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

+ **CRL.L.P. 473/2016**

MS SAVITRI

.... Petitioner

Represented by: Mr.B.N.Sharma, Advocate

versus

STATE AND ANOTHER

.. Respondents

Represented by: Ms.Meenakshi Chauhan, APP
for State with ASI Vijay Pal,
PS Greater Kailash.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

22.11.2017

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Crl.M.A.No.13779/2016

1. By this application, the petitioner seeks condonation of delay of three days in re-filing the leave to appeal.
2. For the reasons stated in the application, delay of three days in re-filing the leave to appeal is condoned.
3. The application is disposed of.

Crl.L.P.No.473/2016

1. The petitioner seeks leave to appeal against the judgment dated 18th May, 2016 passed by learned Additional Sessions Judge (Fast Track Court) acquitting the respondent No.2 for offence punishable under Section 376 IPC. FIR No.101/2013 under Section 376 IPC was registered at Police Station Greater Kailash, New Delhi on the complaint of the prosecutrix who

alleged that she was working as a maid for the last 1½ years, respondent No.2 Maan Singh used to iron the clothes in the colony and also clean the cars besides dropping children to their schools. She further alleged that the accused took her into the servant quarters and committed sexual intercourse without her consent. The FIR was lodged later on after it was revealed that the prosecutrix was seven months pregnant.

2. Evidence of the prosecutrix before the Court is as under:-

“PW-1 is the prosecutrix. She has testified on oath that she had been working as maid in the house of Neeraj Jaju on the second floor, Greater Kailash-I, New Delhi. She had been living in a servant quarter on the third floor. The accused used to iron clothes on the road adjoining the house. In June/July, about a year ago from 13.05.2015, one day at noon, she was in the house. Her employer with his family had gone for outing. The accused came in her servant quarter and committed sexual intercourse with her against her will and without her consent. She raised alarm but since no one was in the building, none came for her rescue. He stayed there for two hours and then went away. She stated that at night her employer came but due to fear, she did not tell the incident to him. After ¾ months, one aunt related to her employer came in the house and inquired why her stomach has distended. Since she did not have any idea, she did not tell her anything. Her employer/Neeraj Jaju took her in a hospital at Kalkaji where doctor told him that she is pregnant. She then told the incident to the aunt and Neeraj Jaju. Neeraj Jaju took her to the police station where her statement was recorded. She stated that prior to the above incident, the accused had committed sexual intercourse with her forcibly 6-7 times in her servant quarter in the absence of her employer. She stated that the accused never promised to marry her nor he ever said that he loves her. She admitted that the last incident happened on 10.06.2013. She stated that after the registration of the FIR, police handed her over to NGO. They took her to the hospital where she delivered a baby. She

stated that she stayed there for about 2-3 months and the baby remained with the NGO.

On being cross-examined, she stated that her employer used to live with his wife and two children. The wife of her employer used to work in a company and return from her office at about 8 p.m. His children used to come from the school of their own. She used to take care of them. She used to go to the servant quarter during the day time as well as at night at about 1 a.m. and in the afternoon at about 4 p.m. She stated that there were servant quarters but except her, no servant had been living. She stated that a family used to live on the third floor in front of her servant quarter. She stated that she was alone in the house of her employer when the incident happened. She stated that when the accused came, the door of the house was open. She stated that the accused committed rape upon her on the bed of the room of the house of her employer. She did not interact with him thereafter. She stated that the accused thereafter started committing rape upon her. She stated that she did not sustain injuries when the accused committed rape. She admitted that in her statement Ex.PW-1/A, she had stated that the accused had taken her to the servant quarter where he committed rape upon her. She then clarified that she was subjected to rape once in the servant quarter and once in the room of her employer. She denied that in her statement u/s 164 Cr.P.C. Ex.PW1/C, she had stated that she was raped only once. She stated that when she returned from the servant quarter, the children of her employer had come from the school. She stated that she did not have physical relations with anyone else except the accused. She denied that the accused did not commit rape upon her and she has falsely implicated him.”

3. Blood sample of the baby girl born to the prosecutrix was compared with that of the respondent No.2 and on comparison, DNA of the baby girl did not match with the respondent No.2. In her cross-examination, the prosecutrix had emphatically stated that she did not have sexual intercourse

with anyone except the respondent No.2, which fact was not fortified by the DNA examination. Considering the nature of evidence on record, the view taken by learned Additional Sessions Judge (Fast Track Court) cannot be said to be perverse warranting interference.

4. Consequently, the leave to appeal petition is dismissed.

MUKTA GUPTA, J.

NOVEMBER 22, 2017
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