

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

% Decided on: 10th July, 2018

+ **CRL.L.P. 311/2016**

Ms. S

..... Petitioner

Represented by: Mr. Joginder Tuli, Ms. Joshini
Tuli and Mr. Ashu Kr. Sharma,
Advocates.

versus

STATE AND ORS.

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Basi, PS Mehrauli.
Mr. M.A. Hussain, Advocate
for R-2 and 3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. As per the practice directions the name of the prosecutrix is withheld to conceal her identity and she has been referred to as 'Ms. S'.
2. Aggrieved by the judgment dated 11th February, 2016, whereby the learned Additional Sessions Judge acquitted respondent No. 2 Dharmender for the offence punishable under Section 376 IPC and in alternative under Sections 493/342/376(2)(g)/313 IPC and respondent No. 3 Rampal for the offences punishable under Sections 376(2)(g)/376/377 IPC, the petitioner/prosecutrix has preferred the present leave petition.
3. Sequence of events leading to the prosecution case is that DD No.16A (Ex.PW-13/A) was recorded on an information received on 16th August, 2013 at 10.30 AM whereby the caller stated that her husband had locked her at their house and she was not feeling well. Aforesaid information was

assigned to SI S.P. Samariya (PW-13). He along with Ct. Subhash went to the spot but he could not find anyone there. He came to know that the victim had been taken to the hospital by the PCR. There he received another information from AIIMS Trauma Centre vide DD No.21A (Ex.PW-13/B). Consequently, he went to the hospital and collected the MLC. He came to know that the prosecutrix had been discharged. When he contacted her on her mobile number, she stated that she would come to the police station and get her statement recorded.

4. Statement of the prosecutrix was recorded vide Ex.PW-11/A wherein she stated that she was living with her husband Dharmender at address 'X' for the past one month. Her husband was a driver and belonged to UP. She belonged to Rohini Delhi. About 2 years back she came to know Dharmender in Rohini. They both fell in love. They both had physical relations and on 26th March, 2013 they got married in Arya Samaj Mandir, Harit Vihar, Burari according to Hindu rites and ceremonies. When her husband was not marrying her she complained against him in February, 2013 in Police Station Harit Vihar. Before this he had put her in the business of prostitution. In November, 2011 she was caught in a raid however, later she left all this. Both she and Dharmender started living together as husband and wife in Chhatarpur. On 16th August, 2013 at about 5:30 PM Dharmender forcibly had sexual intercourse with her. When she resisted he beat her, pushed her, abused her, in anger locked her in the room and went away. She gathered courage and called at 100 number. She was feeling dizzy and anxious. The PCR van came and took her to AIIMS Trauma Centre where her medical examination was got done. She told everything to her parents. She wanted legal action against her husband as while leaving he had

threatened to kill her.

5. On the basis of the aforesaid statement, FIR No.558/2013 (Ex. PW-1/A) was registered at PS Mehrauli for the offences punishable under Sections 342/506/509 IPC. Dharmender was arrested on 16th August, 2013 vide arrest memo Ex. PW-8/A.

6. On 29th August, 2013 the statement of the prosecutrix was recorded under Section 164 Cr.P.C wherein she levelled allegation of rape against Rampal, brother of Dharmender. Rampal was arrested on 5th September, 2013 vide arrest memo Ex. PW-10/C.

7. On completion of investigation chargesheet was filed under Sections 342/506/509/376/377/34/313/498A IPC.

8. Prosecutrix was examined as PW-11 in Court. Learned Trial Court acquitted the respondents on the basis of the inconsistencies in the testimony of the prosecutrix which are discussed below:

9. The prosecutrix stated that Dharmender married her at Arya Samaj Mandir, however, in her testimony she did not state that the marriage ceremony was a fraudulent ceremony or she was deceived into believing that she was married with Dharmender. Moreover no evidence has been led by the prosecutrix to show that Dharmender deceitfully married her. Prosecutrix in her statement recorded under Section 164 Cr.P.C. stated that Dharmender used to take her to his friend's house, mixed something in her drink, raped her and thereafter blackmailed her with a mobile clipping and asked her to have sexual intercourse with him and other persons. However, this version is not stated in her testimony in Court and her complaint. No mobile clipping has been produced by the prosecutrix in support of this allegation. Prosecutrix also stated that Dharmender send her for prostitution

and in this regard FIR No. 454/2011 was registered at PS K.N.Katju Marg, under Sections 3/4/5/8 of Immoral Traffic (Prevention) Act but no evidence was produced to show the involvement of Dharmender in the said case.

10. Prosecutrix in her testimony claimed that once when she was present at the house of Dharmender, she overheard his conversation with someone saying that he had a beautiful girl, she would charge ₹5000 and asked that person to come to his house and see the girl. After sometime, that person came and Dharmender showed the prosecutrix and took ₹5,000. However, no such averment is made in any of the previous statements. Prosecutrix in her cross-examination admitted that she did not make any complaint that she was forced into prostitution.

11. Prosecutrix also alleged that on 10th September, 2012, Dharmender took her to the house of Rampal in Subhash Colony, Ballabgarh where Rampal raped her in the car. There is no mention of such an allegation in her complaint.

12. Another contradictory statement of the prosecutrix is that she stated in her testimony that after she was raped by Rampal, Dharmender got her home, gave beatings with kicks and blows to her in her stomach because of which she developed pain. Dharmender took her to the doctor who gave her medicines. When she came back to the house, Dharmender again gave her beatings because of which she started bleeding. When she asked him to take her to the doctor, he refused and instead gave her a medicine because of which she had a miscarriage. There is no mention of this incident also in the complaint. In her statement under Section 164 Cr.P.C., she stated that miscarriage took place the same day when she and Dharmender came back from Ballabhgarh but there was no mention about Dharmender having

beaten her or taken her to the doctor.

13. Prosecutrix stated in her testimony that Rampal committed sexual intercourse with her forcibly in April 2013. There is no whisper about this incident in her complaint. In her statement under Section 164 Cr.P.C., she stated that Rampal committed anal sex with her, without mentioning the month, date or time.

14. Lastly, prosecutrix claimed that Dharmender blackmailed her into doing prostitution but she has nowhere given the name of any person to whom he sent her for the same. No witness has been examined by the prosecution to prove that the prosecutrix was wrongfully confined by Dharmender.

15. Considering that the findings of the learned Additional Sessions Judge are based on the glaring inconsistencies and improvements in the testimony of the prosecutrix, the view expressed by the learned Additional Sessions Judge is a plausible view. Hence, the impugned judgment acquitting the respondent Nos. 2 and 3 cannot be said to be perverse warranting interference by this Court.

16. Leave to appeal petition is dismissed.

17. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

JULY 10, 2018
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