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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1002/2023, CRL.M.A. 32835/2023 & CRL.M.A. 32837/2023**

XXXXXX

.....Appellant

Through: Mr. Sanjiv Sharma Advocate with
Appellant

versus

STATE & ORS.

.....Respondents

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Mr. Lalit Luthra, Adv.
Mr. Anupam S Sharma with Mr.
Prakarsh Airan, Mr. Harpreet Kalsi,
Mr. Vashisht Rao, Mr. Ripudaman
Sharma and Mr. Syamantak Modgill,
Advs. for R-2

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **29.10.2024**

1. This hearing has been done through hybrid mode.
2. The present appeal under Section 372 read with Section 482 of the CrPC has been filed challenging the impugned judgment dated 29th February, 2020 passed by the Trial Court whereby the Respondent Nos. 2 and 3 were acquitted in Sessions Case no. 34/15 arising out of FIR No. 35/14, under Sections 376D/354B/451/323 of the IPC, registered at PS Mehrauli.
3. A complaint was recorded on 6th January, 2014 raising allegations against Respondent Nos. 2 and 3 and one other who was tried as a juvenile. The allegation was that the said three persons had entered the home of the survivor on 6th January, 2014 at about 10:00 PM and caused certain injuries



to the survivor. The same is described herein below: -

“Statement of XXX

Stated that I am residing at the above address along with my family. I am a homely lady. I have two sons. The name of my elder son is Gaurav who is working in Delhi Jal Board and the younger son Saurav is studying. My husband is working in MCD. Around 4 -5 days back there was a quarrel with Sunil, Asha and Bobby who are residing in front of our house. There are frequent quarrels on the issues of garbage and dog. Today on 06.01.2014 at about 10.00 pm I was alone in the house. My husband and sons were not at home. At this point of time Gopal, Sunil and his son Bobby came inside my house. At that time I was eating the food. All of a sudden Sunil pressed my neck and Gopal and Bobby tore my clothes and beaten me up and scratched my chest and neck and Gopal inserted his hand into my body (part for urination). Thereafter when I raised my voice, all three of them ran away from the spot. Then I called my elder son Gaurav and thereafter I called up at 100 number. Legal action be taken against Sunil, Gopal and Bobby. You have written my statement, read over and understood as correct.”

4. Subsequently, the statement of the survivor under Section 164 of the CrPC was recorded and an **FIR No. 35/2014** was registered and the Trial was conducted.

5. By the impugned judgment, the Trial Court has acquitted all the accused on the following grounds: -

- i) Inconsistent statements of the Survivor-Improvements made by the Survivor in her testimony recorded before the Court from her



statement recorded under Section 164 of the CrPC;

- ii) Absence of injury marks around the genitals- As per the MLC report there were abrasions on the upper chest, back and left side of the neck, however despite the fact that her medical examination was conducted within 2 hours from the reporting of the incident, there were no injuries around the private parts;
- iii) State of the clothes of the survivor- the string of the salwar was intact, which is contradicting the allegations levelled against the Respondent/accused persons;
- iv) Nature of the injuries- injuries inflicted on the survivor were blunt in the opinion of the concerned doctor as mentioned in her MLC;
- v) Non- disclosure of the relationship of the parties- the parties are close relatives and there is a property dispute between the parties;

6. In the present appeal, the submissions have been heard both on the question of condonation of delay, and also, on merits.

7. A perusal of the application for condonation of delay *i.e.*, **CRL.M.A. 32837/2023** would show that the case of the Appellant is that the appeal was first filed in the form of revision on 2nd May, 2023. Thereafter, after clearing all the defects, it was re-filed on 29th November, 2023. It is further submitted that the period during the pandemic deserves to be excluded.

8. Learned counsel for the Appellant has also submitted that the latter has never alleged penetration but has merely alleged that there was outraging of her modesty, which according to him, should be a case under Section 354 of the IPC. It is further submitted that though the Respondent Nos. 2 and 3 are related, the same was not required to be disclosed in the complaint as they are distant relatives. He relies upon the MLC to argue that there were injuries



caused to the Appellant.

9. On behalf of the Respondent Nos. 2 and 3, Mr. Sharma submits that parties are closely related to each other as the father-in-law of the Appellant and the father of the said Respondents are brothers. There was a property dispute which ensued and in order to settle scores in respect of the property dispute the Respondents were implicated in this criminal complaint.

10. Mr. Bahri, learned APP for the State submits that, in fact, though the Appellant today argues that this was a case to be registered under Section 354 of the IPC, the FIR was registered only under Section 376 of the IPC in view of the allegations made by the Appellant as reproduced hereinabove.

11. This Court has considered the MLC, which shows that the Appellant was examined on the same date as to when the alleged incident had taken place, *i.e.*, on 6th January, 2024. The injuries which are caused are described herein below: -

“Abrasions present all over the upper chest, Back & lt. side of the neck. Punctured wound on lt. forearm. Insp of Genitalia & Thighs: No evidence of any injury or bleeding”

12. The Trial Court has, in fact, held that the possibility of a fabricated case cannot be ruled out in the present matter. The Trial Court has passed a detailed decision wherein various circumstances, which have been gleaned from the testimony of the survivor as also the other evidence which has come on record has been analysed. The Trial Court also observes that the non-disclosure of the relationship between the parties, was deliberate as the case then would have been investigated in a completely different manner, if the relationship among the parties was disclosed. The Trial Court also disbelieves various



other circumstances which are stated in the complaint as also the testimony including the status of the clothes of the survivor. The Trial Court further observes that unless and until the guilt is proved beyond reasonable doubt, the Respondent Nos. 2 and 3 deserve to be acquitted. The relevant findings as recorded by the Id. Trial Court are reproduced hereinunder: -

“29. In this case, the criminal machinery was put to motion when on 06.01.2014 at 10:55 PM, the son of the prosecutrix/PW-5 reported to police about the incident that his mother has been beaten by someone after entering the house and he is not present in the house Ex. PW-7/A, thereafter, the police swung into action. The prosecutrix was also taken for medical examination on the same date.

30. It is a matter of record that the details of incident dated 06.01.2014 are completely known to the prosecutrix. It is expected that the prosecutrix while deposing about the occurrence on different occasions should maintain consistency and there should be no material ‘alterations or improvements. If, it is noticed that the statement of the prosecutrix has been manifested with improvements / alterations then it erodes its credibility.

31. From the testimony of the prosecutrix, it is evident that there are innumerable improvements in her testimony. In her examination-in- chief, she has stated that accused Gopal broke string of her salwar and put his hand inside her panty and he put his hand in her private part (vagina) and accused Sunil uttered “isey samaj mein itna baizat kar denge ki ye kahin muh dikhane layak nahi rahegi”. The prosecutrix further stated that when Gopal had put his hand in her vagina, Bobby and accused Sunil were holding her and she raised alarm then all three of them ran away from there, - whereas, there is variation in the original version about giving the details in complaint Ex, PW-12/A, as she had stated that suddenly Sunil pressed her neck and Gopal and Bobby tore her clothes and started beating her, scratched her chest and neck and



Gopal inserted his hand in her private parts. Not only this, there is further improvement in her statement u/s 164 Cr.P.C Ex. PW-3/B, as she has stated that Sunil pressed her neck, Gopal and Bobby pressed her neck, they gave her slaps and torn her clothes and Gopal broke her salwar string and tore her panty and put his hand inside her body, inserted hand in her uterus and she has nail scratch marks on her body and they slapped her a lot.

32. *Moreover, it has emerged on record that besides the above major improvements, there are inconsistencies in the statement of the prosecutrix PW-12 with respect to certain facts when the statements are compared with the statement of her son Gaurav PW-5. PW-12 has deposed that on the date of incident, she called the police on 100 but the fact is that the call was made by her son based on which DD entry Ex. PW-7/A was recorded. Further, PW-12 has initially, stated that her son at the time of incident was on duty but later on it was deposed that he was present in the market in Vasant Kunj. PW-5 failed to depose convincingly as to why he was there in the market at such late hours when the market gets closed. He failed to give the name of the person for whom he was trying to buy birthday cake. In the deposition during trial, the son of the prosecutrix PW-5 denied any knowledge of knowing person with the name "Hemant". However, the prosecutrix PW-12 has admitted knowing this person since the time of her marriage and also accepted that he was a frequent visitor to her house. This contradiction becomes magnified particularly in view of the fact that there are allegations that this person is involved in transactions of immovable properties which has been one of contentions between the family of the prosecutrix and the family of the accused.*

33. *As mentioned above, out of the three accused, one was juvenile, therefore the present trial commenced against the remaining two accused namely Gopal Bhargav and Suril Kumar. These two accused were charged with the offence of rape u/s 376(D) of IPC and also offence*



punishable under section 323/34 IPC for beating and voluntarily causing hurt to the prosecutrix. It would be appropriate to analyse the evidence which could bring on record as to what type of injuries have been inflicted upon the prosecutrix. The best piece of evidence would be MLC issued by the doctor on physical examination of the prosecutrix immediately after the incident. The MLC Ex. PW-2/A was prepared at Max Hospital by Dr. B Krishna Prasad PW-2 and this document has recorded that the abrasions were present all over the upper chest, back and left side of the neck of the prosecutrix. It clearly mentioned that there was no evidence of any injury or bleeding on genital or thigh. It is noteworthy that the medical examination of the prosecutrix was conducted within 2 hours of the reported incident.

34. A careful scanning of medical evidence would show that no injuries have been found around the private parts of the prosecutrix which is highly improbable if any incident of forceful insertion of hand/ finger is resorted to. It is very difficult to believe that if the prosecutrix PW-12- was wearing her clothes at the time of incident any of the accused persons would cut "string of her Salwar" in such a neat manner that it's strings are intact even as on date. Thereafter, such accused Gopal would use his hand/ finger to insert the same into the private parts of prosecutrix when she is resisting all such kind of efforts without resulting into any injury in the nearby area of her private parts.

35. In so far as injuries / abrasions over the upper chest, backside and left side of the neck are concerned which have been allegedly caused due to forceful holding of the prosecutrix by the accused persons appears to be improbable because in such kind of scuffle if the injuries have been created on the body of the prosecutrix by forceful holding then it would be the marks of nail which would first appear on the body parts. The doctor which has conducted medical examination of the prosecutrix clearly deposed that the nature of injuries were blunt.



36. *The veracity of the prosecutrix comes under the scrutiny due to certain other facts because from the testimony of prosecutrix PW- 12, it is evident that the family of the prosecutrix and the family of the accused are close relatives, as the prosecutrix in examination-in- chief admitted that accused are sons of chacha sasur and further, in the opening line of her cross-examination conducted on 01.11.2017, stated that she had not told the police in her complaint Ex, PW-12/A that accused Gopal and Sunil are sons of Chachiya Sasur. The only explanation which appears plausible for nondisclosure of the relationship is that if she had disclosed the relationship the case would have been investigated differently. Moreover, it is evident from record that the prosecutrix, at the time of incident was taking her meals and there was entry of accused followed by scuffle as a result of which she fell on the ground, then it has not been explained as to why there was no evidence of any food scattered or other household articles. The prosecutrix has also alleged that her clothes were torn apart but the clothes produced before the court such as salwar Ex. P-3 and undergarments Ex. P-4 and Ex. P-5 did not contain any such signs. The alleged string of salwar was so neatly cut that it appears same could not have been Gone by force of hand. Moreover, it cannot be lost sight that during the winters of January 2014, when two male members of the family were not present in the house as to why the doors of house kept open by the prosecutrix.*

37. *Further, it has come up from cross-examination of prosecutrix that 'she has admitted that there is no boundary wall between their - house and the house of accused Gopal and Sunil. The prosecutrix further admitted to be correct that there is no boundary wall since the property has not been partitioned. Meaning thereby, these persons are living in a house which does not have any boundary. It also transpires that there have been frequent fights/alterations between these two families over the garbage or the dog. It is also matter of record that*



there are civil disputes and litigations going on regarding the property which has devolved upon these families from their respective father.

38. All the above signifies that there is every possibility that it is fabricated case and the manner in which occurrence is stated to have occurred is not believable. In totality of consideration of the facts and circumstances as mentioned above, the allegations levelled by the prosecutrix in her statement are not corroborated at all with the help of any independent and convincing witness. There exist many inconsistencies and the motive for filing case against the accused due to property dispute cannot be ruled out. In such circumstances, the prosecution has failed to establish any case against the accused. It is cardinal principle of criminal jurisprudence that until and unless the guilt of the accused is proved beyond all doubt; it would be travesty of justice to hold such accused guilty of any offence. Prosecution is duty bound to collect the believable evidence and weave it in such a manner that only logical conclusion which flows out from such evidence is that the accused are guilty of committing offence. In the present case, there is no such clinching evidence connecting the accused but on the contrary there exist a strong motive the prosecutrix to implicate the accused by alleging the incident as above. Therefore, in the facts and circumstances of the case, the solitary version of the prosecutrix PW-12 cannot be taken as gospel truth at face value and in the absence of any supporting evidence, the accused are to be given benefit of doubt.”

13. After having perused the judgment of the Trial Court as also having perused the reasons given in the application for seeking condonation of delay, this Court is of the opinion that there are no valid grounds for condoning the delay. The Hon’ble Supreme Court vide its decision in ***In Re: Cognizance for Extension of Limitation [Suo Moto Writ Petition (C)No. 3 of 2020, order***



dated 10th January, 2022] and *Arif Azim Co. Ltd. v. Aptech Ltd. 2024 SCC OnLine SC 215* had made it clear that the pandemic period would be excluded from 15th March, 2020 to 28th February, 2022 and a further period of 90 days would be given for filing of appeals or any other pleading which were due during the said pandemic period.

14. In the present case, the appeal has been filed one year post even the said period. Further, owing to the relationship between the parties and findings of the Trial Court even on merits, the Court is of the opinion that the judgment passed by the Trial Court is not to be interfered with.

15. Accordingly, the present appeal is dismissed both on delay as also on merits.

16. Pending application(s), if any, also stand disposed of accordingly.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 29, 2024/tp/ks/ns