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

DECIDED ON : 7th SEPTEMBER, 2016

+ **CRL.A. 96/2015**

STATE (NCT of Delhi) Appellant

Through : Mr.Amit Gupta, APP.

versus

KRISHAN KUMAR & ORS. Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the State to challenge the legality and correctness of a judgment dated 15.09.2010 of learned Addl. Sessions Judge in Sessions Case No.40/08 arising out of FIR No.162/08 PS Roop Nagar whereby the respondents were acquitted of the charge. The appeal is contested.

2. Allegations as set up in the charge-sheet against the respondents were that on the night intervening 26/27.07.2008 at House No.7348, Gali No.1, Prem Nagar, Shakti Nagar, Delhi, they committed rape upon the prosecutrix 'X' (Assumed name) aged around eighteen years after administering a poisonous substance and wrongfully confining her in the house. The police machinery came into motion on receipt of Daily Diary (DD) No.9A (Ex.PW-7/A) recorded at 07.00 a.m. at PS Roop Nagar on

27.07.2008. After recording victim's statement (Ex.PW-8/A), the Investigating Officer lodged First Information Report. The victim was medically examined. Statements of the witnesses conversant with the facts were recorded. The accused persons were arrested and medically examined. Certain recoveries were effected. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against them in the Court. To substantiate its case, the prosecution examined twenty-three witnesses. In 313 Cr.P.C. statement, the respondents denied their complicity in the crime and pleaded false implication. The trial resulted in their acquittal as aforesaid. Being aggrieved and dissatisfied, the State has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix 'X' was major on the day of incident. The entire case of the prosecution was based upon the solitary statement of the victim. Needless to say, conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration.

4. In the instant case, the prosecutrix (PW-8) in her examination-in-chief recorded on 01.07.2009 implicated the respondents for committing rape upon her as disclosed in her complaint given to the police at first instance. She was called for further examination on 30.11.2009. In the cross-examination, she completely exonerated the respondents for committing rape upon her. She informed the Court that the previous statement given by her before the Court was under pressure from the

Investigating Agency as she was threatened to be falsely implicated for prostitution. She further disclosed that whatever had happened, it was with her consent. Apparently, the prosecutrix has not adhered to the version narrated by her in her examination-in-chief. No plausible explanation has been offered by the prosecution as to why the prosecutrix opted to give clean chit to the respondents. It has come on record that all the respondents were in judicial custody at the time of her examination on 30.11.2009. There was, thus, no possibility of the respondents to have approached the prosecutrix for settlement or to win her over.

5. The Trial Court has noted various discrepancies and inconsistencies emerging in the statement of the prosecutrix in the impugned judgment. It appears that the prosecutrix has not presented true facts. Earlier in her examination-in-chief, she had disclosed that the respondent – Krishan Kumar had met her in Darya Ganj and had taken her in his TSR to the spot. Subsequently, changing her version, she identified accused Nazmul Hassan to be the TSR driver to whom she had met in Darya Ganj and who had brought her at the spot. The prosecutrix did not raise any alarm when allegedly she was being ravished inside the house. She remained present in the house throughout the night without any demur. In the morning, when she was allegedly pushed out of the house by accused Krishan Kumar, she did not raise any alarm. She conveniently went to the shop of a tea vendor and from there, on his advice, made a telephone call at 100. Initially, she was reluctant to give a statement to the Investigating Agency. The FIR was lodged by sending rukka after a considerable delay at around 03.45 p.m. (Ex.PW-17/A). Arrival time of the victim at Hindu Rao Hospital is around 02.15 p.m. No explanation has been given as to why

there was delay in taking the victim to Hindu Rao Hospital. In the alleged history given to the doctor, the victim did not name the assailants / rapists. She did not give the exact number of the perpetrators of crime and in the alleged history it was recorded 'a sexual assault by 2 – 3 persons'.

6. No independent public witness was associated at any stage of investigation. No person from the neighbourhood was examined to ascertain if any such incident had taken place inside the house. The tea vendor at whose shop the prosecutrix was present was also not examined. FSL report has not connected the respondents with the crime. The circumstances given by the prosecutrix about her arrival in Delhi are suspect and not believable. She had no occasion to accompany with a stranger Nazmul from Darya Ganj in his TSR to a secluded place. Her husband or any other family member did not come forward to corroborate as to under what circumstances she had left the matrimonial home. She has given inconsistent version in complaint (Ex.PW-8/A) and the statement given before the Court as to how she arrived in Delhi and happened to be present in Darya Ganj on the day of occurrence. Since the evidence produced by the prosecution was scanty and the testimony of the prosecutrix was not reliable to the hilt, the Trial Court did not commit any illegality or irregularity in recording acquittal of the respondents.

7. The appeal lacks merits and is dismissed.

8. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

SEPTEMBER 07, 2016 / tr