

\$~40

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

+ **CRL.L.P. 480/2018**

STATE

..... Petitioner

Represented by: Ms.Rajni Gupta, APP for the State
with SI Suresh Chander, PS Ashok
Vihar

versus

CHANDER SHEKHAR

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **27.07.2018**

Crl.M.A.No.28618/2018

Allowed subject to just exceptions.

Crl.L.P.No.480/2018

1. By this petition, the State seeks leave to appeal against the impugned judgment dated 3rd May, 2018 acquitting the respondent for offence punishable under Section 376/506 IPC and Section 27 of the Arms Act.
2. The abovenoted FIR was registered after a DD information was recorded on 12th December, 2013 regarding the admission of a victim at BJRM Hospital. Statement of the victim 'S' was recorded wherein she stated that she was married having three children. Her husband was a porter at New Delhi Railway Station. On the intervening night of 11th and 12th

CRL.L.P. 480/2018

Page 1 of 3

December, 2013, she was sleeping with her aunt and her five year old child. At about 3 to 4 AM in the night one person entered into her jhuggi and committed rape upon her. When she tried to raise an alarm, the accused scared her by showing a knife. She stated that due to darkness, she could not see the face of the person. She also stated that she did not awake her aunt who was sleeping by her side and that her husband was not present as he had gone to Ghaziabad for some work. In the morning, when her husband came back, she disclosed the fact to her husband and thereafter PCR call at 100 number was made and she was taken to the hospital by the police. Similar statement was given by the prosecutrix under Section 164 Cr.P.C.

3. It is thus apparent that the prosecutrix could not identify the accused who committed offence of rape with her. The prosecutrix in her statement recorded after 15 days named the respondent as the accused. No reason was attributed on the basis of which respondent was found out to be the accused in the case.

4. In cross-examination, the prosecutrix stated that though the lights of room were switched off however the accused had a mobile phone and he had pressed the button of his mobile from which light was emanating and she could see his face and recognize him as the respondent.

5. Clothes of the prosecutrix were sent to FSL and semen was detected thereon. However as per the FSL report, the semen on the clothes of the prosecutrix did not account with the alleles similar to the alleles of the respondent as per DNA analysis because of degradation.

6. Further the prosecutrix in her examination also admitted that the jhuggi of her brother-in-law was also adjacent. Thus, it was very unnatural that having found that the respondent committed sexual intercourse with her she neither woke up her aunt who were sleeping nearby nor her brother-in-law or his family who were in the adjoining jhuggi.

7. In view of the belated naming of the respondent as the accused and from the attending circumstances that it was difficult for to prosecutrix to have identified the accused as per her own version and the FSL Report also does not establish the identity of the respondent as the accused who committed rape, this Court finds no error in the learned Trial Court granting benefit of doubt to the respondent. The view expressed by the learned Additional and Sessions Judge on the evidence proved on record is a plausible view and warrants no interference.

8. Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

JULY 27, 2018

mamta