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

+ **CRL.L.P. 659/2018**

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Kusum Dhalla, APP with SI
Praveen Kumar, SI Azad Singh, PS
Ranhola

versus

MAHENDER SINGH @ RAJ SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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12.10.2018

CRL.M.A. 34251/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 659/2018

The State has preferred the present leave petition to seek leave to appeal against the judgment dated 31.05.2018 passed by the learned ASJ-06 (W), Tis Hazari Courts, Delhi in SC No.57576/2016 arising out of FIR 10/2012 registered under Section 376/506 IPC at PS Ranhola. The Trial Court has acquitted the respondent/ accused on the charge framed against him.

The brief facts taken note of in the impugned judgment in para 1 reads as follows:

“1. In brief, the allegations raised against the accused Mahender Singh @ Raj Singh, as per the prosecution case, are that the prosecutrix Ms. P (identity withheld), aged about 17 years was residing in the neighbourhood of accused Mahender Singh @ Raj Singh, who was in friendship with her, and on the pretext of returning a mobile phone that was given by him to her, he called her in his room on 04.01.2012 where he forcibly raped her against her will and kept her there whole night and further he had threatened her to kill, if she would tell the incident to anyone”.

The medical and forensic examination established sexual intercourse between the accused and the prosecutrix. The case of the prosecution was that the prosecutrix was given a mobile phone by the accused, on which even he had conversation with her. The accused then demanded the said mobile phone back and the prosecutrix went to return the same to his room. It was then the accused detained her and committed rape upon her.

No investigation was conducted with regard to the existence of the said mobile phone. No endeavour was made to trace either the said mobile number or the mobile instrument to connect the same with the accused and the prosecutrix.

The Trial Court has observed that the parents of the prosecutrix did not make any complaint about her going missing despite her not returning for the entire night. It has come on record that the room of the accused is situated in the same building where the maternal uncles of the prosecutrix reside. The Trial Court also observed that there are improvements in the statement of the prosecutrix inasmuch, as, in her initial statement she did not state that the accused had made her unconscious by use of some stupefying substance. However, when her statement was recorded in court she

introduced this story for the first time. The Trial Court also takes note of the fact that the prosecutrix claimed acquaintance with the accused for two months. However, when her statement was recorded before the court, she claimed that she knew him only for a few days. It does not stand to reason that the prosecutrix would be offered, and she would accept the mobile phone instrument from someone whom she knew only for a few days. Pertinently, no injury marks were found on the body of the prosecutrix during her medical examination.

In our view, the Trial Court has correctly drawn the conclusion that it has not been proved beyond reasonable doubt that the sexual intercourse between the prosecutrix and the accused was not consensual.

In these circumstances, we are not inclined to interfere with the impugned judgment.

Dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

OCTOBER 12, 2018

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