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

DECIDED ON : MAY 09, 2017

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CRL.L.P. 438/2016

STATE

..... Petitioner

Through : Ms.Meenakshi Dahiya, APP.

versus

PINTOO

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

CRL.M.A.No.12901/2016

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

CRL.L.P. 438/2016

1. Present Criminal Leave Petition has been preferred by the State to challenge the respondent's acquittal by a judgment dated 25.08.2015 of learned Additional Sessions Judge in Sessions Case No. 48/2015 arising out of the FIR No. 242/2015 registered under Section 376/506 IPC at Police Station Palam Village.

2. I have heard the learned APP for the State and have examined the file.

3. Trial Court has noted various discrepancies and inconsistencies in the statements of the prosecutrix and other witnesses. In the impugned judgment, the Trial Court was of the view that the statement of the prosecutrix was not credible. I have examined the Trial Court record. The prosecutrix is aged around 33 years, mother of a daughter aged around 13 years. The occurrence took place on 25.4.2015 at around 10.30 p.m. The incident was not reported promptly to the Investigating Agency and inordinate delay of four days in lodging the report has remained unexplained.

4. The prosecutrix and the respondent were acquainted with each other. In the complaint (Ex. PW1/A) dated 29.04.2015 the prosecutrix informed the police that on 25.04.2015 when her husband was away, at around 10.30 PM, she went upstairs to answer the call of nature. On opening the door of washroom/toilet she found the accused present there. The respondent suddenly dragged her inside the bathroom; bolted it from inside and committed rape upon her. She called her daughter who came running. After releasing her, the respondent fled the spot. She came downstairs along with her daughter and did not inform anyone. The respondent, thereafter, came down stairs and threatened her to kill if she narrated the incident to anyone.

5. In her statement recorded under Section 164 Cr.P.C. (Ex.PW-1/B) on 25.4.2015 she informed the learned Presiding Officer that when she had gone to answer the call of nature at around 10.30 p.m., the respondent was already present in the bathroom and had not bolted the door from inside.

When she opened the door, the respondent caught hold of her hands and committed rape upon her. Her daughter came up in her search. She saw the respondent running from the spot. Her daughter after accusing her came down-stairs.

6. In her Court statement as PW-1, the prosecutrix came up with another conflicting version. She deposed that on the day of occurrence, her husband had gone to work around 10.00 p.m. She went on the first floor to answer the call of nature. When she reached near the toilet, she found that its door was closed from inside due to someone's presence there. She returned to her room. She again went to the toilet after around ten minutes. This time she found the door open. When she entered inside the toilet, she saw the respondent present there. She did not know what the respondent had done to her, she became unconscious. After some time, her daughter came to the toilet and brought her down. In the meantime, the respondent fled the spot. After about two days, her daughter told her about the threats extended by the respondent not to disclose anything to anyone or else they would be evicted from the tenanted room. On the same day, she along with her husband and children lodged the report (Ex.PW-1/A). Learned APP after seeking court's permission cross-examined her. She denied if she was won over by the accused. She, however, admitted the suggestion that when she reached near the toilet, the accused pulled her inside; bolted the door; gagged her mouth and committed rape upon her. Thereafter, she became unconscious. In the cross-examination by defence, she disclosed that the toilet was on the first floor. At first instance when she had gone to answer the call of nature, a roommate of the respondent was inside the toilet. The toilet was measuring 2.5 ft. X 2.5 ft. and there was no electricity in it. Her

daughter, aged around 13 years had cried on seeing her condition in the toilet. She admitted that no call at 100 was made either by her or her daughter. She admitted that the respondent had not issued any threats to her. She further disclosed that her daughter had come to know about the incident of rape on her own and she did not apprise her about it. She, in turn, informed her father after two days. She further admitted that she had physical relations with her husband after the occurrence. She further disclosed that she remained present inside the toilet for about ten minutes in an unconscious state.

7. On scanning the testimony of the prosecutrix, it appears that she had given divergent and conflicting statements at different stages of the investigation/trial. She is not at all consistent. She did not raise any alarm at the time of incident when she was allegedly dragged inside the bathroom and sexually assaulted. She maintained complete silence for about four days and did not apprise her husband or anyone else. Possibility of the prosecutrix to be a consenting party cannot be ruled out. Her post-even conduct is quite unnatural.

8. PW-2 (Kanika), victim's daughter, aged around 13 years has not corroborated her version fully. She testified that on 25.4.2015 at about 10.30 p.m. when she and her brother were watching TV in their room, she heard cries of her mother and she went upstairs. On knocking the door of the toilet, it was opened by the respondent. She found her mother standing with the support of a wall and was unconscious. She caught hold of her hand and brought her downstairs. Subsequently, the respondent came to extend threats to her. In the cross-examination, she disclosed that the door was opened on

her first knock. She did not know anything as to what had happened to her mother in the toilet on the aforesaid date.

9. PW-3 (Shispal Singh), victim's husband, informed that the incident was disclosed to him on 28.4.2015 at around 5 or 6 p.m. by his wife in the presence of his two children. The victim was medically examined on 29.4.2015. No visible external injuries were found on her person.

10. Since there are material infirmities in the statement of the prosecutrix, the conviction on her sole testimony was undesirable. The Trial Court has discussed all the relevant evidence and the findings that the version of the prosecutrix was doubtful and could not be accepted on its face value cannot be faulted.

11. Law relating to appeals against acquittal is well settled. In *State of Rajasthan v. Raja Ram* 2003 Cri. LJ 3901, the Court held as under:

“Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is

to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

12. The Leave Petition is devoid of merits and it is dismissed.

**(S.P.GARG)
JUDGE**

MAY 09, 2017

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