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

+ **CRL.L.P. 325/2018**

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP

versus

ASHISH BATRA & ORS.

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

14.05.2018

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CrI.M.A. No. 9091/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 325/2018

1. The State has preferred the present leave petition to seek leave to appeal against the judgment dated 31.01.2018 rendered by the learned ASJ (Special Fast Track Court) North-West, Rohini, Delhi in case Registration/ID No.01/15, 52237/16 arising out of FIR 470/2008 registered at Ashok Vihar under Section 376(2)(g)/ 366/ 328/384/34 IPC against the respondent/ accused.

2. The case of the prosecution has been noticed by the Trial Court in paras 2 to 9. The same reads as follows:

“2. Prosecution story is that on 04.11.2008 prosecutrix'H' gave a written complaint in PS Ashok Vihar. Precisely stated

prosecutrix in that complaint has alleged that accused Ashish Batra had taken her mobile phone from someone and started making call from his mobile, since August 2007. Accused Ashish Batra stated to have sent 23 messages on her mobile requesting for meeting. Prosecutrix states that on his repeated requests, she met him on 06.09.2007 at Deep Cinema, when accused Ashish Batra proposed her for friendship which she stated to have denied and came back her home. Prosecutrix further states that accused Ashish made another call to her next day, which she did not pick up. Accused Ashish stated to have made another call to her. Thereafter prosecutrix stated to have talked to Ashish in Model Town area, where he had called her for friendship. Thereafter accused Ashish started alluring her.

3. Prosecutrix further states that accused Ashish introduced his friend Rajan to her. Thereafter, both the accused Ashish and Rajan started meeting her and tried to entice her. Prosecutrix alleges that accused Ashish by persuading her for marriage, obtained her consent fraud states that in that car, they offered her a cold drink, after taking it, she become unconscious. When she regained her consciousness, she found herself in a bus and it was quite dark. Prosecutrix states that when she enquired from both accused as to where are they taking her. They told her that they are taking her to her residence in Ashok Vihar.

4. Prosecutrix further states that when she tried to make call to her parents from her mobile phone, both the accused allegedly pretended not to call parents at night. They allegedly offered cold drink again. After drinking that, she alleged to have lost her consciousness again and when she woke up, it was morning and they were at Mussorrie. Prosecutrix states that at that time she received telephone call from her father. Both accused allegedly compelled her to reply her father, she has gone for a urgent college tour.

5. Prosecutrix further alleges that both the accused booked a hotel room without her consent. In that room accused Ashish Batra allegedly committed rape on her firstly on 26.09.2007

when accused Rajan was not in hotel. Prosecutrix alleges that accused Rajan brought some food for her separately. After taking that she felt drowsiness and slept. During that period accused Ashish allegedly again committed rape on her at night.

6. *Prosecutrix further states on visit of tourist places and accused have also taken her to movie in the evening. She states that she was terrified from both the accused as she was alone and she was in a new place. She was also terrified that accused may give her some intoxicating substance. At the night both the accused allegedly misbehaved with her and accused Ashish committed rape on her twice.*

7. *Prosecutrix states that on 28.09.2007 they started their journey to Delhi by bus. On the way both the accused allegedly threatened her not to disclose anything about what happened in hotel in Mussorrie as they have her photographs in nude condition as well as photographs at the time of committing rape. Both accused allegedly threatened her not to disclose anything to her parents or any person otherwise they will display her photographs in public and to her friends in college.*

8. *Prosecutrix states that after her coming back to Delhi she did not disclose to anyone, as to what had happened to her because they had threatened her that in case she discloses anything to parents or any person, her photographs will display in public or her friends in college. She further alleged that even after coming to Delhi, all the three accused persons started misusing those photographs and they converted those photographs from their mobile into a CD. She further alleges that under the grab of those photographs and CD, accused Ashish Batra and his coaccused namely Rajan and Vinod had taken different jewelery articles from time to time from her, as per the details enumerated in para8 of the complaint. She further alleges that all the three accused continued to extend threats and in the month of March, 2008, accused Ashish Batra called her at his residence in Ashok Vihar. When she reached there all the three accused were present, they took her inside a*

room, which was bolted from inside and thereafter accused Ashish and Vinod allegedly committed rape upon her and accused Rajan had taken her objectionable photographs to misuse them further.

9. It is further alleged in the complaint that on 04.07.2008, all the accused persons had called her at the residence of Ashish Batra, on the ground that they will destroy the photographs and CD in her presence and will not misuse those any further. Prosecutrix states that when she went there, they repeated the same thing and accused Vinod allegedly committed rape upon her and accused Ashish took photographs. Prosecutrix alleges that till the filing of the complaint all the accused persons have been threatening for dire consequences, if she discloses about their heinous crime committed upon her.

3. The charge was framed against the respondents- for the offence under Section 328/366/34 IPC, 376(2)(g) IPC against the accused Ahsish Batra and Rajan Bhasin and under Section 384/34 IPC and under Section 376(2)(g) IPC against the accused Ashish Batra, Rajan Bhasin and Vinod Gupta.

4. The respondents pleaded not guilty and, consequently, the matter went to trial. The Trial Court examined 19 prosecution witnesses. Following that the statement of the accused were recorded under Section 313 Cr PC who claimed false implication. The Trial Court has analysed the evidence led before it in depth and has disbelieved the case of the prosecution in its entirety and acquitted the accused.

5. The prosecutrix had alleged that the accused had taken obscene photographs of her at a hotel in Mussorie and that was disclosed as the reason as to why she did not disclose anything to her parents after coming to

Delhi from Mussorie. However, no such photograph were recovered even after forensic examination of the mobile phones of the respondent/ accused. The Trial Court held that there was no explanation for the prosecutrix not making any complaint between 25.09.2007 to November 2008.

6. The story of the prosecutrix and her parents, even otherwise, was found to be containing gaping holes. She claimed that she was given, a cold drink on one occasion and was given chowmein on the other occasion– the second occasion being at Mussorie, and after consuming the said drink and eating the said food, she had lost her consciousness. The Trial Court has observed that there was no evidence to substantiate the said allegation. She claimed that she has been taken in a bus after being given the cold drink. Admittedly, her parents did not make any complaint despite her not returning home the whole night. The Trial Court has disbelieved the said version by observing as follows:

“30. Now if I pause her, taking such evidence on face of it, I find many improbabilities in evidence of PW1. On 25.09.2007 PW1 had gone to meet accused Ashish in Deep Cinema market at 6.00pm, then she was given cold drink, which made her unconscious and then her mobile phone was also taken by accused Ashish. She when found some conscious, she found herself in a bus. In such situation, if a girl had gone in evening only to meet her friend, but later found herself in bus in night. Then a natural reaction would be to raise alarm and to object for it in bus. There were admittedly other persons present in the bus. But it appears very unnatural that she would not make any efforts to save herself from accused persons. By then she was made unconscious and her mobile phone was also taken by accused. These circumstances were sufficient for her to understand that she was being taken some where else. When she was admittedly residing near to Deep Cinema market there was no reason to take any bus.

31. Now if we further examine her evidence, PW1 says in the bus she was again given a cold drink which rendered her unconscious again. Thereafter in morning when she regained consciousness, she found herself in a place where mountain were all around. PW1 when understood that she had come in previous evening at 6.00pm to meet accused in Deep Cinema market and found herself at new place, having idea that she was made unconscious by giving cold drink on two occasions, still PW1 did not raise any alarm. PW1 in cross-examination says that she did not raise alarm in the bus though she was demanding return of her mobile phone from accused. PW1 also say that she did not ask for help from anybody. PW1 has also testified that after reaching Mussorrie, she was taken in a hotel. PW1 in her cross-examination says she did not raise alarm even at that time. PW1 says in the meantime her father made a call to her. PW1 says since both accused Ashish and Rajan were staring at her and Ashish held her hand tightly, therefore she told her father that she is OK and she has come on a college tour.

32. Again I would mention here that if prosecutrix/PW1 had not accompanied with accused persons with her consent. They brought her to Mussorrie. It was most natural and obvious to find that parents would feel panic as to where their daughter has gone. It is not possible that despite passage of whole night, father will simply make a call in morning to his daughter and daughter would simply says on phone that she is fine and then father will not find it abnormal. In this regard it is important to refer here crossexamination of PW4 SmtS (mother of prosecutrix) who has testified that “ we did not lodge any missing report when my daughter did not return from Deep. On receiving telephone from my daughter neither myself nor my husband made any inquiry from the college to verify whether there was any college

tour to Mussorrie. Neither myself nor my husband went to Mussorrie.”

33. If prosecutrix did not leave her house in evening of 25.09.2007 without any clothes etc, and did not return home whole night. This circumstance to my mind, would have been sufficient for parents of a young girl, to take some effective legal steps. It be noted by this stage, there was no photograph threat etc therefore if prosecutrix had not voluntarily gone with accused persons, then in that situation a college going girl would not easily go in hotel and stay there for two nights and also visit for sight scenes in Mussorrie.

34. Evidence of PW1 as enumerated above, certainly create big doubt about her consent. PW1 says in hotel, accused Rajan left the room and accused Ashish forcibly raped her. PW1 says she was weeping and told Ashish that she has not done right thing with her. Now important fact to be noted her is that even if evidence of PW1 is taken on fact of it, even by then when she was forcibly raped by accused Ashish, accused Rajan had left the room. So by then also no photographs etc were taken. PW1 has not reacted for help or to make complaint against accused, when she ravished by accused Ashish.

7. In these circumstances, we are of the view that the acquittal of the respondents was completely justified and we find no reason to interfere with the same. Dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 14, 2018

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