

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

% Decided on: 26th July, 2018

+ **CRL.L.P. 471/2018**

STATE

..... Petitioner
Represented by: Ms. Rajni Gupta, APP for the
State with ASI Krishna, PS
Mangol Puri.

versus

CHARAN SINGH

..... Respondent
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 28521/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 471/2018

1. By this petition, the State seeks leave to appeal against the impugned judgment dated 31st March, 2018 acquitting the respondent for offences punishable under Sections 376/328 IPC.
2. The prosecutrix in her complaint alleged that she was residing in a rented accommodation and her husband passed away four years ago. She had four sons. She knew one Anil Chaudhary working as a property dealer for the last 10-12 years. Earlier also Anil Chaudhary had sold her one house. Prosecutrix had another house in Sant Nagar, Burari which she wanted to dispose off thus she went to the property dealer Anil Chaudhary on 2nd February, 2016. It is alleged that Anil Chaudhary brought Barfi and one cold drink which he gave her to eat and drink, whereafter they talked with each

other. At about 4:00 PM Anil dropped her to her house. Since she was not fully conscious, she slept. In the morning, she came to know that Anil Chaudhary had mixed something intoxicating in cold drink and thereafter committed “wrong act” with her without her consent.

3. In her statement recorded under Section 164 Cr.P.C. the prosecutrix stated the name of the property dealer as Shiv Charan Chaudhary @ Anil and reiterated her allegations in the complaint. She further stated that while she was in a state of unconsciousness she felt someone was doing something with her. Blood was oozing out from her head. Next day when she regained her consciousness her sister brought her to the hospital and doctor told her that she was subjected to rape.

4. In her statement recorded before the Court she reiterated her allegations in the statement recorded under Section 164 Cr.P.C. and also stated that after when she drank the cold drink she felt heaviness in her head and did not remember anything thereafter as she got unconscious. She also did not know as to how the accused brought her home but she felt noise of moving vehicle and so thought that accused might be taking her back. When she woke up in the morning she found wound on her head and felt blood in the wound. In her deposition before Court she gave the name of the accused as Charan Singh.

5. Thus the prosecutrix in her three statements has taken three different names of the accused. In the complaint he was named as Anil Chaudhary, in the statement recorded under Section 164 Cr.P.C. he was named as Charan Singh Chaudhary@ Anil and in the deposition before the Court he was named as Charan Singh.

6. No evidence was collected by the prosecution to connect that Charan Singh the accused before the Court was also known as Anil Chaudhary or Charan Singh Chaudhary. Even in her deposition the prosecutrix did not clarify the name of the accused.

7. As noted above though in her complaint she stated that she talked to the accused till 4'O clock even after having the sweet and the cold drink, however, in statement recorded under Section 164 Cr.P.C. and in the Court she said that after having the cold drink she felt heaviness and did not remember anything. Further blood was oozing out of wound from the head on the next day morning. Thus the injury on the head could not be prior to 4'O clock on the previous day because blood was not be continuously oozing out till the next morning, as the blood has the tendency to clot immediately. Further even if blood had oozed out then her other cloths and the bed sheets would have already been blood stains which is not the case of the prosecution.

8. The basis on which the prosecutrix alleges that rape was committed on her is medical examination. She states that the doctor told her that she was raped. The MLC of the prosecutrix only stated hymen to be torn which would be otherwise as the prosecutrix had given birth to four children. As per the FSL report no stupefying substance was found in the blood of the prosecutrix. Further FSL also does not confirm presence of semen in the swabs of the prosecutrix much less identifying the said semen to be that of the respondent.

9. Considering the evidence of identification being not cogent and improvements in the testimony of the prosecutrix, further the FSL report not connecting the respondent to the offence committed, the learned Trial Court

rightly acquitted the respondent, thus the impugned judgment of acquittal warrants no interference.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 26, 2018
‘yo’

