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

+ **CRL.L.P. 108/2018**

STATE

..... Petitioner

Through: Ms.Radhika Kolluru, APP for State
with SI Ashwani Kumar, PS Jyoti
Nagar.

versus

RAJ KUMAR SHARMA

..... Respondent

Through:

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

% **13.02.2018**

CRL. M.A. 2719/2018 (Exemption)

1. Allowed, subject to all just exceptions. Application stands disposed of.

CRL. M.A. 2718/2018 (delay in filing)

2. For the reasons stated in the application, the delay of 36 days in filing the Criminal Leave Petition is condoned. The application is disposed of.

CRL.L.P. 108/2018

3. This is a petition under Section 378 (3) Cr PC by the State seeking leave to appeal against the impugned judgment dated 11th August 2017 passed by the learned Addl. Sessions Judge (East), Karkardooma Courts, Delhi in Sessions Case No.641/16, arising out of FIR No.557/2014, registered at

Police Station ('PS') Jyoti Nagar, Delhi, acquitting the Respondent of the offences under Sections 354/452/376/376(2)(h) IPC.

4. The case of the prosecution was that the prosecutrix (PW-2) was residing along with her husband and daughter as a tenant at an address within the jurisdiction of the PS Jyoti Nagar. Her husband used to leave for work in a jeans factory at 7.00 am every morning and return only at 11.00 pm. According to the prosecutrix, on 1st August 2014 at 5.00 pm, she had gone to the bathroom to fetch the water. At that time, the Respondent, who was also residing as a tenant in another room in the same house, entered the bathroom, caught hold of her from behind and pressed her breast. She somehow escaped and returned to her room. Later at night, after preparing dinner, she retired to bed with her daughter but forgot to bolt the door. At 10.30 pm, she noticed that her clothes had been taken off by someone. She noticed that the Respondent was bending over her and when she tried to push him, the Respondent pushed her back on the cot. He thereafter laid on her after taking her underwear off and raped her. When she raised an alarm, the Respondent ran away from there. When her husband (PW-6) returned, the prosecutrix narrated to him the incident. PW-6 then called the police. On the basis of the statement of the prosecutrix, the FIR was registered. PW-2 was medically examined.

5. The case of the prosecution is that on the receipt of secret information, the Respondent was arrested. He was medically examined on 2nd August 2014. On 4th August 2014, the statement of the prosecutrix under Section 164 Cr PC was recorded before the learned Metropolitan Magistrate

(MM). The samples collected during the medical examination of the prosecutrix and the Respondent were sent to FSL, Rohini for analysis.

6. 19 witnesses were examined by the prosecution. In his statement under Section 313 Cr PC, the Respondent claimed that he had been falsely implicated in this case. Although he alleged that the prosecutrix had levelled false allegations of rape on other persons to extort money, he did not lead any evidence to substantiate it. Therefore, the trial Court at the outset rejected the said plea.

7. The trial Court analysed the evidence of the prosecutrix PW-2 at some length. One of the first issues discussed was the exact location of the scene of crime. According to PW-2 the incident took place at House No. A-296, whereas the site plan prepared by the IO showed that it had taken place at House No. A-279. Even during her deposition in Court, PW-2 had mentioned the house number as A-296. The prosecution tried to clarify this by pointing out that the IO in her deposition in Court stated that the correct place of incident is A-279. However even PW-6 as well as Ct. Rajeev Kumar Sindhu (PW-12) stated that the incident took place at A-296. Head Constable Shyam Lal (PW-8), who took the photographs of the place of incident also mentioned that the place was A-296. Likewise, SI E.S.Yadav (PW-11), who prepared the crime scene report also stated on the same lines.

8. There is also problem in the description of the house. The landlord of the house A-279 (PW-7) described the house as single storeyed building. The IO deposed in the Court that after sending the *ruqqa* to the PS for registration of FIR, she came to know that the correct place was A-279 and

not A-296. However, she admitted in her cross-examination that she did not mention this fact in the police diary. She also did not note down the name of the person who supposed to have disclosed to her the correct address of the house. Even at the time of preparation of site plan, the prosecutrix did not inform the IO about the correct address of the house. It is also not explained as to how so many prosecution witnesses, i.e., PWs, 4, 6, 8, 10, 12 & 14 have mentioned the place of incident as A-296.

9. According to PW-2, the building had three floors. She was residing at the 3rd floor and the Respondent was residing at the 2nd floor. However, in her cross-examination, she stated that the accused was residing in the first floor. Her husband (PW-6) maintained that the house was A-296 and it was a single storeyed building. Even according to Constable Ashok (PW-), there was only one floor apart from the ground floor. However, Head Constable Murari Lal (PW-5) deposed that the house was double storeyed one and the respondent was found at the first floor. The landlord of the house has categorically stated that his house was single storeyed having four rooms. There was, therefore, a genuine confusion about the location and the description of the place where the crime is stated to have taken place. This was not properly investigated by the police.

10. The trial Court has found that there were inconsistencies and half truth in the deposition of the prosecutrix. She claimed during her cross-examination that the earlier incident in the bathroom took place at 5 pm had been witnessed by an old woman, whereas no such old woman was even questioned or cited as a witness. There was also confusion whether PW-2 in

fact bolted the room before going to sleep. Although in her statement under Section 164 Cr PC before the MM PW-2 stated that she forgot to bolt the door, in her cross-examination, she stated that she had bolted the door from inside during the period she remained in her room, i.e. from 5 pm till 10.30 pm. The trial Court rightly observed that there were too many inconsistencies in the deposition of PW-2.

11. Even the place of arrest of the Respondent was not clear. During her cross-examination, PW-2 stated that her husband went to the room of the Respondent around 1 am, but no quarrel had taken place. However, PW-6 stated that when he went to the room of the Respondent, the latter started to quarrel with him and threatened to kill him. In his statement under Section 161 Cr PC PW-6 stated that he never visited the room of the Respondent. According to both PWs 2 and 6, the police reached within 10 minutes of the complaint given by them and arrested the Respondent from his room in their presence, whereas according to the IO, the Respondent was arrested on the information given by some secret informer.

12. Added to this the FSL report showed that no comparison could be drawn with the blood sample of the accused and the sample obtained during medical examination of the prosecutrix. There was nothing to connect the Respondent to the alleged crime.

13. With the above numerous inconsistencies and contradictions, the trial Court rightly given the benefit of doubt to the Respondent and acquitted him of the charges framed against him.

14. This Court finds that no ground has been made out by the State to grant leave to appeal against the impugned judgment.

15. The petition is accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

FEBRUARY 13, 2018
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