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

+ CRL.L.P. 350/2017

X

..... Petitioner

Through: Ms.Saahila Lamba, Advocate.

Versus

STATE (GNCT OF DELHI) & ANR

..... Respondents

Through: Ms.Kusum Dhalla, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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19.07.2017

CrI.M.A.9782/2017

1. For the reasons stated in the application delay of 36 days in filing the appeal is condoned.
2. The application is disposed of.

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1. By filing this petition the prosecutrix 'X' (name withheld to conceal the identity) has sought leave to appeal against the judgment dated 17th February, 2017 whereby the learned ASJ (SFTC), Dwarka Courts, New Delhi has acquitted the accused in Sessions Case No.441306/2016 in FIR No.194/2016 under Sections 376/328/506 IPC, PS Baba Haridas Nagar.
2. Ms.Sahila Lamba, learned counsel for the leave petitioner has submitted that the prosecutrix was having friendly relations with the

accused/respondent No.2. She was taken to a hotel in Bahadurgarh, Haryana by the accused on 13th March, 2016 on the pretext of attending the marriage anniversary function of Charu, a common friend of the parties. There she was given water containing some stupefying substance. Thus after consuming the water she felt giddiness and was not in a position to resist or save herself. Her BP was also lowered. The accused/respondent No.2 started removing her clothes and committed rape on her for 5-6 times. When she regained consciousness she found herself totally naked. She was threatened by the respondent No.2/accused not to disclose it to anyone or she would be defamed in the society as the act has been videographed by him. Due to threat she could not disclose it to anyone which was the reason for delay in reporting the matter to the police.

3. Ms.Saahila Lamba, learned counsel for the leave petitioner further submits that learned ASJ has acquitted the respondent No.2/accused mainly on the ground of delay in lodging FIR which has been duly explained by the prosecutrix.

4. Learned Additional Public Prosecutor for the State has placed on record the status report stating that the State has not filed any leave petition challenging the judgment of the acquittal in Sessions Case No.441306/2016 in FIR No.194/2016 under Sections 376/328/506 IPC, PS Baba Haridas Nagar.

5. Perusal of the record shows that the learned ASJ has acquitted the respondent No.2/accused for the following reasons:

(i) There is a delay of more than three months in lodging the FIR which has not been adequately explained by the prosecution.

- (ii) There is no medical evidence to prove that the prosecutrix was raped on 13th March, 2016.
- (iii) There is also no evidence to prove the ingredients of Section 328 IPC. Since the matter was reported after more than three months no stomach wash could be taken to ascertain whether she has been administered any poison, stupefying or intoxicating substance.
- (iv) As per the prosecutrix she narrated the incident to her husband on 15th April, 2016. The FIR was lodged on 17th June, 2016 for which there is no explanation.
- (v) The mother of the accused had lodged a complaint against the prosecutrix with the police vide Ex.DW1/A on 17th June, 2016 which was compromised on 13th June, 2016 and closure report was filed by the police on 14th June, 2016.
- (vi) The money dispute between the parties was taken as defence and considered by the learned Trial Court in the backdrop that the FIR has been lodged on 17th June, 2016 i.e. after a compromise with the mother of the accused on 13th June, 2016.
- (vii) PW-2 Girish Chand Saxena, Manager of the hotel in Bahadurgarh, Haryana where the offence was allegedly committed and PW-3 Ashok Kumar, the owner of the hotel had specifically stated that on that date only one customer Ashish Kumar had stayed in the hotel and no room was booked in the name of Puneet Kumar nor the prosecutrix had visited their hotel on that date.
- (viii) No video or audio clip of the alleged incident was retrieved from the mobile phone of the accused. CCTV footage also did not prove their visit to the said hotel.

(ix) PW-4 Charu, the common friend whose marriage anniversary was alleged to be celebrated in that hotel at Bahadurgarh, Haryana has deposed that her marriage anniversary falls on 4th June, 2017 as she was married on 4th June, 2013. Thus, on 13th March, 2016 it was not her marriage anniversary and this was proved by placing on record her marriage certificate Ex.PW4/A.

(x) The defence taken by the accused was found to be consistent and proved.

(xi) Thus disbelieving the oral testimony of the prosecutrix the accused was acquitted.

6. The law with regard to the grant of leave is well settled. Leave to appeal can be granted 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. The High Court cannot entertain petition merely because another view is possible or that another view is more plausible. In ***Arulvelu and Anr. Vs. State represented by the Public Prosecutor and Anr.*** 2009 (10) SCC 2006, while referring with approval the earlier judgment in ***Ghurey Lal vs. State of Uttar Pradesh***, (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an appeal against acquittal. The principles are:-

1. *The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

2. *The power of reviewing evidence is wide and the appellant court can re-appreciate the entire evidence on record. It can review the trial*

court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. *The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*

4. *The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has 'very substantial and compelling reasons' for doing so.*

5. *If two reasonable or possible views can be reached – one that leads to acquittal, the other to conviction – the High Courts/appellate courts must rule in favour of the accused.*

6. *Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."*

7. Since the present petition does not disclose any of the above elements, the impugned judgment passed by the learned Addl. Sessions Judge does not call for any interference by this Court.

8. The leave petition is accordingly dismissed. Trial Court record be sent back forthwith along with a copy of this order.

PRATIBHA RANI, J.

JULY 19, 2017

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