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

+ **CRL.L.P. 344/2017**

STATE (NCT OF DELHI)

..... Petitioner

Through Mr Amit Gupta, APP for state.
SI Sandeep Kumar, P.S. Malviya Nagar.

versus

MOHD SWALIN & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.03.2020**

CRL.M.A. 9587/2017

1. For the reasons stated in the application, the same is allowed and the delay in filing the present leave to appeal is condoned. The application is disposed of.

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2. The State has filed the present petition seeking leave to appeal against the judgment dated 31.08.2016 passed by Additional Sessions Judge-Special Track Court, Saket Courts whereby the court had acquitted respondent no.1 of the charges for committing offences punishable under Sections 366/417/376 of the IPC and Sections 506/34 of the IPC and respondent nos. 2 and 3 were acquitted of the charges for committing the offence punishable under Sections 506/34 of the IPC.

3. On 23.01.2014, the prosecutrix, aged twenty-one years had gone to PS Malviya Nagar, along with her mother and had given her statement. In her statement, the prosecutrix stated that she knew respondent no.1 (Mohd Swalin) as he was her neighbour. She stated that he used to stalk her and try to propose friendship with her. On 15.01.2014, at about 7 p.m., when she was going to the market, he came near her in his car and forcibly made her sit in his car. He took her to a flat in Mehrauli and promised that he would marry her. She alleged that on the night of 15.01.2014, he raped her. She stated that he had kept her in the said flat for three days (i.e. from 15.01.2014-17.01.2014). However, after 15.01.2014, the prosecutrix did not allow respondent no.1 to rape her. She stated that respondent no.1 had established physical relationship with her on the basis of a false promise of marriage.

4. She stated that on 18.01.2014, when she asked him to marry her, he started scolding her and threatened to kill her. Respondent no.1 then brought her to his uncle's (*chacha's*) house (respondent no.3) for one night, but she stated that nothing untoward happened to her in his house. Next morning, respondent no.1, respondent no.3 and respondent no.2 (Mohd. Azhar – respondent no.1's father) took her to an advocate's chamber in Saket Courts. There, she was informed by respondent no.1 about a missing person report that had been filed by her father. She was threatened that if she disclosed the incident regarding respondent no.1 establishing physical relations with her to anyone, their marriage would not take place. She got scared and under their pressure, she wrote whatever was dictated to her by the advocate. She stated that no one from her family was present at that time. Respondent no.1,

thereafter, left the prosecutrix at her home. She stated that she and her father had gone to the police station, where they met with the father of respondent no.1 (respondent no.2), who promised them that respondent no.1 would marry the prosecutrix. However, when the prosecutrix and her father reached home, the respondents ceased all communication and did not respond to them. The prosecutrix alleged that respondent no.1 had raped her on the false promise of marriage.

5. On the basis of the prosecutrix's statement, FIR No. 87/2014, under Sections 376/506/323/342/34 of the IPC was registered with PS Malviya Nagar. Charges under Sections 417/376/366/506 read with Section 34 of the IPC, were framed against respondent no.1. Charges under Sections 506 read with Section 34 of the IPC, were framed against respondents no. 2 and 3.

6. The prosecution examined eleven witnesses to prove its case. On perusing the evidence, the Learned ASJ acquitted the respondents of the said charges by the judgment dated 31.08.2016, which is impugned herein.

7. This court is informed that respondent no.1 has passed away on 07.12.2016. This was noted by this court in the order dated 17.09.2018 and the proceedings qua respondent no.1 had been abated.

8. The present petition is, thus, limited to impugning the acquittal of respondent no.2 and 3. Charges under Sections 506/34 of the IPC were framed against respondent nos. 2 and 3, on the basis of the allegation of the prosecutrix that respondent nos. 2 and 3, along with respondent no.1, had forced her to write that she had accompanied respondent no.1 on her own wish and he had not established any physical relations with her. She claimed that she wrote the note (Mark X) on the dictation of respondent nos. 2 and 3.

9. The Trial Court examined the evidence on record, with reference to the allegations against respondent nos. 2 and 3, and observed that the prosecutrix had not deposed as to how she was forced by the respondents to write the said note. The Trial Court also noted that it was difficult to believe that she would have been forced to write the said note in the presence of a third person, that is, the advocate. In her cross examination, she had deposed that when she was taken to Saket Courts, a number of police officials, woman constables, advocates were present at the court complex. The Court noted that she did not raise any alarm or attempt to make any complaint to any police personnel or anyone else. The Court held that that her conduct seemed unnatural in light of her allegation that she had been raped and abducted.

10. The Trial Court also noted that there were discrepancies in the statements of the prosecutrix and her testimony before the Trial Court. In her supplementary statement, as recorded on 26.03.2014, she had stated that she did not know the name or the chamber number of the advocate before whom her statement was recorded. She also admitted that she had not mentioned the name of the advocate in her complaint (Ex. PW4/A) or her statement before the Learned MM (Ex. PW 3/C). However, in her testimony before the Trial Court, she stated that the name of the advocate was Mr. Narender Sharma. On the said basis, the Court held that the prosecutrix had made improvements in her testimony. The Court also noted that the advocate mentioned by her was not examined. The prosecutrix had also, admittedly, not filed any complaint or taken any action against the said advocate.

11. The Trial Court also noted that the prosecutrix had claimed that she

was taken by the respondents to three different offices, including the office of the DCP. The Court found it improbable that the prosecutrix had not complained to anyone or reached out for help from anyone, when she had ample opportunity to do so.

12. On the basis of the abovementioned findings and observations, the Trial Court held that respondent nos. 2 and 3 were not guilty of the offences under Sections 506/34 of the IPC.

13. This Court finds no infirmity with the decision of the Trial Court in acquitting respondent no. 2 and 3 of the charges framed against them.

14. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

MARCH 12, 2020

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