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

+ **CRL.L.P. 302/2016**

MUNNI KHATOON

..... Petitioner

Through Mr Bhuvneshwar Sigh, Mr Kumar
Dushyant Singh, Mr Abhishek Yadav, Ms Pooja
Singh, Advocates.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Ms Meenakshi Chauhan, APP for State.
SI Dhananjay Dubey, P.S. Krishna Nagar present.
Mr Sudipto Sircar, Amicus Curiae, for R2 and R3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.02.2020

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 10.02.2016, whereby respondent nos. 2 to 3 were acquitted of the charges under Sections 323/341/354/506/34 of the Indian Penal Code, 1860 (IPC).

2. The said FIR was registered at the instance of the petitioner. She had alleged that on 10.07.2006 at about 4.00 p.m., the accused (respondents) had attacked her within the court complex at Krishna Nagar, Delhi. She alleged that the accused (respondents) had wrongfully restrained her, assaulted her and had torn her clothes with an intention to outrage her modesty. In addition, she claimed that they had caused voluntary hurt and also

threatened to kill her.

3. On 31.05.2011, charges were framed only against respondent nos. 2 and 3 as respondent no.4 had expired and the proceedings against him stood abated.

4. The prosecution had examined seven witnesses in order to establish its case. The accused (respondents) had pleaded not guilty and the matter was set down for trial.

5. The Trial Court had found that the prosecution's case rested principally on the testimony of the complainant, who deposed as PW 2. She stated in her testimony that the accused Raju (respondent no.2) had caught hold of her hair and the accused Guddu and Shamshad (respondent no.3 and 4) had given fist blows on her chest and back and had also torn her *Kurta* and pulled her *duppata*. She stated that she raised an alarm and consequently, public gathered at the spot. She stated that she was rescued by her husband and other persons. She had covered the upper portion of her body with the help of a handkerchief (a big *roomal*). She claimed that respondent no.2 (Raju) was apprehended by the public while the other accused had run away.

6. She stated that she suffered internal injuries and was taken to a Hospital at Shahdara by the police, where she was medically examined. The police had made a *Kalandra* against the accused Raju. She stated that on the next date, she availed treatment from LBS Hospital and was referred to Guru Tegh Bahadur (GTB) Hospital. Thereafter, she made a complaint to police PS New Ashok Nagar but no action was taken. She testified that she also

made a complaint to DCP (East) (Ex. PW 2/A) and thereafter, an FIR was registered on the basis of her complaint. A photocopy of the complaint was placed on record as Ex. PW 2/C.

7. The Trial Court, after examining her evidence, had found that her testimony was not reliable. The Trial Court noted that although the petitioner had stated that she had covered her torn *Kurta* by a large Handkerchief (*roomal*); in her cross-examination, she stated that she was not carrying any such handkerchief or any extra cloth such as saree, hanky, suit, etc. The Trial Court noted that in her statement recorded on 11.07.2006, (Ex. PW 2/D1) there was no allegation that the accused had torn her *Kurta* or had outraged her modesty.

8. Further, the Trial Court noted that the *Kalandra* registered against the accused Raju had also not been made a part of the charge sheet. In addition to the above, the Trial Court noted that there were material discrepancies in the testimony of the complainant and that of her husband, who had deposed as PW 3. She had stated that that she was present before the Court on or around 3.30 or 4.00 p.m. for recording of her statement. However, PW 3 had stated that they had reached the SEM Court at about 10.00 a.m.; the Court proceedings had started at around 10.50 a.m.; and the statement of his wife was recorded within 30 minutes. Thus, according to PW 3, the complainant would have been free from the court proceedings at about 11.20 or 11.30 a.m. and therefore, there was no reason for her to remain present in the SEM Court on or around 3.30 or 4.00 p.m. for recording her statement.

9. It is seen that the MLC also does not support the case of the

petitioner. The MLC does not indicate that the petitioner had suffered any injuries on her chest. The report from GTB Hospital indicates that the petitioner had reported symptoms of vomiting and seizures. It does not indicate that the petitioner had suffered any physical injury on her chest or back.

10. The learned counsel appearing for the petitioner submitted that there was patent error in the impugned judgment inasmuch as, the Trial Court had disbelieved the testimony of the complainant on the ground that she was not carrying a handkerchief and had yet testified that she had covered her torn *kurta* with a handkerchief. He submits that the Trial Court had erred in not examining the cross-examination carefully, as the complainant had explained that she had used the handkerchief of her husband.

11. The aforesaid contention is merited. The testimony of the complainant cannot be discarded only on the ground that she had stated that she had covered the torn portion of her *Kurta* by a large handkerchief but was not carrying any. Nonetheless, this Court is of the view that the respondents could not be convicted on the evidence obtaining in the present case, as the testimony of PW 2 does not inspire any confidence. First of all, there was no allegation that the accused had torn her *Kurta* in the initial statement recorded by her but this was an allegation that was made subsequently and, therefore, the Trial Court had rightly considered that there is an improvement. Undeniably, the testimonies of the complainant (PW2) and her husband (PW 3) are inconsistent in material aspects. More importantly, the medical reports also do not support the petitioner having suffered injuries which can confirm that she was attacked by the respondents, as

described by her.

12. Considering the above, this Court does not find any reason to interfere with the impugned order. The petition is, accordingly, dismissed.

FEBRUARY 13, 2020
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VIBHU BAKHRU, J