she mentioned that A1 had come to her *jhuggi* at 10 pm on 19th November, 2016 and it is only when the APP put to her a leading question that she corrected the time as being 10 am.

9. The trial Court also noticed that in her initial complaint PW-1 herself had stated that she had been a live-in relationship with A-1 for almost 15 years and that she had come to Delhi with him, as a result of which her husband had in fact left her. In Court, however, when asked about it, she claimed that she never had a live-in relationship with A1 and that she simply resided and worked with him. In her cross-examination, she admitted that the *jhuggi* in which she was residing along with her children was in the joint name of PW-1 and A-1 and apart from the said *jhuggi*, one flat at Baprola in Delhi and one property in District Tikamgarh (M.P.) was also purchased in the joint names of PW-1 and A-1. Her explanation that A-1 got her name entered jointly with his without her knowledge was unbelievable

because even in her Aadhar Card, the name of A-1 was shown as her husband. This was consistent with the version of A-1 that both of them had got married some years ago and that PW-1 had falsely implicated him only because she wanted him to transfer the joint properties in her and her children's name.

10. The medical evidence also did not help the case of the prosecution. In the vaginal swab, only the semen of A-1 was found and this was consistent with his own version that a night prior to 19th November, 2016, PW-1 had consensual intercourse with him. The DNA sample did not show the presence of the semen of A-2.

11. Having heard the learned APP for the State and having examined the evidence of PW-1 in light of the judgment of the trial Court, this Court does not find any ground having been made out for interfering with the impugned judgment of the trial Court. The petition is accordingly dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 28, 2018

"shailendra"