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

+ CRL.L.P. 252/2017 and Crl.M.A. No.7040/2017

STATE GOVT OF NCT OF DELHI Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor along with SI Sandeep
Sharma, PS-Vasant Kunj (North), for
the State.

versus

RAMESHWAR MANNA Respondent

Through: Mr. Manjeet Godara, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

03.11.2017

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P.S. TEJI, J. (ORAL)

**Crl. M.A. No. 7040/2017 (Condonation of delay of 48 days in filing
the leave petition)**

1. The State has filed the application under Section 5 of the Limitation Act read with Section 482 of Cr. P.C. for seeking condonation of delay of 48 days in preferring the accompanying leave petition to challenge the impugned judgment dated 08.12.2016 passed by learned Additional Session Judge, New Delhi in case FIR No. 437/2014, registered under Section 328/376/506 of IPC at Police Station Vasant Kunj (North), Delhi.

2. In the application for condonation of delay, it has been submitted that the judgment was delivered on 08.12.2016 but the

certified copy of the judgment was applied for thereafter and the same was delivered on 10.01.2017. The file was sent to the Lt. Governor seeking permission to file the appeal on 13.01.2017 which was assigned on 17.03.2017 to Directorate of Prosecution and then the case was received in the office of Standing Counsel on 21.03.2017 and ultimately the matter was entrusted to Additional Public Prosecutor to prepare and file an appeal before this Hon'ble High Court.

3. Argument submitted by the learned Additional Public Prosecutor for the State is that there is a cumbersome procedure to process the matter for filing the leave to appeal and it is formulated after the opinion of the legal experts and the opinion formed by various officers, as a result the present appeal could not be filed within the prescribed time and the same caused a delay of 48 days. She has referred to a judgment of Hon'ble Supreme Court in case of ***State of Nagaland v. Lipok AO and others 2005 (3) SCC 752***

4. Keeping in view the explanation and the law laid down in case of ***State of Nagaland v. Lipok AO and others*** (supra), this Court is of the opinion that the object of the judicial system is to provide justice. The present case is involving the offences under Section 328/376/506 IPC. Consequently, the application for condonation of delay is allowed and the delay in filing the application for the grant of leave is hereby condoned.

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5. The present leave petition has been filed by the State under Section 378(1)(a) of the Cr.P.C. seeking leave to appeal against the judgment dated 08.12.2016 passed by the Court below.

6. Leave to appeal has been sought by the State feeling dissatisfied by the judgment of acquittal delivered by the Court below.

7. As per FIR of the instant case, the prosecutrix used to live with her brother Woymkesh near the house of the accused. Woymkesh (brother of prosecutrix) used to go to work from 9 a.m. to 11 p.m. The allegations levelled are that the accused who lived nearby, had asked the prosecutrix to prepare meals for him. Woymkesh called the husband of the complainant (Basanti) to come to their jhuggi, as the prosecutrix appeared to be in fear of someone. On enquiry, the prosecutrix informed that the accused gave her some water after which she could not recall the incidents of the day. On further probing, the prosecutrix informed the complainant that the accused gave her some intoxicating liquid, committed rape on her and thereafter threatened her not to disclose this to anybody.

8. After completion of investigation, charge sheet was filed in the Court. Charge under Section 328/376/506 IPC and Section 6 of POCSO Act was framed against the accused to which he pleaded not guilty. To prove its case, the prosecution examined 14 witnesses, namely, Prosecutrix (PW1), HC Rajender Singh (PW2), Devranjan Patra(mama) (PW3), brother of victim (PW4), Basanti (mami) (PW5),

Dr. Shailender Gautam (PW6), Ct. Sanjay (PW7), Lady Ct. Satwanti (PW8), Lady Ct. Kavita (PW9), Ct. Jaswant (PW10), SI Sudhir (PW11), Dr. Neelam Verma (PW12), IO Santosh Chauhan (PW13) and Gaurav Rao Ld. MM (PW14).

9. The main witnesses examined by the prosecution to prove the guilt of the accused were the victim herself (PW1), mama (PW3) and mami (PW5). As aforesaid, the trial court acquitted the accused as the charge could not be established beyond reasonable doubt. It has been submitted that the trial court erred in coming to the conclusion that from the testimony of witnesses, it appears that victim had gone to her mami's house on 10.06.2014 so the incident as alleged from 10.06.2014 to 13.06.2014 could not have happened. Further, the Ld.Trial Court did not appreciate the fact deposed by PW1 victim in the court in which she specifically stated she was preparing food for the accused in the kitchen when the accused came inside the kitchen and caught hold of her from behind and brought her to a bed in the room and laid upon her. Accused thereafter touched her inappropriately and committed rape on her. It was further submitted that the Ld.Trial Court did not appreciate the fact that there was no strong motive to falsely implicate the accused and also failed to appreciate the fact that there is lack of material omissions, improvements and/or contradictions which go to the root of the case.

10. We have heard Ld.APP Ms.Aashaa Tiwari and Ld. Counsel for the respondent.

11. A perusal of the testimonies of the victim (PW1), PW3 and PW5 show that they are full of discrepancies and inconsistencies. As per PW1, the accused had committed penetrative sexual assault on her on three different occasions. She alleged that on two occasions, she did not have the knowledge that such an act was being done owing to the fact that she was sedated. However, on the third occasion, she had not consumed any intoxicant. As per PW5, in her initial statement it was stated that the third act was done on 13.06.2014 whereafter the matter was reported to the police on 14.06.2014. However, when the prosecutrix was brought to the hospital, she narrated the history of assault to the Doctor on 14.06.2014. As per the history noted down by the Doctor, it appears that the alleged sexual assault took place on 09.06.2014, 08.06.2014 and 07.06.2014. As per PW5, in her initial statement Ex. PW1/A, she stated that the accused committed the third act on 13.06.2014 and previous two acts on 12.06.2014 (Thursday) and 11.06.2014 (Wednesday).

12. Further, as far as the scientific analysis/ DNA report Ex.PA is concerned, the same is silent regarding any sexual assault. Similarly, MLC Ex.PW1/B of the prosecutrix is also silent with respect to any fresh injury on any parts of the genital. There is a remark stating “hymen torn”, however it does not mention whether it is freshly torn or an old tear.

13. In *Atender Yadav vs State Govt Of Nct Of Delhi 2013 (4) JCC 2962*, the Court observed that :

“It is true that in a case of rape, the evidence of the prosecutrix must be given pre-dominant consideration and in certain cases even without any corroboration, testimony of the prosecutrix should be given due credence and weightage as in all the rape cases the prosecutrix suffer a great stress, trauma, humiliation and due to this factor alone many cases of rape are not even reported by the victims. However, at the same time, it cannot be denied that false allegation of rape can cause equal damage, humiliation, embarrassment, harassment, disgrace and agony to the accused as well.”

In the case of ***Tameezuddin @ Tammu vs. State of (NCT) of Delhi (2009) 15 SCC 566***, the Supreme Court held as under:

“It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable.”

14. From a careful reading of the impugned judgment and the material placed on record, including the testimony of prosecution witnesses, we find that the trial Court had given clear, cogent and convincing reasons for disbelieving the testimony of the prosecutrix.

15. In view of the aforesaid circumstances, we are not inclined to interfere with the impugned judgment. Therefore, the present leave petition filed by the state is dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

NOVEMBER 03, 2017

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