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

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Date of Decision: 13.05.2019

% **CRL.L.P. 513/2013**

STATE NCT OF DELHI

.... Petitioner

Through Mr. Tarang Srivastava, APP for State.
SI Nikhil Raman, PS Geeta Colony.

versus

SHALABH GUPTA

..... Respondent

Through Mr. Amit Sharma and Mr. Ahmad
Ziad, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. By the instant petition filed under sub-Section (1) of Section 378 Cr.P.C., the State seeks leave to entertain appeal against an order-judgment of acquittal passed by the Id. District Judge/Addl. Sessions Judge (N/E), whereby, the respondent-the accused was acquitted of the charge of rape.
2. Concisely, the relevant facts are that on 30.06.2007 at 07:05 hrs, FIR No.264/2007 PS Geeta Colony under Sections 376/506/34 IPC was registered on the complaint made by the prosecutrix for the commission of the offences under Sections 376 and 506 IPC on 27.06.2007 at about 11.00 p.m. on the road on Pontoon Bridge, near Cremation Ground, Geeta Colony.

As per the allegations, the prosecutrix had known the accused for the last few years and in February, 2007, he proposed to marry her and on the day of the incident, which was her birthday, he committed rape on her telling her that this was his birthday gift much against her wishes. After the incident, the accused is said to have expressed regrets for about 20 minute and thereafter, both of them went to Atta Bazar Parking at about 11.45 p.m. and from there, the prosecutrix picked up her own car and moved around in insensible condition and did not go back home refusing to attend to the calls received from the family members and even Delhi Police PCR Van searched for her. It was only on the receipt of the message of sickness of her father, she is said to have gone back home but did not narrate the incident and it is only on 29.06.2007 at about 11.00 p.m., she disclosed of the incident to her family members and thereafter only, she came to the police station along with her family members and lodged the complaint. On the conclusion of the investigations, the challan was filed for trial of the offences under Section 376/506/34 IPC. The Trial Court framed charge for the offence under Section 376 IPC, to which the respondent pleaded not guilty and claimed trial. In support of its case, the prosecution examined PW-1 ASI Jagmal Singh; PW-2 Sh. Naresh Kumar, Id. MM; the prosecutrix PW-3; PW-4 HC Subhash; PW-5 Ct. Daya Ram; PW-6 Dr. Virender Kumar; PW-7 Ct. Ranjeet; PW-8 Retd. SI Maha Singh; PW-9 Dr. Kamal Kumar; PW-10 SI Israil Khan-IO and PW-11 HC Mool Chand and closed PE. Incriminating evidence and the circumstances were put to the respondent in his statement recorded under Section 313 Cr.P.C. The respondent however did not lead any defence evidence. Vide the impugned judgment, the respondent was

acquitted of the charge under Section 376 IPC.

3. What is the perversity in the impugned judgment, which invites grant of leave by this Court, is the pertinent question for consideration in the instant petition.

4. The respondent come to be acquitted of the charge by the Trial Court with the observations in the impugned judgment as follows:

“14. Law is stated as appearing from judgments cited from both sides that prosecutrix in an offence of sexual assault is not an accomplice and rather is to be treated as injured/ witness. There is no law requiring court to ask for support and corroboration to her testimony before her evidence is accepted. Conviction can be based on solitary evidence of the prosecutrix provided the evidence appears trustworthy and inspires court's confidence to believe it without any further support. Support and corroboration is infact a rule of prudence and not of law. Having taken scrutiny of the evidence of the prosecutrix I find it is a bit difficult to accept her case that offence of rape has been committed against her. What all prosecutrix has stated in evidence on the point of offence of rape is that she and accused were together on the evening of the date of incident and they both had together a dinner in a restaurant till 11.00 pm. Accused then took prosecutrix in his Santro car from restaurant premises in Noida and brought the car to a place Paltoon bridge near cremation ground, Geeta colony. She further deposed that accused asked her to offer her a birthday gift and then despite her protest accused forcibly committed rape on her. This is in all witness has deposed and this is what in all witness had described in her FIR statement. To the opinion of this court some kind of further description of the offending act of accused ought to have come on record.

If a boy and girl in a love relationship travelled together in a vehicle car then the boy finally indulging in act of physical relationship with girl without her consent ought to be by some kind of elaboration as to exactly in what particular place in the car and how accused committed that foul act/ play. As to how resistance given by girl became ineffective, how accused accomplished that act without being pushed away by any kind of act, even by an act of raising hue and cry. In cross examination prosecutrix when asked as to what resistance she gave to accused, she replied that accused being a bit heavy prevailed upon her. Prosecutrix admits in cross examination which has been referred to by defence counsel that her clothes were not torn. She had tried to push him away but he laid upon her being too heavy. She further states that she pleaded, shouted and cried. Counsel rightly argued that such a conduct of shouting and crying in ordinary course of human behaviour should have come as a narration in FIR but is missing. To my view counsel rightly argued that absence of any kind of injury on any part of the body of the prosecutrix as it appears from the MLC of the prosecutrix, it becomes difficult to accept the testimony of the prosecutrix that physical relationship if really indulged in by accused was without consent.

15. Report has been lodged after more than two days. Had it been an offence committed to invade the privacy of a girl and she treated it as a serious offence committed to her, she would have at least called her parents through her mobile phone. On the contrary she deposed that being late in the night she was receiving calls from house on her mobile phone but she was not picking it up and kept on driving on roads and finally on receiving a message on her mobile that

her father had fallen sick then she reached home in the early morning hours. Another important fact remained unsupported and corroborated is that by the time victim reached home which she says by around 5.00 am of 28.06.2007, accused Shalabh Gupta was already present in the house and he asked prosecutrix to not to disclose incident to anybody. She further states that Shalabh Gupta was with her family in the search of the prosecutrix on that night. Father of the prosecutrix would have been important witness to depose circumstances in which accused Shalabh Gupta reached his house and what facts and information he conveyed to father of the prosecutrix. Adverse inference needs to be taken note of when father of prosecutrix has not been examined. Defence counsel had reasons to assert that on 28.06.2007 when family of accused was called by the prosecutrix to speak to Shalabh Gupta, brother of accused Shalabh Gupta responded that Shalabh Gupta should not be involved and called and he threatened prosecutrix with dire consequences. Delayed FIR thus suggests both views, prosecutrix feeling ashamed and disgusted waited for response of Shalabh Gupta and possibility of second view also appearing equally plausible that family of Shalabh Gupta denying to respond to the call made by prosecutrix that present case as a revenge was got registered.

16. Admittedly the medical report has not at all given any support to the case of the prosecution. Defence counsel rightly argued that no opinion was sought from the doctor if it was a case of sexual intercourse as an offence of rape indulged in without consent of the prosecutrix and by force. To the considered opinion of this court the arguments from the prosecution side that in the given fact situation submission by the prosecutrix to the act indulged in by

accused could be taken to be no consent is too difficult to accept. Accused has specifically denied to have indulged in any such act of sexual relationship with prosecutrix. Prosecution cannot be said to have proved its charge of rape against accused. Benefit of doubt deserves to be considered and given in favour of accused. Accused is acquitted of the charge.”

5. During the course of hearing, Mr. Srivastava, Id. Addl. PP, was at pain to explain the absence of any injury on the person of the prosecutrix or even any of her clothes being torn, in the event, the respondent has forced himself on her person, more so, when the prosecutrix alleged that it was forceful and much against her consent. It is a matter of record that but for the deposition of the prosecutrix, the prosecution has failed to adduce any scientific evidence to support the allegations of the prosecutrix. Not only that, no other public witness much less any of her family members to whom she allegedly confided of the incident, has come to be examined to extend support to the version of the prosecutrix. Prosecution failed to even examine the doctor, who had medically examined her. During her cross, the prosecutrix has disclosed that she had married the accused-the respondent in a temple on 04.07.2007. This fact of performing of marriage within few days of the alleged incident of commission of rape upon her by the accused also raises serious doubt on the veracity of the prosecution story. In the event, the respondent had forced himself on the prosecutrix much against her consent and as per her version, she had taken more than two days to reconcile and then approach the police for lodging of the FIR, her performing marriage with the accused-the respondent within 6/7 days of

registration of the FIR, in fact, invites adverse inference. Is it, the lodging of the FIR, made the respondent marry her? It appears to be so. The facts and the circumstances suggest, a relationship between the prosecutrix and the respondent, which turned sour, resulted in lodging of the FIR. In totality of the facts and circumstances therefore the conclusions drawn by the Trial Court cannot be said to be suffering from any perversity. During the course of hearing, Mr.Sharma, learned counsel for the respondent, also pointed out that the prosecutrix having also preferred an appeal against the impugned judgment by way of a Criminal Appeal No.331/2013 did not pursue it and it was dismissed for non prosecution on 03.05.2017. Be that as it may, this court does not see any reason to grant leave to appeal.

6. For the foregoing reasons, the leave petition is dismissed.

A.K. CHAWLA, J.

MAY 13, 2019

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