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

DECIDED ON : 29th MAY, 2017

+ **CRL.L.P.340/2017**

STATE (GOVT. OF NCT OF DELHI) Petitioner

Through : Mr.Amit Gupta, APP.
versus

VINAY TIWARI Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CRL.M.A.No.9324/2017 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.A.No.9325/2017 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the present appeal, the delay is condoned.
2. The application for condonation of delay is disposed of.

CRL.L.P.340/2017

1. Present petition has been filed by the State under Section 378 Cr.P.C. to seek leave to appeal against the judgment dated 27.07.2016 of learned Addl. Sessions Judge in Sessions Case No.180/2015 arising out of

FIR No.591/2015 registered under Sections 376/506 IPC at PS Hauz Khas whereby the respondent was acquitted of the charges.

2. I have heard the learned Additional PP and have examined the file. I find no sufficient reasons to grant leave to the State to file appeal against the respondent's acquittal. The Trial Court has given cogent reasons while recording acquittal. The prosecution case is based upon the sole testimony of the prosecutrix. Number of inconsistencies and infirmities were noticed in her statement. She was not considered as a sterling witness. It was unsafe to base conviction on her solitary statement in the absence of any corroboration by medical evidence or otherwise. There were vital discrepancies in the statements of the prosecutrix and her husband. Inordinate delay in lodging the FIR has not been explained. The FIR was lodged after about ten days of the occurrence. The victim and her husband have given divergent statements as to when the incident was informed. Initially, it was the victim's case that due to fear, she did not disclose the commission of crime by the respondent to her husband. Out of fear, she started staying sad. On 02.06.2015 when her husband repeatedly enquired from her about her sadness, she told him everything. In evidence, a different version has emerged. It has come on record that the prosecutrix and the respondent were found together in the room on the arrival of PW-3, victim's husband. On his knocking the door repeatedly, it was opened by the respondent. It enraged PW-3, victim's husband and he started giving beatings to the prosecutrix. The respondent was asked to quit immediately. The victim was told that he would not keep her with him. Apparently, PW-3 accused the prosecutrix to have indulged in physical relations with the respondent. It is relevant to note that the prosecutrix was a married lady,

mother of four children. The respondent was their relative who had come to stay in the room. The prosecutrix did not raise any alarm at the time of commission of the crime. No injuries whatsoever were found on her person showing forcible rape. Seemingly, when she was caught red-handed while having physical relation with the respondent, the FIR in question was lodged after due deliberations. Possibility of the prosecutrix and the respondent to have physical relations (if any) with consent cannot be ruled out. PWs have given contradictory statements regarding the availability of the children at the time of incident.

3. The well reasoned judgment cannot be faulted and no compelling and sufficient circumstances exist to allow the present petition against acquittal.

4. The petition is dismissed.

(S.P.GARG)
JUDGE

MAY 29, 2017 / tr