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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 253/2017**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State
with SI Chander Kanta, PS
Kapashera.

versus

SALMAN

..... Respondent

Through: Mr Suivsna Vashisht,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.01.2020

VIBHU BAKHRU, J

1. The State has filed the present petition, seeking leave to appeal against the judgment dated 09.08.2016, passed by Sh. Praveen Kumar, ASJ (Special Fast Track Court), Dwarka Courts, whereby the respondent was acquitted of the offence under Section 376 of the Indian Penal Code, 1860 (IPC).
2. The respondent was prosecuted pursuant to a FIR (FIR No. 1198/2015) under Section 376 of the IPC registered with Police Station Dabri. The said FIR was lodged at the instance of the prosecutrix (name withheld to conceal her identity).
3. The prosecutrix had reported that she lived on rent at her given address and was engaged in selling Arrier, Surf for a private company.

She stated that she was married about ten years ago and her husband was a drunkard. Her husband had not come home since the past six months. She stated that the respondent used to live in front of her mother's *jhuggi* in Gautam Puri, Delhi. She stated that about one year ago, she got acquainted with the respondent and disclosed to him that her husband was a drunkard and used to beat her whenever he was inebriated. She stated that respondent won her confidence (*dheere dheere Salman mujhpar vishwas Jeetne laga*). She stated that during the said time, she had sold the property admeasuring 33 sq. yards for a sum of ₹7,00,000/- and Salman (the respondent) persuaded her to invest ₹5,00,000/- in his furniture shop. She also alleged that during the last one year, he had been forcibly raping her and had not visited her for the past three months. She stated that he was living with his brother-in-law in Gautam Puri and she desired that legal proceedings be initiated against him.

4. The statement of the prosecutrix under was recorded under Section 164 of the CrPC and thereafter, the respondent was arrested. After completing the investigation, a chargesheet was filed before the Court.

5. Charges under Section 376 Cr.P.C. of the IPC were framed against the respondent to which, he pleaded not guilty. To establish its case, the prosecution examined five witnesses. The prosecutrix was examined as PW-1 and others were official witnesses. The Trial Court rightly noted that the case of the prosecution rested entirely on the testimony of PW-1. However, the Trial Court found that her testimony

was not credible.

6. The Trial Court found that there were several inconsistencies between her testimony and her complaint, as well as her statement recorded under Section 164 of the CrPC.

7. The complaint filed by the prosecutrix was exhibited as Ex.PW1/C. In her complaint, she had stated that her husband was a drunkard and this used to lead the quarrels between them. Consequently, for about one and a half years, he has not been living with her. She stated that her mother lives in Gautam Puri and the respondent used to live in front of her *Jhuggi*. She stated that she became well acquainted with him and he used to visit her in her locality. She stated that he had proposed marriage to her and thereafter, both of them started living at her house as husband and wife. She stated that she had a house in Jaitpur, which she sold at the instance of the respondent and on his persuasion that they would do business. She stated that thereafter, they opened a furniture shop in the name of the respondent and suffered a loss in the said business. She complained that for the past three-four months, the respondent had not come to her house and she has become aware that he has gone to her village and had got married for the second time. She complained that he had established physical relationships (*galat sambandh*) with her on inducement of marriage. She also stated that she had got him a motorcycle. Further, she alleged that the respondent had issued threats that he would kill her and her children.

8. There are material inconsistencies in her complaint and the FIR lodged by her on the same date. There is no allegation of forcible rape in her complaint. On the contrary, she had stated that she and the respondent were living as husband and wife and he had established relationships (*galat sambandh*) on the inducement of marriage but had he failed to marry her. However, in the FIR, it was reported that he had forcibly, and without her consent, raped her.

9. The statement of the prosecutrix was recorded under Section 164 of the CrPC. In her statement, she stated that the respondent had started talking to her and used to sympathise with her as to how she managed to live with her husband and she had expressed her helplessness in this regard. She stated that when she sold her plot, she wanted to buy another plot but was persuaded by the respondent to do business instead. She had told him that she did not have any knowledge of business but he had assured her that he would manage the same. She stated that out of the sale proceeds of the plot, the respondent had used ₹5,00,000/- to open a carpenter shop and he had run the shop for six months. She stated that she also used to visit the shop and thereafter, he started forcing her (*mere se jabardasti karne laga*). She stated that his house was above the shop and he would take her there and establish physical relations. She stated that he had done so about three or four times. She stated that he had done so for about three or four months. She also stated that she had paid him ₹40,000/- for a vehicle. She stated that she had gone to attend the wedding and when she returned, she found that the respondent had closed his shop and sold all the goods.

He had returned to his village and had married another person there. She stated that she had taken a few people from the neighbourhood to his place and under their pressure, he had entered into an agreement to return ₹2.5 lacs for her. She also stated that when he was forcing himself on her, she had pushed him and resultantly, his head had hit the wall.

10. Before the Court, she testified that she became acquainted to respondent during her stay in her parental house. She stated that whenever her husband used to quarrel and beat her, the respondent would intervene. He would also empathise with her by saying how was it possible for her to stay with a man like her husband. She claimed that she had a house in Jaitpur measuring 33 sq. yards. She stated that her mother had sold her house at Gautam Puri about one and a half years ago and had purchased her house at Jaitpur for a sum of ₹7,00,000/-. She reiterated that the respondent had convinced her to give him ₹5,00,000/- out of the sale proceeds of ₹7,00,000/-, for running a furniture business. She had given him the said money about eight days after the sale of the aforesaid house and he had started a business in a shop in Vijay Enclave. She stated that he also started living on rent in a house in Gautam Puri and she used to visit his shop occasionally. During the initial two – three months, the accused carried on the business properly. However, on her visit to the shop, he had a sexual intercourse with her forcibly. She stated that after she was freed by the respondent and was returning to her house, the respondent had chased her on his motorcycle and had threatened her that if she lodged

a complaint against him in the Police Station, he would kill her and her children. She stated that thereafter, the respondent took the first floor of the said shop on rent and started residing there. She now alleged that he used to call her on her mobile phone and used to ask her if she was coming to his house otherwise, he would come to her house. She alleged that he had pressurised her to come to his house and had forcibly sexual intercourse with her on four to five occasions. She stated that she continuously requested him to return her money, but he did not do so. She further stated that about eleven months of her lodging the complaint to the police, the father of the respondent had come to her and had assured her that he would return ₹2.5 lacs to her. She stated that the respondent had also assured that he would return a sum of ₹2.5 lacs to her. She also produced an original of the agreement (a copy of which was accepted as Ex.PW1/A).

11. The conclusion of the Trial Court that the versions of the prosecutrix regarding the offence is not consistent, cannot be faulted. As noticed above, in her complaint lodged initially, she did not make any allegation of rape. However, she made that allegation in her statement recorded on the same date, which then resulted in the FIR being lodged. Her statement under Section 164 of the Cr.P.C. is also inconsistent with her complaint. In her testimony before the Court, she alleged that he had raped her once at the shop and thereafter, he had done so on four to five occasions at his residence located on the first floor. However, she did not provide any other particulars of the incidents.

12. It is material to note that the prosecutrix did not provide any detail of the incidents. Her complaint and her testimony are bereft of any particulars regarding the date on which the incidents had taken place. It appears from her complaint and her testimony that she was more concerned about the respondent not contacting her for a period of three months. She had also expressed her grievance regarding respondent contracting a second marriage. And, importantly, this is on her assumption that he was married to her. The FIR has been filed after a considerable delay and there is no credible explanation for such delay in filing the FIR. Undoubtedly, the petitioner may be aggrieved regarding the conduct of the respondent. But it is not established beyond reasonable doubt that he had sexual intercourse with her without her consent.

13. Given the evidence obtaining in the case, the Trial Court's conclusion that the testimony of PW-1 could not be relied upon, warrants no interference. This Court concurs with the Trial Court's view that the prosecution has failed to establish that the respondent had committed an offence punishable under Section 376 of the IPC, beyond any reasonable doubt.

14. In view of the above, this Court finds no reason to interfere with the impugned judgment.

15. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 23, 2020/RK