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

+ **CRL.A. 4/2021 & CRL.M.A.121/2021 & 11565/2021**

KP

..... Appellant

Through: Mr. Prakhar Bhatnagar and Mr.
Sourav Tyagi, Advocates with
appellant in person

versus

STATE & ORS.

.... Respondents

Through: Ms. Manjeet Arya, APP for State with
Insp. Sunil Sidhu, SI Sangeeta (main
IO) and SI Manita
Mr. Ashok Drall and Ms. Aashi Drall,
Advocates for R-2 to 4

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER
01.05.2024

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1. The present appeal has been preferred by the appellant/prosecutrix under Section 372 Cr.P.C. read with Section 482 Cr.P.C. challenging the impugned judgment dated 07.02.2019 passed by learned Additional Sessions Judge, North West, Rohini Courts, Delhi in Sessions Case No.52647/2016.
2. The brief facts of the case are that the appellant got married on 24.11.2022 according to Hindu rites, customs and ceremonies. The appellant alleged that she could not conceive child due to her husband's impotency but her in-laws started blaming and taunting her and one day, respondent



No.3 (father-in-law of the appellant) proposed the appellant that he can help her conceiving a baby by having sexual intercourse with her which proposal was turned down by the appellant. Thereafter, after a few days, the respondent No.3 forcibly entered appellant's room and committed rape upon her and when the appellant told the incident to respondent No.4 (mother-in-law of appellant), she did not pay any heed to it. The said incident was told by her to her husband and brother-in-law (devar) (respondent No.2). However, they also stood in support of rape committed by respondent No.3. Thereafter, respondent No.2 also started committing rape upon her while intimidating her.

3. The appellant got FIR No.1105/2015 registered for the offence under Sections 376(2)/506/34 IPC in Police Station Mangolpuri. Her medical examination revealed that she was pregnant. The appellant alleged that the said pregnancy was result of the rape committed by respondent Nos.2 & 3. The appellant also filed two cases under provisions of PWDV Act and a divorce petition under Hindu Marriage Act, 1955. Respondent Nos.2 & 3 were arrested and vide order dated 09.10.2015, the learned trial Court framed charges under Sections 376(2)(n)/498-A/506/34 IPC against respondent Nos.2 & 3 and under Sections 376 read with Section 109/498-A/34 IPC against respondent No.4.

4. Since the prosecution failed to prove its case, the accused persons were acquitted of all the charges vide impugned judgment dated 07.02.2019 passed by the learned trial Court.

5. The acquittal was, ostensibly, in view of hostile and unsupportive testimony of prosecutrix (appellant herein).

6. Learned counsel for appellant/prosecutrix submits that due to the



pressure from the side of her in-laws, prosecutrix could not reveal the truth. Moreover, her child was in their possession. After she turned hostile, the learned trial Court issued her a notice under Section 340 Cr.P.C. In reply to the said notice, the prosecutrix disclosed the aforesaid facts and the circumstances under which she had deposed before the Court.

7. It is pertinent to mention here that during hearing of the present appeal, it came to notice of this Court that the appellant had already preferred an application under Section 311 Cr.P.C. seeking her re-examination. However, the impugned judgment was passed without even deciding such application.

8. Though the proceedings under Section 340 Cr.P.C. had been initiated by the learned trial Court, but there is no final order to that effect.

9. Since the application under Section 311 Cr.P.C. remained pending, the learned trial Court should not have pronounced the judgment, without deciding the said application.

10. In view of above, we hereby set aside the impugned judgment dated 07.02.2019 and remand the case back to the learned trial Court with direction to hear arguments on the application under Section 311 and to decide the same and thereafter to proceed further as per law. Consequently, the proceedings under Section 340 Cr.P.C. shall also be dealt with as per law.

11. Respondent Nos.2 to 4 are directed to appear before learned trial Court on 27.05.2024.

12. With the aforesaid directions, the present appeal and pending applications stand disposed of.

13. We clarify that we have not expressed any opinion about the merits of



the case or for that matter of the application moved under Section 311 Cr.P.C.

SURESH KUMAR KAIT, J

MANOJ JAIN, J

MAY 1, 2024/rk