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

+ CRL.L.P. 597/2018

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP for the State

Versus

KAJOD KUMAR @ CHHOTU

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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29.11.2018

This petition impugns the order dated 28.05.2018, passed by the learned ASJ (Special Fast Track Court), Tis Hazari Courts in case bearing FIR No. 148/2016, registered at PS Punjabi Bagh under section 376 IPC.

It is appellant's case is that the impugned order errs insofar as; i) it failed to take into account the fact that the prosecutrix had made specific allegations against the respondent; ii) that there was no delay in the registration of the FIR, iii) that the prosecutrix had reiterated the complaint in her statement recorded under section 164 CrPC iv) that the learned Trial Court failed to appreciate the fact that the prosecutrix had changed her clothes before going for her medical examination, as she had stated that the respondent had torn her clothes; v) resultantly, the MLC did not find anything incriminating against the respondent and vi) that the statement of the prosecutrix has been consistent before the police, doctors and the Court.

The Court would note that the DNA report does not implicate the accused. That despite the medical examination, there was nothing found to

implicate the respondent. The prosecutrix had alleged that the respondent had bitten her, but as per the MLC, no such injury was found on the person of the prosecutrix; that there are contradictions in the statement of the prosecutrix apropos the facts of the incident, as well as contradictions between the statements of her husband and her. The impugned order has noted as under:

In the case in hand, as came earlier, the prosecutrix has given different versions at different point of time during her evidence. The different versions cannot be termed as normal because it touches the core issue of the incident viz. date of incident, the presence of her husband on spot and her raising alarm etc. Apart from this fact, the contradictions as pointed earlier between the evidence of PW 1, her husband and IO are found to be material because the exact scene on spot when husband of prosecutrix returned with liquor bottle, seizure of torn clothes or liquor bottle etc. are important which shakes the basic version of the prosecution story.

Further as per record, the incident took place at about 7.30 PM and there is no evidence on record which suggest that the prosecutrix has taken bath or cleaned her private parts. The prosecutrix was medically examined on the same night at about 1.30 AM and certain samples from her private parts were collected by the concerned doctor at the time of her medical examination. The blood sample of accused was taken and undergarments of accused were also seized as per MLC of accused. The samples collected from private part of prosecutrix and taken from accused were sent to FSL. But the report of FSL does not support the case of prosecution because the DNA profile of samples collected from the private parts of prosecutrix and blood of accused

does not tally.

In the light of above discussion, it is found that there are numerous contradictions, infirmities and inconsistencies in the evidence of prosecutrix and remaining prosecution witnesses. Considering the manner in which the prosecutrix has deposed her evidence is not free from suspicion, clear, consistent, hence; is found to be not trustworthy. It would not be safe to rely upon the evidence of the prosecutrix to bring home the guilt of the accused for which he was charged. Hence, by giving benefit of doubt, the accused stands acquitted for offence punishable u/s 376 IPC.

It is clear that there is nothing on record to implicate the respondent for the charges under which he has been arrayed as an accused, except for the statement of the prosecutrix, which in itself is not sufficient to punish the respondent as the evidence on record is contrary to her statement. Furthermore, there are significant contradictions in her own statement.

In view of the above, the Court finds no merit in the petition. Accordingly, it is dismissed.

NAJMI WAZIRI, J

NOVEMBER 29, 2018

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