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

+ **CRL.L.P. 403/2018**

STATE GOVT. OF NCT OF DELHI Petitioner

Through: Mr. Hirein Sharma, APP for State

versus

VIKAS & ANR

..... Respondents

Through: None

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

ORDER
02.07.2018

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Crl.M.A.No. 11716/2018

1. Exemption allowed, subject to all just exceptions.

CRL.L.P. 403/2018

2. The State seeks leave to appeal against the judgment dated 14th March 2018 passed by the learned Additional Sessions Judge, North West, Rohini in SC No.53/2015 arising out of FIR No.439/2015 registered at Police Station ('PS') Aman Vihar acquitting Vikas (Respondent No.1) of the offence punishable under Section 376 IPC and Sunny (Respondent No.2) of the offences under Section 376(2)(n)/366/377 IPC.

3. The case of the prosecution essentially rested on the evidence of the prosecutrix (PW-3) who in her complaint alleged that Sunny was taking tuitions in the same education centre as her in the year 2010 during which time they developed friendly relations. According to PW-3, Sunny proposed marriage to her in the year 2013. According to PW-3, in January 2013, he

came to her house when no one else was present, committed rape and again promised to marry her. PW-3 stated that in March 2013 they visited the Vaishno Devi Temple where Sunny applied vermilion on her hair-parting and announced that they were married. According to PW-3, when she disclosed these facts to her parents they asked her to leave the house. Thereafter, PW-3 started living at the house of her maternal aunt in Chawri Bazaar, Delhi on rent.

4. PW-3 further alleged that about a year or a year and a half prior to her making the complaint in April 2015, Vikas, who is the brother of Sunny, gagged her while she was returning from her work and raped her. She further alleged that in March 2015 Sunny beat her, took away Rs. 9,000, and then abandoned her.

5. The statement of PW-3 under Section 164 Cr PC was recorded on 10th April 2015. As many 16 prosecution witnesses, including PW-3, were examined. Both accused denied the charges and claimed to have been falsely implicated. According to Sunny, he was already married and this was within the knowledge of PW-3. According to him, PW-3 was pressurizing him to stay with her but he had refused and, therefore, a false case was registered against him.

6. The trial Court has, in the impugned judgment, discussed the evidence of PW-3 in great detail. Among the factors that weighed with the trial Court in disbelieving PW-3 was that despite her rape by Sunny having taken place in 2013, PW-3 neither informed her parent nor did she lodge any complaint against Sunny. His subsequent visits to her house and having physical

relations with her on each occasion gave the impression that it was with her consent on each occasion. Further, according to PW-3, on each occasion, the accused visited her in the absence of her family members. In the circumstances, the mere assurance of marriage was itself not sufficient to bring the act within the definition of rape.

7. In her cross-examination recorded on 3rd December 2015, PW-3 admitted that her physical relations with Sunny were with her consent. PW-3 also visited Vaishno Devi Temple with Sunny of her own volition. In the deposition of PW-8, the mother of PW-3, it is stated that after returning from Vaishno Devi Temple, PW-3 told her that she had got married to Sunny and in fact showed her photographs of her marriage. These photographs were, however, not given to the police for investigation or referred to by PW-3 in her evidence. PW-8 told PW-3 that since she had married Sunny, she should stay with him only. It is then that PW-3 began living in her aunt's house on rent where Sunny used to visit her frequently.

8. The maternal aunt of PW-3 deposed as PW-7 and also confirmed that PW-3 had informed her about having married Sunny and their staying as husband and wife.

9. In her cross-examination, PW-3 admitted that she had earlier filed a complaint at PS Aman Vihar after Sunny got married with someone else. PW-3 admitted that she withdrew that complaint on 29th December 2014. In her cross-examination, she further admitted that she stayed with Sunny in a rented accommodation from December 2014 up until 30th March 2015 knowing that he had married someone else. The trial Court concluded that

this showed that PW-3 was well aware that Sunny had married someone else and yet continued to have consensual physical relations with him.

10. As far as the evidence against Vikas is concerned, the question posed by the trial Court was if indeed the incident of rape of PW-3 by him had taken place more than a year prior to April 2015, why would PW-3 wait for such a long time? In her cross-examination, PW-3 admitted to not remembering the date and month of when Vikas is supposed to have raped her.

11. On an analysis of the evidence, the trial Court concluded that the prosecution had failed to prove the case against each of the accused beyond reasonable doubt.

12. Having examined the depositions of the witnesses, including PW-3, and the impugned judgment of the trial Court, this Court is unable to be persuaded to hold that the conclusion reached by the trial Court is contrary to the evidence on record or suffers from any illegality warranting interference by this Court.

13. There are no grounds made out for grant of leave to appeal.

14. The petition is dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

JULY 02, 2018/mw