

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

% Decided on: 20th February, 2018

+ **CRL.L.P. 444/2016**

‘A’

..... Petitioner

Represented by: Mr. R.K. Lamba, Adv.

versus

STATE & ANR.

..... Respondent

Represented by: Mr. Ashok Kr. Garg, APP with
SI Vikash PS Palam Village.
Mr. Vinay Kr. Sharma, Mr.
Udham Singh, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 17631/2017

For the reasons stated in the application delay of 78 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 444/2016

1. Cause title of the leave to appeal petition has been changed so as to not reveal the identity of the prosecutrix as ‘A’ Vs. State and Anr. Registry is directed to change the cause title of the leave petition.
2. The petitioner seeks leave to appeal against the judgment dated 6th November, 2015 acquitting the respondent No.2 for offences punishable under Sections 354/376/377/506 IPC.

3. FIR No.594/2014 under Section 354 IPC was registered at PS Palam Village on 7th December, 2014 on the statement of the petitioner/prosecutrix on the following allegations:

“..... I am a housewife. Earlier I along with my family was residing at Indira Park, Sagarpur, Delhi, where Atul s/o Devender Prasad along with his elder brother Ashwani was residing as a tenant in our house since August/ September, 2012. As Atul was having a bad eye upon me, we evicted him from our house in March, 2014. Thereafter, he had been harassing me by making calls upon my mobile No..... from his mobile No. 9891494333 and also used to stop my way. However, I did not lodge any complaint against him as he used to threaten me to defame me. Today at about 3.30 PM, I along with my maid was going to our Indira Park house in my i-10 car for fetching some goods. Atul tried to stop my car near Athithi Bhawan, near Manglapuri Subzi Mandi. I came out of the car and Atul abused me, hit my chest with his hand and tried to tear off my clothes. However, I somehow saved myself and returned home. I narrated the whole incident to my husband. Thereafter, I along with my husband reached the house of Atul and narrated everything to his mother. I also made a call at telephone No.100 and then came to the police station on my own along with my husband.....”

4. Statement of the petitioner was thereafter recorded under Section 164 Cr.P.C. on 12th December, 2014 wherein she stated that she was having friendship with Atul Sharma, however since her husband got to know about the same in the month of March, he got the house evicted from Atul Sharma in the month of March. The petitioner in her statement under Section 164 Cr.P.C. further stated that despite vacating the house she continued her relationship with Atul Sharma, however since she got to know that he was involved with other ladies she stopped talking to him. On 28th October Atul Sharma gave beatings to her and threatened her that in case she maintained

distance he would show her photographs and text messages to her husband. The petitioner further stated that Atul Sharma called her to his office one or two times along with some money and misbehaved with her and also that he committed rape on her on 18/20th of the month. During the course of MLC the petitioner/prosecutrix stated that apart from being raped on 18th November, 2014 she was also subjected to anal course as well as oral sex.

5. During the course of trial prosecutrix was examined as PW-1 when deposed about her friendship with the respondent which was not to the liking of her husband who got the house vacated from the respondent and that thereafter she continued telephonic talks with the respondent. Prosecutrix further deposed that respondent asked money from her on various occasions which she used to give, however he did not return the loan amount to her. The petitioner also reiterated her other allegations made in the statement under Section 164 Cr.P.C. In respect of the incident dated 7th December, 2014 she stated that she had gone to fetch goods when respondent who was on motorcycle met her on the way near Manglapuri vegetable market. She did not stop her car but respondent stopped her and when she rolled down the windshield, he misbehaved with her and the maid intervened.

6. In her cross-examination the prosecutrix was confronted with various photographs clicked between the prosecutrix and the respondent at various places at Vaishno Devi Temple and she admitted that she had gone there on 27th June, 2014 where the respondent met her. She further stated that she had clicked the photographs with her husband also on her mobile but the same was broken in a quarrel. She later stated that her husband was not having a mobile phone with a camera. She was confronted with her

complaints filed by her in CAW Cell in the year 2002, 2005 and 2014 to which she admitted, though she stated that May 2014 complaint was against her in-laws. The prosecutrix also could not give mobile number used by her and admitted that her husband had beaten her on 31st March, 2014 and she made a call at 100 number. She denied the suggestion that on every Sunday she used to go to Sukhdev Dhaba at Murthal for having breakfast with the respondent. As regards her allegation of being beaten, no medical documents were produced. As regards the incident near the Manglapuri bus terminal she admitted that it was a crowded vegetable market and it was difficult to drive the car and that she did not raise any alarm when the accused touched her inappropriately. She did not even hand-over the mobile phone which was allegedly broken nor produced the receipt of the repair.

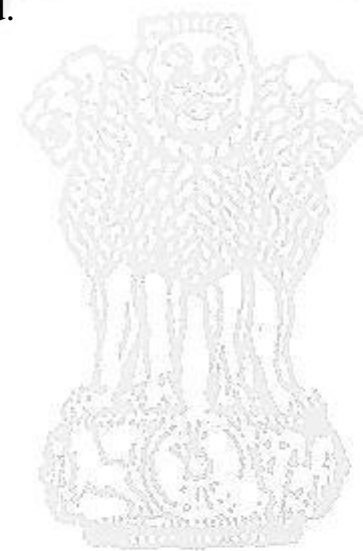
7. In view of the fact that the prosecutrix made improvements at every stage and despite her having said to the Doctor that she was subjected to oral and anal sex she did not say this fact either in her statement recorded on the basis of which FIR was registered or the statement under Section 164 Cr.P.C. or in her deposition in Court and the documents Ex.PW-1/D-11 and PW-1/D-12 both dated 27th March, 2014 wherein the prosecutrix mentioned the details of the ill-treatment meted out by her husband both admittedly in her hand-writing, the alleged incident of 7th December, 2014 at 5.00 PM taking place in a very busy market where despite a big crowd the prosecutrix did not seek any help and the failure of the prosecution to prove that the lady Poonam @ Mansi who appeared in the Court as PW-5 was the maid working at the house of the prosecutrix, the learned Trial Court acquitted the respondent.

8. For the evidence as noted above, the material improvements in the stand of the prosecutrix and the fact that in the FIR the case of the prosecutrix was of molestation on 7th December, 2014 whereas in her statement under Section 164 Cr.P.C. it was regarding the rape on 18/20th November, 2014; in the MLC it was regarding anal and oral sex as well; which was not deposed in the Court; this Court finds that the view expressed by the learned Trial Court is a plausible view and needs no interference. Leave to appeal is declined.

9. Petition is dismissed.

FEBRUARY 20, 2018
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(MUKTA GUPTA)
JUDGE



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