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

DECIDED ON : 7th MARCH, 2018

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CRL.L.P. 35/2011

STATE GOVT. OF NCT OF DELHI Petitioner

Through : Mr.Ravi Nayak, APP with SI Jagdish.

versus

DEEPAK BHATIYA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CRL.M.A.No. 794/2011 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the leave petition, the delay is condoned.

2. The application for condonation of delay is disposed of.

CRL.L.P. 35/2011

1. The State has filed leave petition to challenge the legality and correctness of a judgment dated 29.04.2010 of learned Addl. Sessions Judge in Sessions Case No.60/2009 arising out of FIR No.216/2009 registered under Sections 363/376/342/506 IPC at PS Bindapur whereby the respondent Deepak Bhatiya was acquitted of the charge.

2. Notice of the leave petition was issued to the respondent. However, despite several attempts he could not be served.

3. I have heard the learned Addl. Public Prosecutor on merits and have examined the file. Learned APP urged that the learned Trial Court did not appreciate the evidence in its true perspective and recorded acquittal without cogent reasons.

4. On scrutinising the impugned judgment, this court finds no illegality or material irregularity. Number of discrepancies, inconsistencies and contradictions were noted by the learned Trial Court to give benefit of doubt to the respondent. The prosecutrix was aged around 15 ½ years. As per ossification test, her age was determined to be more than 15 years but less than 16 years. The Trial Court committed no error to come to the conclusion that the age of the prosecutrix could be considered more than 18 years taking into consideration margin of two years. It was further noted that in the cross-examination the doctor who had conducted ossification test vide Ex.PW-6/A admitted that on the basis of dental X-ray, age of the prosecutrix was not determined. The prosecution for the reasons best known to it did not collect any school record of the victim though admittedly she studied in a school. Adverse inference is to be drawn against the prosecution for withholding the best evidence.

5. The statement of the victim's father was not believed as he had given inconsistent version. It was observed that the prosecutrix had left home having annoyance with her mother. PW-1 – victim's father had given conflicting statement and informed the police that the prosecutrix had left without any intimation. Non-examination of

material witnesses was taken as lapse on the part of the prosecution. No plausible explanation was offered as to why the material prosecution witnesses i.e. respondent's wife who had allegedly taken the prosecutrix to her home from Golden Temple, Amritsar and Sunil @ Sonu, one of the suspects, were not examined during investigation and not cited as witnesses. Recovery of the prosecutrix at the house of the respondent is suspect. The prosecutrix remained in the respondent's house for around 20 days. At no stage she raised alarm for alleged forcible rape by the respondent. It has come on record that the respondent occupied one room accommodation and lived there along with his wife and son. The prosecutrix though had liberty to use mobile and have conversation with several individuals during her stay at the respondent's house did not contact her parents to inform her whereabouts. During this period, she had travelled at different places and had made telephone calls. The victim's father had travelled along with the police at several places on the basis of the calls made by her to find her out but she could not be traced. At the time of her recovery, she did not exhibit any abnormal conduct. No fresh injuries were found on her body at the time of her medical examination. She did not disclose the examining doctor as to who was the perpetrator of the crime. Apparently, the prosecutrix has not presented true facts. It was not elaborated as to how she had travelled alone from Delhi to Amritsar for stay at Golden Temple. The Trial Court rightly noted that the prosecutrix was not expected to leave the Golden Temple accommodation of her own and to accompany the respondent's wife, a stranger to her house on her asking. The statement of the prosecutrix

remained uncorroborated. The prosecutrix did not give details as to how and when she was defiled by the respondent. The prosecution was unable to prove its case by clinching evidence. Physical relationship, if any, seemingly was with consent.

6. This Court finds no sufficient and compelling reasons to grant leave to the State to file appeal against the impugned judgment which is based upon fair appreciation of evidence.

7. The leave petition is dismissed.

8. Trial Court record be sent back forthwith with the copy of the order.

MARCH 07, 2018 / tr

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