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

+ CRL.L.P. 480/2017

SMT NAVITA BANIWAL

..... Petitioner

Through

Mr. Naresh C. Sharma, Adv. along
with appellant in person

versus

THE STATE & ANR

..... Respondents

Through

Dr.M.P. Singh, APP.
W/SI Rakhi, P.S.Rani Bagh

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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24.08.2017

The petitioner is aggrieved by the judgment dated 30.05.2017 whereby the respondent No.2 has been acquitted of the charge under Section 376/511 of the IPC.

A case was lodged by the petitioner vide FIR No.182/14 dated 11.03.2014 (P.S. Rani Bagh) for an occurrence which took place on 11.03.2014 at House No.174, Village Pitampura, Delhi at about 7 p.m. The respondent No.2, who is the brother of the husband of the petitioner, allegedly tried to molest and rape the petitioner. During the trial, nine (9) prosecution witnesses were examined. The petitioner has been examined by the trial court as PW5 whereas her husband has been examined as PW6. Though the aforesaid two persons, namely, the petitioner/complainant and her husband have supported the prosecution version but the trial court disbelieved their versions on the following counts:

(i) the statement of the father-in-law of the petitioner (father of the respondent No.2 and the husband of the petitioner) as DW1 before the trial court clearly revealed that there was a property dispute between the two brothers and respondent No.2 had been hitherto living in the same house which is occupied by the petitioner and her husband. A day prior to the occurrence, respondent No.2 had shifted to another house and had come to the place of occurrence for collecting his belongings; (ii) the allegations in the complaint are vague inasmuch as there is only one statement that an attempt was made by the respondent No.2 to molest/rape her; (iii) the statement of the petitioner under Section 164 of the Cr.P.C. recorded on 18.03.2014 reveals a different version. New facts were introduced by the petitioner in the aforesaid statements. It was alleged by her that respondent No.2 had an evil eye on her from the very beginning and on five occasions, an attempt had been made by him to rape her; (iv) the petitioner/complainant tried to establish the commission of the offence by explaining away as to what would constitute an attempt.

From the perusal of the record of the case, it appears that there is a property dispute between two brothers, one of whom is the husband of the petitioner. The prosecutrix has in her deposition alleged that on 11.03.2014 respondent No.2 came to House No.174 at about 7 O'clock in the evening. The prosecutrix is then said to have opened the door. The respondent No.2 opened the lock of one of the rooms which was in his possession and thereafter held the hand of the petitioner and pulled her in the room which he had opened. Then an attempt was made to commit rape on her, in which process, the clothes of the petitioner were torn. It was at that time that her husband came and saved her.

The trial court is absolutely justified in holding that in the absence of any evidence regarding intention, preparation and making of any attempt at outraging the modesty of the petitioner, the charge against respondent No.2 must fail. There is complete absence of any evidence regarding the attempt of the respondent No.2 in outraging the modesty of the petitioner. The evidence of the prosecutrix or her husband was found to be totally deficient and least convincing.

The view taken by the trial court does not appear to be perverse at all. No good reason has been pointed out for differing with the opinion of the learned trial court. As such the present petition fails and leave is declined.

The petition is, accordingly, dismissed.

ASHUTOSH KUMAR, J

AUGUST 24, 2017

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