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

+ **CRL.A. 188/2004**

STATE

..... Petitioner

Through: Mr. Kewal Singh Ahuja, APP
for State

versus

SHYAM SUNDER PAL & PAPPU

..... Respondent

Through: None

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

ORDER

01.10.2018

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1. This is an appeal by the State against the judgment dated 16th May 2001 passed by the learned Additional Sessions Judge, Delhi ('trial Court') in SC No.202/1999 arising out of FIR No.201/1999, registered at PS Keshav Puram acquitting Respondent Nos. 1 and 2 (Accused Nos. 1 and 2 respectively) of the offences punishable under Sections 354/376/506 read with Section 34 IPC.

2. At around 5 am on 7th July 1999, DD No.25A was recorded at PS Keshav Puram to the effect that a quarrel had broken out in Sone Wali Gali, Rampura, due to the harassment of a girl. The information was given by one Ramesh Chand (DW-1). Pursuant thereto, SI

Dharam Pal (PW-14) proceeded to the spot along with HC Rajbir Singh (PW-13).

3. The girl in question (PW-4) was brought to the PS and her statement (Ex.PW-4/A) was recorded wherein she had stated that she had married one Vimal in March 1999. She stated that Vimal was a mechanic and was unemployed at the time. Respondent No.2, Kailash (A-2), was a friend of Vimal. According to her, on 6th July 1999, Vimal took PW-4 to the house of A-2 in Village Rampura. A-2 told Vimal that a post is lying vacant in a company and so Vimal went to that company. He did not return that day. PW-4 then slept in the house of A-2 on that night. Incidentally, A-2 is the first floor tenant in the house owned by DW-1 who stays with his family, including A-1, on the ground floor.

4. According to PW-4, she slept in the room of A-2 and at around 2:30 am, A-1 and A-2 came into that room and raped her one after the other. When she tried to raise an alarm, one of them pressed her mouth with his hand and also threatened to kill her if she disclosed the incident to anyone. In the morning, when she came out of the house, PCR officials met her and she narrated the incident to them and they then took her to the PS and recorded her statement which was converted into a *rukka* and an FIR was registered. The police thereafter returned to the house and arrested both A-1 and A-2.

5. The MLC of PW-4 was prepared at 12:50 pm on 7th July 1999, almost 10 hours after the incident, at Hindu Rao Hospital. The only injury noticed was a small abrasion (1mm) and 1cm scratch over the right anterior wrist. There was no apparent external injury. Dr. Indu Mehra (PW-10), the gynecologist who examined PW-4, thereafter recorded on the MLC that PW-4, aged about 19 years, was referred to her. She deposed as under in the trial:

“On local examination hymen was found torn. It seems to be old torn. There were not perineal injuries. Slides were prepared from vaginal discharge and sent for examination and handed over to Ct. Saroj.”

6. The MLCs of both the accused were also conducted on the following day, i.e. on 8th July 1999 by Dr. Keshav Sharma (PW-2). He found no anatomical abnormality or recent injury on the external genitalia of either of the accused. Smegma was absent in both cases. It must be also noticed at this stage that the FSL report was received subsequently on 29th October 1999. The parcels examined included the blood samples of A-1 and A-2 (Ex.S1 and S3) and two glass slides (Ex.S5) being the vaginal smears from PW-4. S2 and S4 were underwear.

7. The FSL examination found that blood could not be detected on S2 and S4. Semen and human spermatozoa were detected on S4 and S5. As regards the blood grouping, the FSL report indicated that blood group of both S1 and S3, i.e. of A-1 and A-2, was B group. As far as

S4 is concerned, while the specimen was found therein was of human origin, the group test was inconclusive. In other words, the semen on the underwear of A-1 (S4) could not give any indication of blood group. Most importantly, as regards the vaginal smear, there was no indication at all of whether the sperm found thereon matched the blood group of either A-1 or A-2. In other words, there was no clinching medical or forensic evidence to connect either of the accused to the crime.

8. The trial Court has, in the impugned judgment, pointed out to the numerous inconsistencies in the evidence of PW-4 that made the truthfulness and reliability of her testimony doubtful. In her cross-examination, it transpired that after the incident, Vimal resided in Bihar and did not meet her. It also emerged that within three months of the marriage, the relationship between them was not cordial. She appeared to have come off on her own with Vimal to the house of A-2. While she was asleep, Vimal appears to have left the house of A-2 without informing her. She had never seen A-1, now she introduced A1 by Vimal. Yet no TIP was conducted for identification of A1 by PW4. It also transpired that A1 had gone over to her house with Vimal on 5th July, 1999 and A1 in fact, stayed in her house on the night of 5th July 1999. The next day she has supposed to have come to A1's house with Vimal. These inconsistencies made her testimony doubtful.

9. Added to this was the version of A1 that he had noticed two other boys emerging from her house in the early hours and that he had slapped her. PW4 two admitted that she had been slapped by A1. According to the trial Court, it was quite probable that at the odd hours, a quarrel took place between A1 and PW4 and the two other persons who were found by them to be present in her room and that A1 who happened to be the son of the landlord also participated in the quarrel. It is this that led the elder brother of A1 to inform the PCR at 5 am of the quarrel.

10. For the above reasons, the trial Court gave the accused the benefit of doubt since the version of PW4 apart from being doubtful, was also not corroborated by the medical or forensic evidence.

11. There was also an issue regarding the age of PW4 whether she was below 16 years of age at the time of incident. On this, the Trial Court has after discussing the evidence in some detail came to the conclusion that the evidence on record did not conclusively show that she was below 16 years of age at the time.

12. Having perused the trial Court record (TCR) and after considering the submissions of learned APP for the State, this Court is not persuaded to come to the view different from that taken by the Trial Court on the evidence on record.

13. The appeal is accordingly dismissed.

14. The TCR be returned with the certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 01, 2018

“shailendra”