

\$~3

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

+ **CRL.L.P. 761/2018**

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP.

versus

RADHEY SHYAM MISHRA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

%

29.01.2019

1. The State is aggrieved by the judgment dated 07.1.2018, passed by learned ASJ-Special (FTC-2), (Central), Tis Hazari Courts, Delhi, acquitting the respondent in Case No. 576/2017, arising out of FIR No. 622/2016 P.S. Burari for the offence under Section 376(2)(f) IPC.
2. The case as set up by the prosecution is based on the statement of the prosecutrix that on 20.12.2016 at about 1.00pm, she had gone to get some medicine from the clinic of a homeopathic doctor, the respondent herein. At that time, no one was present in the clinic. As per the prosecutrix, the accused took her to the patient couch behind the curtain and locked the clinic from inside and raped her. When the husband of the prosecutrix, PW-5, Ram Vilas returned home at 9.00PM, she narrated the incident to him. Since it was night time, they did not go to the P.S. to lodge a complaint against the accused. A complaint was lodged on the next day i.e., on 21.1.2016 at 10.00AM. Based on the said complaint, investigation was

conducted and a charge for the offence punishable under Section 376 (2) (f) IPC was framed against the accused.

3. After the trial was concluded, the learned trial court arrived at a conclusion that the prosecution had not been able to prove its case against the accused beyond reasonable doubt. For holding so, learned trial court opined that the testimony of the prosecutrix (PW-1) and that of her husband, (PW-5) was contradictory as to the sequence of events on the relevant date, narrated by them. While the prosecutrix deposed that her husband had returned home at 9.00PM on the date of incident, her husband had stated that he came to know about the incident only at 7.00PM. However, neither of them approached the Police Station on that day or called up at 100 number or even inform the neighbours about the fact that the accused had raped the prosecutrix. Thus, the delay in making a complaint to the police, remained explained. Further, the MLC of the prosecutrix (Ex.A-3) suggested that no fresh external injury was present at the time of her external examination. The report submitted by the FSL (Ex.PW7/G) concluded that the DNA of the victim did not match with the DNA of the accused.

4. The trial court has observed in para 61 of the impugned judgment that the prosecutrix had admitted that she had established physical relation with her husband after the incident of rape and that too before going to the Police Station and before her medical examination was conducted, which itself appears to be quite unusual. Ordinarily, a victim of rape would not act in such a manner and nor would her husband, who was stated to be under depression, proceeded to have sexual intercourse with his wife knowing very well that she had undergone the trauma of sexual assault in the same morning. In this context, the evidence of the IO, (PW-7) W/Inspector

Mukesh Devi gains significance. In her cross-examination, the IO has clearly stated she had inspected the clinic of the doctor after his arrest but did not find any door there that could be bolted from inside. Instead, there was only a shutter. In the light of the said testimony, the version of the prosecutrix that she was raped by the accused inside the clinic, after the door was bolted by him, stands falsified. Even otherwise, the version of the room being bolted from inside by the accused, was not mentioned in the statement of the prosecutrix recorded under Section 164 Cr.P.C., on 22.12.2016.

5. There is also doubt cast on the story set up by the prosecutrix about her rape at the hands of the accused in the light of her statement recorded during her first examination conducted at Aruna Asaf Ali Govt. Hospital on 22.12.2016 wherein, it is recorded that she was sexually assaulted by “a local Homeopathic doctor on 20.12.2016 at around 5.00PM” whereas her own version is that she was raped at 12.00PM on the said date. Moreover, the accused was known to the prosecutrix, as she had been going to him earlier for treatment. Therefore, his name not being mentioned in the said document, is also curious.

6. For all the aforesaid reasons, we do not find any justification for interfering in the impugned judgment, which is well reasoned and the conclusion drawn is based on the evidence brought on record.

7. Accordingly, leave prayed for in the petition is declined. The petition is dismissed.

HIMA KOHLI, J

MANOJ KUMAR OHRI, J

JANUARY 29, 2019/ap