

28# \$~

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

+ **CRL.L.P. 156/2017**

STATE

..... Petitioner

Represented by: Mr. Ravi Nayak, APP for the
State with SI Shri Gopal, PS
Shakarpur.

versus

SURESH CHAND KANDPAL

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

17.03.2017

Crl. M.A. No. 4502/2017 (Delay in filing)

1. Since this Court has proceeded to hear the leave to appeal petition and finds no merit therein, this Court does not find any reason to issue notice to the respondent for condoning the delay in filing the leave to appeal.
2. For the reasons stated in the application, delay of 141 days in filing the leave to appeal petition is condoned.
3. Application is disposed of.

CRL.L.P. 156/2017

1. State seeks leave to appeal against the impugned judgment dated 15th July, 2016 whereby the respondent was acquitted for offence punishable under Sections 323/354 IPC. The reasoning of the learned Trial Court in acquitting the respondent is noted as under:

“Complainant has entered into the witness box as PW1 and she has deposed that on 04.12.2011, she went to School Block,

Shakarpur in search of rented accommodation and at about 07.00 pm when she was returning to her parlour and passing through Mother Dairy road near School Block, Shakarpur, suddenly a silver coloured car bearing no.7364 stopped near her. The man who was driving the car started making gestures towards her and indicated her to sit in his car. She ignored her and started crossing the road and at that time he came out from his car, caught hold of her hand and pulled her towards his car. She opposed his act and tried to get herself freed from his clutches and pushed the accused who fell down on the road. After that accused stood up and hit something on her head due to which she received injuries. There was another boy in the car who ran away from the spot. Complainant has fully supported her allegations in her examination in chief but she failed to withstand the trials and turbulence of cross-examination when once she states that her hand was caught by the person who was sitting on the driver seat and he is the accused but when she has been re-examined u/s 311 Cr.P.C. she states that she does not remember as to who came out of the car and cannot state as to whether the person who came out from the car is present in the court or not today. She further states that she does not know whether accused came out of the car or not. She further denied the whole incident when she states that there was only a heated exchange of words with the person who came out the car but there was no indecent word or action from his side. She has been re-examined by Ld. APP wherein, she confirms that whatever she has stated above is correct and denied whatever has been stated in examination in chief. She further denied that accused had not caught hold of her hand. she has further raised doubt over the number of persons present in the car since in her examination in chief she has stated that there were two persons whereas she has stated in her cross-examination dated 30.06.2016 that there were 3-4 persons present in the car. The aforesaid testimony does not inspire confidence and there is no other eye witness of the incident despite being an admitted fact that public persons gathered at spot.

Secondly, there is no other supporting witness in this case and in that situation the testimony of complainant is to be read more carefully. It is well settled principle of law that conviction can be founded on the testimony of prosecutrix unless there are compelling reason for seeking corroboration. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of prosecutrix is not a requirement in law but a guidance of prudence under the given circumstances. In the present case, the testimony of complainant is not found to be full proof so as to base the conviction and there is no other corroborative witness. Therefore in the absence of proper corroboration of the prosecution version to alleged offence, it will be unsafe to sustain the case of the prosecution.

From the aforesaid, it is clear that in this case commissions, contradictions and discrepancies as noted above cannot be said to be minor or trivial. In fact, the same are on major issues and demolish the foundation of prosecution case and I am of the considered opinion that prosecution has failed to prove the allegations under Section 323/354 IPC reasonable doubt and accused namely Suresh Chand is hereby acquitted of the offence charged.”

2. The respondent was charged for offence punishable under Sections 323/354 IPC. As noted above in her re-examination the complainant stated that she did not remember as to who came out of the car or who was present there. She further denied the whole incident and stated that there was only heated exchange of words and no incident took place. The complainant was re-examined by the learned APP wherein she confirmed her statement recorded under Section 311 Cr.P.C. and denied her stand in examination-in-chief.

3. In view of this vacillating stand of the complaint not corroborated by any other witness the view expressed by the learned Trial Court cannot be held to be perverse warranting interference.
4. No case is made out for grant of leave to appeal.
5. Petition is dismissed.

MUKTA GUPTA, J.

MARCH 17, 2017
‘vn’