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

+ **CRL.L.P. 528/2017 & CRL. M. A. No. 15098/2017**

STATE GOVT OF NCT OF DELHI

..... Petitioner

Through Mr. Amit Gupta, APP.

versus

RAFIQ

..... Respondent

Through Mr. S.K. Atri, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.01.2020

1. The State has filed the present petition, seeking leave to appeal against the judgment dated 26.07.2016, passed by the Additional Sessions Judge, Saket Courts, New Delhi. The Trial Court vide the impugned judgment acquitted the respondent of the offences punishable under Sections 376/506/323 of the Indian Penal Code, 1860 (IPC). The State contends that the Trial Court erred in not appreciating that the testimony of the prosecutrix was fairly consistent with reference to the allegation of the offences and it was settled in law that conviction can be solely based on the testimony of the victim without corroboration.

2. The present case arises from FIR bearing No. 489/2014, under Sections 376/451/506/323 of the IPC, registered with PS Fatehpur Beri. The said FIR was registered at the instance of the prosecutrix.

3. In her complaint (Ex. PW5/A), the prosecutrix stated that she stays with her family and runs a beauty parlour in the name and style of “Meghna”. She stated that on 23.09.2014 at about 10:30 am, she was alone in the house, and the respondent entered her house since the door was open. Her son, Vishal, aged fifteen years, was upstairs on the terrace using the washroom. She alleged that the respondent threatened her and asked her to take back the previous cases against him otherwise he would rape her and kill her and her son. She told him to go out but he proceeded to beat her, pull her hair; kicked her and delivered blows using his fists on her stomach. She alleged that he grabbed her from behind, overpowered her and made her lie on the floor in the house. Thereafter, he tore her lower garment and raped her. She stated that her son came from the terrace and hit the respondent on his back. Since she was nude, he put a sheet on her. The respondent ran away and she called 100 number. She sat in the PCR van and went to AIIMS Hospital where her medical examination was conducted. She wanted legal action against the respondent since he had raped her without her will and consent.

4. In her statement under Section 164 of the Code of Criminal Procedure, 1973 (CrPC) (Ex PW 5/B), the prosecutrix stated that the respondent lives in her neighbourhood and he used to annoy her. On 23.09.2014, at about 10:30 am, he came to her house. The door of her house was open, and on entering her house, he closed the door. He threatened her that if she did not withdraw the case against him, then he would teach her a lesson. She stated that he stripped her nude. She stated that she has a son and her husband had entered into a second marriage. She stays with her family but her husband does not come to visit her. She stated that the respondent

had sexual intercourse with her without her consent and hurt her. She stated that he did this again with her. While saying so, she pointed out the scratch marks on her chest, ear, nose, cheek (left). She also pulled out hair and a torn pyjama, which she stated was torn during the assault. She stated that he bit her lips with his teeth. When she shouted, her son came and covered her with a cloth. She stated that she felt that her and her son's life were in threat due to the respondent. She also stated that he had committed the abovementioned acts with her again on 24.09.2014.

5. On the basis of the prosecutrix's statements, investigation was conducted. Charges under Sections 376, 323 and 506 of the IPC were framed against the respondent. The prosecution examined twelve witnesses and the respondent examined his sister (DW1) in his defence. Out of the twelve witnesses, the prosecutrix and her son were the material witnesses and the rest were formal witnesses.

6. The prosecutrix was examined as PW5, and in her examination-in-chief, she deposed that she had lodged a FIR against the respondent prior to the present case as he used to tease her and entered her house without permission. On 23.09.2014, at about 10/10:30 am, the door of her house was open and her son had gone to the washroom on the terrace of the house. The respondent had entered her house and had threatened her demanding that she withdraws previous cases against the respondent otherwise he would rape her. Thereafter, the respondent caught hold of her, gave her fist and kick blows on her stomach and pulled her hair and pinned her down on the floor of the room. She deposed that, thereafter, he removed her lower garment and committed sexual intercourse with her forcibly. In the meanwhile, her son

came down and gave a blow on the back of the respondent. Respondent fled from the spot and since she was naked below the waist, her son covered her with a sheet. She called the police at 100 number and informed the police that rape had been committed on her. She called the police thrice on 100 number. However, she was told that they were unable to understand her location and that they would be sending help to her shortly. At about 11.30/12 noon, PCR officials came and took her to AIIMS Hospital to get her medically examined. She stated that during the investigation she had handed over the clothes which the respondent had torn and also the hair which were pulled by the respondent, on the said day.

7. In her cross examination, she stated that house of the respondent was situated opposite to her house in which she was staying for the past five years. She stated that prior to the alleged incident, the mother and sisters of the respondent had come to her house and threatened her to withdraw the previous cases. They quarrelled with her and also gave her beatings. The respondent came after their departure at the spot and he had remained there for a duration of five-six minutes. She stated that the sisters and mother of the respondent came back at once with the respondent and her son had also reached on hearing noise. She stated that it was correct that after the said incident, no further quarrel took place between her and the family of the respondent.

8. The Trial Court, on perusing the statement made by the prosecutrix before the police, her statement under Section 164 of the CrPC and her deposition before the Court, held that there were several inconsistencies in her testimony and therefore, the testimony of the prosecutrix was not reliable. The Trial Court noted that in her examination-in-chief, she had

claimed that on the day of the incident only the respondent had come to her house. However, in her cross examination, she stated that that on the day of the incident, the mother and the sisters of the respondent had come to her house. The respondent had come to the spot after their departure and the mother and sisters of the respondent had also returned to the spot. The prosecutrix had not mentioned the fight between the respondent's family and her in any of the previous statements and nor in her examination in chief.

9. Further, in her statement under Section 164 of the CrPC, the prosecutrix had stated that the respondent had raped her again on 24.09.2014 (a day after the incident). However, the same was not mentioned in her testimony. The Trial Court also noted that till her statement was recorded on 24.09.2014, she had not given her torn *pajami* (lower) to the IO. The seizure memo (Ex. PW 5/C) showed overwriting on the said date. There was no reason which was provided by the prosecutrix or the IO for the lower of the prosecutrix being handed over one day after the incident. The Trial Court held that the lapse on behalf of the prosecutrix and the IO made the seizure doubtful.

10. The son of the prosecutrix, who was examined as PW7, did not support the version of the prosecutrix in his examination in chief. He deposed that a quarrel had taken place between the respondent and his mother. When he came down, the respondent had already left the spot. He stated that except the abovesaid fact, nothing was seen by him. His statement was also not recorded by the police. He was declared hostile by the Ld. APP and he read over the statement of PW7 to him, recorded under Section 161 of the CrPC by the police. PW7 denied having made such statement to the police. He stated that it was wrong to suggest that when he

saw his mother, she was naked from the lower part and that he had put a bedsheet on her.

11. The Trial Court noted that the son of the prosecutrix did not support her version and stated that if such an incident had taken place with the mother before the eyes of her son, there would rarely be any reason for the son to protect the assailant of his mother. The fact that the son of the prosecutrix did not support her version made her allegation of rape very difficult to believe.

12. The Trial Court also noted that the medical evidence did not support the case of the prosecutrix. The prosecutrix had claimed that the respondent had forcibly committed sexual intercourse with her on 23.09.2014. However, as per the FSL result (Ex. PW11/J), there was no semen present in her vagina and vulval swab and smear. Further, the Trial Court noted that in the MLC (Ex. PW 2/A), the prosecutrix had given her sexual assault history wherein she stated that the respondent had 'attempted to rape her'. The Court noted that the varying versions of the prosecutrix made the allegation of rape very difficult to believe.

13. The Trial Court noticed that the MLC (Ex. PW 2/A) mentioned fresh injury marks present on the face of the prosecutrix, facial abrasions on the left side of her face, nasal bridge, neck and scratch marks on her left breast. However, in light of the fact that the prosecutrix had admitted that a quarrel had taken place between her and the respondent's family members, the Trial Court held that it would be unsafe to conclude that the injuries had taken place due to the alleged rape.

14. The Trial Court also perused the DDs which had been recorded with reference to the present case. PW10 – Ct Kamal Singh – had proved the

PCR form (Ex. PW 10/A). The said form recorded several calls and the reasons on the basis of which the said calls were made. The first call noted that a fight between two ladies in the neighbourhood had broken out. Thereafter, another call was made which stated that the incident was not pertaining to rape and it was a fight between two ladies. However, a third call was made, around 11:15 a.m., which stated that the respondent had committed rape on the prosecutrix. The Trial Court noted that the sequence of the events with reference to when the calls were recorded and their contents revealed that the prosecutrix was not being truthful about the alleged incident. The Trial Court also noted that there was no investigation with reference to the PCR call regarding the fight between the prosecutrix and the family members of the respondents.

15. Based on the aforementioned reasons, the Trial Court held that the case of the prosecution was not free from suspicion and accordingly, acquitted the respondent.

16. In view of the above, this Court finds no merits in the present petition. The present petition has been filed two hundred and seventy-eight days beyond the prescribed period. The only explanation for such delay is sought to be explained by the bureaucratic process of obtaining opinions and approvals. The same are clearly unpersuasive. The petition is, thus, dismissed both on limitation as well as on merits. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 29, 2020
DR