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

% *Date of Judgment: 04.12.2015*

+ CRL.A. 1304/2015

MALTI CHAUHAN

..... Appellant

Through Mr.Amit Gaurav Singh,
Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents

Through Ms.Kusum Dhalla, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

Crl.M.A.No.17716/2015 (exemption)

1 Exemption is allowed subject to just exceptions. Application disposed of.

Crl.M.A.No.17717/2015 (for condonation of delay of 20 days)

2 In view of the averments, made in the application, the delay of 20 days in filing the appeal is condoned. Application disposed of.

CRL.A. 1304/2015

3 This appeal has been filed by the victim impugning the judgment

dated 07.7.2015 wherein the respondent nos.2 and 3 stand acquitted.

4 The present FIR had been registered pursuant to DD No.28A having been received in the local police station at police station Sarita Vihar. This was on 22.3.2011. Information was that attempt of rape had been committed upon the victim by her uncle and cousin. Investigation was set into motion. Victim was examined. Her statement under Section 164 Cr.P.C. was also recorded. Certain scratches were noted upon her body. No internal or external injuries were found. There was no fresh tear of the hymen. The prosecution in support of its case had examined 15 witnesses. The star witness was the prosecutrix herself. She was examined as PW-2. The statement of the accused recorded under Section 313 Cr.P.C. and his defense that he has been falsely implicated was examined. The Trial Judge was of the opinion that the victim was not cogent and credible in her version; the scientific analysis and the medical opinion also did not support the version of the prosecution. The accused persons were accordingly acquitted.

5 Learned counsel for the appellant submits that this judgment has been passed erroneously. Testimony of PW-2 has not been considered in the correct perspective.

6 Version of PW-2 has been scrutinized. Admittedly, in this case apart from the testimony of PW-2 there is no other corroborative evidence as the MLC of the victim and the FSL report do not support the version of the prosecution. As noted supra there was no fresh tear of the hymen. No injuries were noted upon the victim. The Court had noted that the FSL also did not support the version of the prosecution as although semen was detected on the vaginal swab and trouser of the prosecutrix but there was no DNA matching; therefore it could not be said that the semen was that of the accused.

7 In this background the testimony of PW-2 had been appreciated. PW-2 had on oath stated that the accused persons Shoram and Umesh were known to her. Shoram was her uncle and Umesh was her cousin. She was married with one Kuldeep Singh. Her divorce case was pending. On 21.3.2011 she was called by her uncle Shoram at his house where she found only her uncle Shoram. She was given cold drink which was laced with some sedative. After taking the cold drink she felt giddy. Her uncle Shoram committed rape upon her and also took nude photographs and made video film from his mobile phone. He confined her wrongfully. At the time of her release she was threatened

not to disclose the incident to anyone otherwise her nude photographs and video film would be circulated. PW-2 did not disclose the incident to any person. The accused Shoram gave a call to her on the next morning. PW-2 refused to go. Accused threatened her that he would disclose her nude photographs and video film to her husband and other family members. PW-2 felt threatened and she went inside the house of the accused Shoram where he wrongfully confined her and committed rape upon her against her will. At that time her cousin Umesh was also there. She disclosed the incident to him. Umesh got angered with her. He did not cooperate with her. Police complaint was lodged by the victim thereafter. She was medically examined. In another part of her cross-examination she stated that she had deliberately named Umesh as perpetrator of the crime as she was upset with him as he had not taken her side when he was told about the atrocities committed by accused Shoram upon the victim. This witness was cross-examined by the learned APP for the State. She admitted that she had initially roped in Umesh and this was only for the reason that he had not toed her line and had not agreed to get the complaint lodged against Shoram. This had been admitted by her in her cross-examination which had been effected

upon her by the learned APP.

8 In her cross-examination by the counsel for the accused Shoram, she admitted that she had gone to the house of Shoram on 21.3.2011; no one had seen her either entering or coming out of the house. The complaint was lodged on the next day i.e. on 22.3.2011. No one from her family was supporting her that is why she had gone to the police station for lodging the complaint.

9 Record further reveals that on 23.3.2011 the prosecutrix had moved an application Ex.PW-14/DA and filed an affidavit Ex.PW-2/F wherein she had admitted that when Shoram called her to the house; no other person was present. These facts were reiterated in her subsequent affidavit filed by her on 14.5.2011(Ex.PW-2/G).

10 The Trial Court has appreciated the testimony of the victim in its correct perspective. The interpretation of her testimony has been reproduced herein as under:

“On an analysis of testimony of the prosecutrix with the documents on record. I find material contradictions and improvements. When she informed the police vide DD no.28a, Ex.PW-4/A, she had alleged that her cousin had tried to do wrong with her. In her complaint Ex. PW-2/A, she had alleged that both the accused persons had

committed rape upon her on both the times. During investigation, she had filed affidavits that only the accused Shoram not the accused Umesh had committed rape upon her. She had named Umesh since hwas not pressurizing her not to lodge complaint against the accused Shoram. Her MLC does not show any internal injury on her person, though she was examined on the same day of incident. Though she had abrasions on her upper back and accused Umesh had injury/scratch abrasion over back right scapular region but testimony of PW-2 would show that PW-2 and Umesh sustained the injuries when the accused Unesh After knowing the entire incident scolded her. The prosecutrix in her cross examination has also admitted to have gone to meet the accused Umesh in Central Jail and tied him rakhi.

The defence of the accused Shoram that he had seen the prosecutrix with accused Umesh in some wrong position and when he objected, she falsely implicated in this case, cannot all rightly be rejected. Although this fact has been denied by the prosecturix in her cross examination but her testimony would show that she used to move with the accused Umesh alone even outside Delhi. Further, in her first information to the police, she had alleged that Umesh had attempted to do wrong upon her.”

11 It was on the basis of this version that the Court has come to the conclusion that the testimony of the prosecutrix being full of inherent contradictions and the prosecutrix having taken conflicting stands she could not be termed as a witness of sterling quantity and on the basis of

the evidence, the Trial Judge has rightly acquitted the respondent.

Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 4, 2015

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