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

+ **CRL.L.P. 336/2017**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State.
SI Mahender Singh, PS Pul
Prahladpur.

versus

MOHD FARMAN

..... Respondent

Through: Mr Adeel Tabib, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.10.2019**

CRL.M.A. 9229/2017

1. For the reasons stated in the application, the delay in filing is condoned.
2. The application stands disposed of.

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3. The State has filed the present petition seeking leave to appeal against the judgment dated 17.09.2016, whereby the respondent has been acquitted of the offences under Sections 365/366/342/376/506 of the Indian Penal Code, 1860 (IPC).
4. The said case stemmed from a FIR bearing no. 91/2011 registered with P.S. Pul Prahlad Pur. The said FIR was registered at the instance of the prosecutrix (name withheld to avoid any ignominy). She had alleged that on 13.04.2011, she had been kidnapped and thereafter, raped by the respondent.

The Trial Court had found her testimony to be unreliable and the description given by her improbable. She had stated that the respondent had forced her inside a vehicle. She had tried to raise an alarm but could not do so as he had gagged her mouth with his hand and also placed a knife on her neck with the other hand. She had stated that he had pulled the seat of the car backward and had driven to an isolated place in Greater Noida. The Court reasoned that it was not possible for the respondent to drive while employing both his hands in the manner as deposed by the prosecutrix. In addition, the Trial Court also found certain other inconsistencies in her testimony.

5. Mr Gupta, learned APP appearing for the State contended that the Trial Court had erred in not accepting the statement of prosecutrix. He submitted that the Trial Court had failed to appreciate the medical evidence. The FSL report had indicated presence of human semen and this established that the respondent had committed the alleged offences.

6. Before proceeding further, it would be relevant to examine the evidence obtaining in this case. At the material time, the prosecutrix was a student of B.Sc. (Physics)(Honours) at a college in Govind Puri. She had deposed that she was returning from her college on 13.04.2011 at 02:30 p.m. and had travelled to Okhla Morh, M.B. Road by bus. She stated that she had alighted at the said point and was waiting for another bus to go to her house. At about 03:00 p.m., the respondent had arrived at the site and while sitting in his car had pulled her forcibly inside his car by holding her *dupatta*. She stated that she knew the respondent for one year prior to the said incident as he had stayed in her house as a tenant. She stated that he was evicted from the house as she had complained to her parents and her sister regarding the

respondent stalking her on her way to her college and her coaching centre.

7. She stated that the respondent had made her sit on the front seat of the vehicle (Chevrolet Spark bearing no. HR 51 5297). She claimed that she tried to shout but the respondent had placed his hand on her mouth. He had placed a knife on her neck and had instructed her to keep silent. She stated that the backrest of the seat was pulled backward and she was made to lie on it. She testified that the respondent had taken her to an isolated spot in Greater Noida and had raped her in his car. She stated that later in the evening, he took her to a house in Greater Noida and had confined her there. She alleged that he had once again raped her later at night. She had stated that on the following day (that is, on 14.04.2011), he had taken her in his car to Pul Prahlad Pur, where she was confined in a room behind Shiv Mandir. She alleged that the respondent had raped her on that day as well. She further alleged that the respondent had threatened to kill her and her family if she raised any alarm or lodged any complaint against him before the police.

8. A missing report was lodged by her parents at PS Govind Puri. On becoming aware of the same, the respondent had taken the prosecutrix to PS Govind Puri on 15.04.2011 at about 09-10 p.m. to make a statement in his favour. She claimed that he had pressurised her to make a statement that she was his friend and had voluntarily accompanied him. She claimed that she had made such a statement under pressure.

9. She stated, her parents and her elder sister had also arrive at PS Govind Puri about 12:30 a.m., on being informed by the police officials.

But, she did not meet them as she was so instructed by the respondent and at the material time, she was under his threat.

10. She deposed as PW-1. She stated that she continued to be at the police station till at about 01:00 p.m. on 16.04.2011, when she was handed over to her parents by the police officials. She testified that her statement recorded at P.S. Govind Puri (Ex.PW1/B) bore her signatures but the same was recorded under pressure of the accused.

11. PW1 was cross-examined. In her cross-examination, she admitted that she was friends with the respondent. She also admitted that she used to talk to him on the phone once a week and also used to exchange messages with him. However, she denied the suggestion that she and the respondent desired to get married or visited the Courts at Noida for the said purpose. She denied that she had signed any document relating to her marriage with the respondent. She was confronted with an affidavit dated 14.04.2011 affirmed by her. However, she denied having signed the same. She also denied her hand writing as well as the thumb impressions on the said affidavit. The said affidavit dated 14.04.2011 related to a declaration / contract of marriage. She reiterated her testimony that the respondent had forcibly pulled her into the car and she could not ask for any help. She explained that she could not ask for any help as the respondent was holding her mouth with his left hand and also held a knife in his right hand. She stated that on reaching Noida, the respondent had removed his hand from her mouth and had stopped the car at an isolated place.

12. She stated that she did not remember if any of her clothes were torn or

any of the buttons were broken. She stated that the respondent had thrown away the clothes, she was wearing at that time and the respondent had given her other clothes which she was wearing (jeans and top) when she went to PS Govind Puri. She also admitted that she did not sustain any injury or injury marks during the incident. She stated that she had resisted the respondent by slapping him and pulling his hair.

13. On further cross-examination, she stated that during the period when she was confined in a room in Greater Noida, the respondent had tied her with her *dupatta* when he had gone out to make a call. She stated that she could not raise any alarm on the way from Greater Noida to Pul Prahlad Pur since the glass of the car was tinted and the respondent had tied her. This was also her explanation for not raising any alarm when she was shifted from the car to the room at Pul Prahlad Pur.

14. It was respondent's case that he and the prosecutrix had married and claimed that he had established physical relationship with the prosecutrix with her consent, after they were married.

15. One Sh. Ajay Kumar, Nodal Officer was examined as PW16. He produced the CDR of the mobile number of the accused (Ex.PW16/A) for the period from 01.04.2011 to 15.04.2011.

16. The Trial Court found that the age of the prosecutrix was above 18 years as she had given her age as 19 years at the time when she was medically examined. She had also recorded her date of birth as 19.12.1992 while applying for a mobile connection. Her college ID Card also reflected her date of birth as 19.12.1992. The Trial Court, thus, concluded that the

prosecutrix was a major on the date of the incident (that is, on 13.04.2011).

17. The Trial Court disbelieved the testimony of the prosecutrix that she had been forcibly driven to Noida. The Court reasoned that it was not possible for the respondent to drive while gagging her mouth with his left hand and holding a knife in his right hand, as deposed by the prosecutrix. The allegation that the respondent had raped the prosecutrix was also not accepted as the prosecutrix could not even answer whether her clothes were torn or the buttons were broken during the alleged incident. The Trial Court also took note of the fact that admittedly the prosecutrix had not suffered any injury mark on her body during the said incident. The prosecutrix had stated that she had been confined in a room in Greater Noida and in her cross-examination also deposed that the respondent had tied her with her *dupatta* when he went out to make a call. However, no such allegation was made either in her complaint (PW1/A) or in her statement recorded under Section 164Cr.P.C. (Ex.PW1/D).

18. SI Kishan (PW--) deposed that he had recorded the statement of prosecutrix during the intervening night of 15/16.04.2011. He also deposed that the prosecutrix had made the statement voluntarily and she did not appear to be under any fear or pressure.

19. The Court noted that in her statement recorded in the intervening night of 15/16.04.2011, she had stated that she had taken the decision of marrying the respondent without being allured or pressurised. The father of the prosecutrix had also recorded his statement (Ex.PW12/E) stating that the prosecutrix had gone with the accused voluntarily. The Trial Court noted

that the prosecution had not examined the father of the prosecutrix and therefore, drew an adverse inference.

20. The FSL report indicated that the thumb impression and the signatures on the affidavit (marked as “DA”) was that of the prosecutrix. In view of the FSL report, the testimony of the prosecutrix that she had not affirmed the affidavit, was found to be wrong.

21. The testimony of the prosecutrix that she had been abducted at about 03:00 p.m. was disbelieved as the CDRs indicated that the prosecutrix and the respondent had spoken to each other on phone from different places at about 04:00 p.m. Given the evidence in this case, this Court concurs with the view of the Trial Court. The testimony of the prosecutrix does not inspire any confidence. On the contrary, it is established that the same is incorrect. The Trial Court had evaluated the evidence and has rightly concluded that it would be highly unsafe to convict the respondent on the basis of the evidence and material available on record.

22. In view of the above, no interference with the impugned judgment is called for. The petition seeking leave to appeal against the said judgment is, accordingly, dismissed.

VIBHU BAKHRU, J

**OCTOBER 21, 2019
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