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

+ CRL.L.P. 473/2017

STATE NCT OF DELHI

..... Petitioner
Represented by: Mr. Ashok Kr. Garg, APP with SI
N.K. Singh PS V.K. North

versus

PANKAJ YADAV & ORS

..... Respondent
Represented by: Mr. Hemant Singh, Mr. Ankur
Bansal, Advs. for R-1 and 3.
Mr. Abhinav Tathagat, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
29.01.2019

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CrI.M.A. 13414/2017

For the reasons stated in the application delay of 134 days in filing the petition is condoned.

Application is disposed of.

CRL.L.P. 473/2017

1. By this petition the State seeks leave to appeal against the judgment dated 6th January, 2017 whereby the respondents were acquitted for offences punishable under Section 323/341/354/34 IPC.

2. The learned Trial Court noted that the prosecution has not produced the MLC of the complainant/PW-1 and thus rightly acquitted the respondents for offence punishable under Section 323 IPC. The learned

CRL.L.P. 473/2017

Page 1 of 3

Trial Court also held that the version of the prosecutrix was highly improbable and she contradicted herself in her cross-examination. Further there are inherent contradictions in the testimony of the complainant/ PW-1.

3. Case of the prosecutrix was that she used to go to plot No. 211-212 to throw garbage and on 14th July, 2009 at 7.30 AM while she was coming back from Shani Bazaar after purchasing milk, the three respondents stopped her and restrained her. When she objected respondent No.1 held her hand, respondent No.3 pushed her and started beating her by legs and fist due to which she fell down. In the meantime it is alleged that respondent No.2 caught hold of her breast and hit her by legs and fist. When she raised alarm, many people gathered and Police reached the spot whereafter she was taken to the trauma centre. She gave the written complaint on the next date and did not get her statement recorded on the same date. To corroborate the version of the complainant/ PW-1 the prosecution has examined PW-2 the photographer who allegedly took photographs of the complainant lying on the plot of land in an injured condition. PW-2 admittedly is not a witness to the offences allegedly committed and had gone to the place of alleged incident only after the husband of the complainant called him to click the photographs. He has also not supported the case of the prosecution fully and states that he was called later on and he clicked the photographs.

4. The learned Trial Court has noted that the first PCR call was made at 8.02 AM whereas the alleged incident took place at 7.30 AM. The call was made by husband of the complainant who stated that a girl had been raped. The learned Trial Court found the conduct of the husband of the complainant to be absurd for the reason that he first called the photographer

to click the photographs as the time on the photograph was 7.56 AM and thereafter a PCR call was made.

5. In view of the facts noted above showing that the version of the complainant/ PW-1 is not reliable and there is no corroboration to her version, this Court finds that the view expressed by the learned Trial Court is a plausible view on the evidence available on record. Hence no case for interference in the impugned judgment is made out.

6. Leave to appeal petition is dismissed.

MUKTA GUPTA, J.

JANUARY 29, 2019
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