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

+ **CRL.L.P. 509/2018**

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Mr. Kewal Singh Ahuja, APP

versus

NARENDER SINGH BHADANA Respondent
Through: None.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL**

ORDER

% **11.09.2018**

1. The State seeks leave to appeal against the judgment dated 5th May, 2018 passed by the learned Additional Sessions Judge, Special Fast Track Court in SC No.2467/2016 arising out in FIR No.662/2015 registered at Police Station (PS) Jaitpur, Delhi acquitting the Respondent for the offence under Section 376D, 506 and 34 IPC.

2. The case of the prosecution is that the Respondent along with three other co-accused, two of whom were juveniles in conflict with law (JCLs) (referred to hereinafter as JCL-1 and JCL-2), and one other subjected the victim (PW1) to gang rape in the house of the Respondent. According to PW1, two JCLs forcibly took her on a motorcycle to the house of Respondent and there the Respondent, the two JCLs and one other person raped her. Thereafter, JCL-1 dropped her at the *nala* near her house where her parents and maternal uncle

were present. She narrated the entire incident to them. Her maternal uncle then searched and located the JCLs and the unnamed accused, caught them, gave them beatings and brought them to the house of PW-1. The police was subsequently called.

3. The statement of PW-1 was recorded before the learned Metropolitan Magistrate under Section 164 Cr PC.

4. The trial Court noticed that while deposing before it, PW-1 did not disclose the complete facts and permission was granted to the Additional Public Prosecutor to put leading questions to her whereupon she deposed that it was correct that two JCLs took her on a motorcycle to the house of the Respondent; that the house of Respondent was situated at Meethapur Extension; that at the time of committing rape the Respondent threatened to kill her with a knife; that the police took her to the house of the Respondent where she identified his house; that the rough site plan was then prepared at her instance; that the Respondent was arrested from his house at her instance on 11th September, 2015; that the motorcycle on which the two JCLs took her to the house of the Respondent, was recovered from the house of the Respondent; and that no one other than the Respondent and two JCLs came to the house of the Respondent.

5. This added to the contradictions that emerged in the cross-examination of PW-1. This has been discussed in detail by the trial Court in paras 24 to 31 of the impugned judgment. In her cross-

examination, PW-1 admitted that she did not point out the house of the Respondent to the police and it was her father who showed the said house to the police. However, the rough site plan of the place of occurrence bears her thumb impression. The case of the prosecution was that the two JCLs had a pistol and knife respectively with them but on the date of incident when they were beaten up by the public no knife or pistol was recovered from them. In her complaint to the police, PW-1 spoke about eating food in the house of the Respondent but denied this in her cross-examination. She also stated in her cross-examination that she did not raise any alarm when she went with the JCLs to the house of Respondent. The mentioning by PW-1 of four persons who raped her in the house of the Respondent in her complaint was contrary to her deposition in the Court, at the instance of the APP that no one other than the Respondent and the two JCLs were at the house of the Respondent.

6. With the testimony of PW-1 being unreliable and not disclosing the complete facts, the trial Court looked for corroboration by the medical evidence. PW-1 was examined at the All India Institute of Medical Sciences (AIIMS) on 2nd September, 2015 itself. There were no injuries on her internal or external body parts. Also since at the time of examination she was menstruating, the FSL result could not corroborate the crime. The exhibits seized from the house of Respondent did not belong to PW-1. They were exhibits of the accused persons.

7. Learned APP on the first date of hearing of this petition requested that the Trial Court Record (TCR) should be requisitioned. The TCR has since been received in this Court and has been examined by the learned APP. He took the Court through the FSL report. There were three parcels sent to the FSL. Exhibit 3 was a gauze cloth piece described as the blood of the Respondent. The exhibits lifted from the scene of occurrence i.e. house of the Respondent were described as under:

- Exhibit '1a' One bed sheet.
- Exhibit '1b' One chunni.
- Exhibit '1c' Cloth piece.
- Exhibit '1d' Cloth piece having brown stains.
- Exhibit '1e' Dirty baby t-shirt having brown stains.
- Exhibit '1f' Condom.

8. The biological examination showed that blood was detected on Exhibits '1d', '1e' (i.e the blood sample of JCL-1) and Exhibit '3' (blood sample of the Respondent). Blood could not be detected on Exhibits '1a', '1b', '1c' and '1f'. Human semen was detected on Exhibits '1e' and '1f' but not on Exhibits '1a', '1b', '1c' and '1d'.

9. Specific to the Respondent, DNA was isolated from Exhibit '3'. The male DNA profile generated from Exhibit '1f' was found similar to the DNA profile of the Respondent from the source of Exhibit 3. The female DNA profile was generated from Exhibits '1d' and '1e' could not be matched with the DNA profile of PW-1. The mere matching of the male DNA of the Respondent with Exhibit 3 which

was recovered from the room of the Respondent could not *per se* connect him with the crime particularly since none of the exhibits recovered from the room established the presence of PW1 in that room.

10. The trial Court is right in its conclusion that the FSL results did not connect the Respondent with the crime. With the testimony of PW1 being inconsistent and unreliable and with the medical and forensic evidence not corroborating the version of PW-1 regarding the commission of crime by the Respondent, the trial Court did not commit any legal error in concluding that the prosecution had not been able to prove the guilt of the Respondent for the commission of crime beyond reasonable doubt.

11. No grounds are made out for grant of leave to appeal. The petition is dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 11, 2018

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