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

DECIDED ON : APRIL 25, 2017

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CRL.L.P. 330/2016

THE STATE (NCT OF DELHI)

..... Petitioner

Through : Ms.Anita Abraham, APP.

versus

NEERAJ @ GUDDU & ORS

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

CRL.M.A.No.9632/2015 (delay)

1. For the reasons mentioned in the application, the delay in filing the criminal leave petition is condoned.
2. The application stands disposed of .

CRL.L.P. 330/2016

1. By the present criminal leave petition filed under section 378 of the Code of Criminal Procedure, the State seeks leave to file appeal against the judgment dated 08.10.2015 of learned Metropolitan Magistrate (Mahila Court) North-West District, Rohini Courts, New Delhi in Case No. 72/2/14 arising out of FIR No. 337/03, PS Keshav Puram, whereby the respondents (accused before the trial court) were acquitted of the charges punishable under Sections 323/342/354/34 of the Indian Penal Code.

2. I have heard the learned APP for the State and have examined the Trial Court record.

3. Briefly stated, the prosecution case, as set up before the Trial Court in the charge-sheet was that the respondents along with other accused persons Jagdish (since 'Proclaimed Offender') and Sher Singh (since deceased) inflicted injuries to the complainant 'X' (assumed name) and wrongfully confined her at H.No. 473, Rampura, Delhi with an intention to outrage her modesty. DD No. 22A came into existence on 04.09.2003 in this regard. After recording victim's statement, the Investigating Officer lodged First Information Report. During the course of investigation, statements of witnesses conversant with the facts were recorded. Upon completion of investigation, charge-sheet against the respondents was filed and to substantiate its case the prosecution examined 5 witnesses in all. In 313 statements, the respondents denied their involvement in the crime and pleaded false implication. They examined three witnesses in defence. The trial resulted in acquittal, as mentioned previously.

4. Learned APP for the State urged that the judgment based on conjectures and surmises cannot be sustained. Delay in lodging the FIR has been satisfactorily explained and is not fatal. The Trial Court has not appreciated the testimony of the complainant in the right perspective and respondents have been acquitted on the basis of minor contradictions.

5. The occurrence took place on 26.8.2003 when allegedly the respondent No.2-Rajesh suspected victim's involvement in the commission of theft of four bangles belonging to his wife. She was allegedly beaten by respondents Neeraj @ Guddu and Sher Singh. In the complaint 'X' further revealed that her husband who arrived at the spot was also beaten. The

respondents continued to beat her for around three days and due to fear, she could not lodge report. On 31.8.2003 at around 4.00 p.m., she was taken at Rajesh's room where again she was beaten; her modesty was outraged. FIR in question was lodged on 4.9.2003. Apparently, there is inordinate delay in lodging the report with the police. In her testimony as PW-2 before the Court, 'X', did not give plausible explanation for delay in lodging the FIR. The victim and the respondents were working in STN Food Industry on the relevant day. They were living on the first floor of the factory premises. Number of other workers also used to live there. However, none of them was associated during investigation. The victim had no real apprehension not to lodge complaint with the police promptly. Respondents used to address 'X' as aunty. The victim had no complaint, whatsoever, against their conduct and behavior prior to the occurrence. Delay in lodging the FIR is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the version of the prosecution to satisfy itself as to whether any innocent person has been implicated in the crime or not. When an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true. Since the prosecution has not explained the delay in lodging the FIR, the version stated by the prosecution requires to be perused with great care and caution.

6. The prosecution did not examine victim's husband though allegedly he was present at the time of alleged commission of crime and was also beaten by the respondents. Non-examination of the material witness i.e. victim's husband is a serious flaw in the prosecution case. The victim did not get herself medically examine at any stage. Nothing has come on record

to show if she had sustained any physical injuries due to several beatings, as alleged. The victim is not expected to maintain complete silence and suffer physical torture continuously for about three days. Apparently, the victim has not presented true facts. In her cross-examination, she admitted that respondent No.2-Rajesh belonged to her village and she used to treat him like her son. She was apparently aggrieved by the false allegations of commission of theft of gold bangles. It seems the motive for the victim to implicate all the respondents including the owner of the factory-Jagdish. In her testimony before the Court, the victim did not disclose as to at what time on 26.8.2003, Rajesh had come to her room to suspect commission of theft.

7. The victim did not raise any alarm at the time of commission of crime. Testimony of complainant seems highly unreliable. It was unsafe to base conviction upon her sole testimony.

8. I find no illegality or irregularity in the impugned judgment regarding respondents' acquittal. Leave to file appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle.

9. I find no manifest error in the impugned judgment.

10. Leave petition is dismissed.

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

(S.P.GARG)
JUDGE

APRIL 25, 2017

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