

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 537/2009**

Decided on 10.02.2011

IN THE MATTER OF :

SHASHI CHAUDHARY Petitioner
Through: Mr. Ravi Kumar Tomar, Advocate

versus

RAM KUMAR & ANR. Respondents
Through: Mr. Sumeet Verma, Advocate for R-1.
Mr. Navin Sharma, APP for the State/R-2.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Sections 397/401 of the Cr.PC against the judgment and order dated 23.05.2009 passed by the Additional Sessions Judge, Karkardooma Courts, Delhi, in a case arising out of FIR No.129/2008 lodged by the petitioner/prosecutrix against respondent No.1/accused under Sections 376/506 IPC, registered with Police Station: Mandawali, Delhi.

2. The conspectus of the case, as per the prosecution, is that on 03.04.2008 at 10:30 PM, respondent No.1/landlord of the petitioner/complainant/prosecutrix had entered her house, threatened her and sexually assaulted her. The statement of the petitioner was recorded on

05.04.2008, wherein she had stated that on the very next day of the incident, i.e., on 04.04.2008 at about 8:00 PM, respondent No.1/landlord had quarrelled with her and beaten her up. After the investigation was completed, charge-sheet was filed and respondent No.1/accused was charged vide order dated 09.07.2008 for the offences punishable under Sections 376/506 IPC, to which he pleaded not guilty and claimed trial.

3. To support its case, the prosecution examined 10 witnesses. The important witnesses were PW-1, the prosecutrix, PW-4, Dr. Sunita Yadav and PW-5, HC Amarjit Singh. Respondent No.1/accused was examined under Section 313 Cr.PC. He claimed to be innocent and submitted that he had been falsely implicated in the case by the complainant because of a dispute with her regarding the non-payment of rent of the tenanted premises payable @ ₹3,500/- per month, for a period of three months apart from outstanding electricity charges. No other witness was examined by respondent No.1/accused.

4. In the impugned judgment, the learned ASJ took notice of the testimony of PW-1, the petitioner/complainant; PW-3, Dr. Rajni Lohia, who had medically examined the accused; PW-4, Dr. Sunita Yadav, who had proved the MLC of the petitioner/complainant; PW-2, Ct. Surekha, who had taken the petitioner/complainant for her medical examination; PW-5, HC Amarjit Singh, who had reached the spot where he had found the petitioner in an intoxicated condition; PW-7, HC Ramesh, who proved the FSL report and PW-8, PW-9 and PW-10, the police officers in whose presence respondent No.1/accused was arrested. After carefully examining the oral as well as documentary evidence, the learned ASJ arrived at a conclusion that the evidence did not lend credence to the allegations of the petitioner

that she was raped by respondent No.1/accused on 03.04.2008. As a result, it was held that the prosecution had failed to prove its case under Sections 376/506 IPC and respondent No.1/accused was, therefore, acquitted.

5. Aggrieved by the aforesaid judgment, the present revision petition is filed by the petitioner/prosecutrix. Learned counsel for the petitioner states that the assumption drawn by the learned ASJ, to the effect that the testimony of the prosecutrix was not reliable, is erroneous. He states that no such suggestion was made by the defence or given to the prosecutrix that the accused had been falsely implicated in this case or that there was any dispute between them with regard to the tenanted premises and hence, any deduction drawn in this regard was inappropriate. He seeks to explain the delay in lodging of the complaint by the petitioner with the police by stating that she was in utter shock and being a respectable lady, did not want to reveal the crime committed by respondent No.1/accused on account of the social stigma attached to the same. It is his argument that the petitioner/prosecutrix had proved her case beyond doubt and that there is sufficient material on record to hold respondent No.1/accused guilty of the offence under Sections 376/506 IPC.

6. *Per contra*, counsel for respondent No.1/accused submits that a perusal of the testimony of the petitioner/complainant, PW-1 establishes the fact that the same was not reliable as she contradicted herself in her deposition. He further states that the petitioner improved, to a large extent, the statement as made by her at the time of filing of the FIR, by adding to her testimony certain facts, which were never there in the FIR. He also draws the attention of this Court to the deposition of PW-4, Dr. Suman Yadav to state that there were material differences in the statement made

by PW-1 to her, insofar as the status of her husband was concerned and particularly, with regard to the date of the incident.

7. This Court has heard the counsels for the parties and carefully perused the record. At the outset, it must be noticed that the scope of interference in a criminal revision petition filed against an acquittal order passed by the court below is rather limited. Reliance can be placed Chandrappa v. State of Karnataka reported as **(2007) 4 SCC 415**, wherein the Supreme Court laid down the general principles for an appellate court to follow in case, where the accused has been acquitted by the trial court. The principles were:

- “(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.” (para 42)

8. In the present case, on an analysis of the evidence of the trial court, it has to be noticed that the behaviour of the petitioner/prosecutrix, as reflected from her testimony, appears to be quite strange. There was no explanation given by her for not making a hue and cry on 03.04.2008, when the alleged offence took place, nor is there any explanation for failure on her part to lodge the complaint with the police immediately or for that matter within a reasonable time of the incident. After considering the explanation offered on behalf of the petitioner that she could not file the complaint on account of her fear of facing the society, particularly, since she was a mother of two young sons, the trial court was of the opinion that no plausible explanation was offered by the petitioner to show how the said fear vanished within 24 hours, for her to have lodged the FIR on the very next day.

9. The second aspect which the Court noticed was that while the petitioner alleged that on the night of 03.04.2008 she was sexually assaulted by respondent no. 1/accused, yet on 04.04.2008, she made no such allegation against respondent No.1/accused. Instead, the petitioner claimed that on 04.04.2008, respondent No.1/accused had offered a cold drink to her, which contained some intoxicating substance and he forced her to drink it by threatening her. The said behaviour of the petitioner has been noticed and commented upon in the impugned judgment. The Court found it inexplicable that when the prosecutrix claimed that she had been sexually assaulted by respondent No.1/accused only a night before, why would she accept a beverage from the accused at all. Further, the testimony of the prosecutrix was found to be doubtful on account of the fact that she gave a different version to the doctor as compared to her deposition in Court. In

this regard, a perusal of the MLC, Ex.PW4/A, shows that the petitioner stated to the doctor that her husband had expired, but in the testimony presented in Court, she did not state so. Rather, in her cross-examination, she admitted that her husband had been living separately from her for the past 15 years. It was also admitted by her that her younger son had not been living with her since July 2008. Furthermore, as per the statement of the petitioner (Ex.PW1/A), it is evident that she had never disclosed earlier the fact that on the date of the incident, respondent No.1/accused had knocked on her door, pressed her mouth by putting his hand and thrown her on the bed, but in the examination-in-chief, she has made the aforesaid assertions.

10. The Court also noticed that the petitioner is a mature woman of 40 years having two young children and cannot be equated with a shy and resistant young lady, who would have a societal inhibition preventing her from informing the police about the crime at the earliest. Pertinently, DD No.26-A recorded on 04.04.2008 at 10:35 AM only mentions the fact that in the house in question one woman was quarrelling. The said DD entry was not denied by the petitioner. In the said DD, there is no whisper of any commission of offence of rape. Even the second telephonic call made by the petitioner from her mobile phone after 15/20 minutes, as recorded by the police, did not reveal the fact that she had been raped. It was on the third occasion, in the midnight of 04.04.2008, when for the first time was a complaint of sexual assault made by the petitioner. Furthermore, surprisingly, while the petitioner claimed in her examination-in-chief that she was wearing a *pajama* and *nighty* on the alleged date of the incident, the said clothes were not handed over for medical examination. Instead, the

petitioner gave a black pant to the doctor during the MLC, which was conducted on her at 8:00 AM on 05.04.2008. The doctor, who conducted the MLC, noticed the fact that the petitioner was smelling of alcohol, that her hymen was not intact, that no fresh mark of injury was present there and two fingers could be inserted easily in the vagina.

11. Having regard to the entire evidence placed on record and taking into consideration the conduct of the petitioner/prosecutrix as noted above, this Court is of the opinion that the conclusion arrived at by the trial court to the effect that the testimony of the petitioner/prosecutrix was not reliable is neither arbitrary, illegal or contrary to the record. There are a number of loopholes in the story set up by the petitioner, so as to shake the foundation of the case laid by the prosecution. The trial court rightly held that the prosecution failed to prove its case against respondent No.1/accused under Sections 376/506 IPC. The conduct of the petitioner in the given facts and circumstance when tested on the anvil of ordinary reaction of a normal person, cannot withstand scrutiny. It appears to be more a case of the petitioner seeking to involve the respondent No.1/accused in the offence under Sections 376/506 IPC only to pressurize him in the civil litigation initiated by her, in respect of the tenanted premises, of which respondent No.1/accused is the landlord.

12. In view of the aforesaid facts and circumstances, the impugned judgment and order dated 23.05.2009 are upheld and the present petition is dismissed.

FEBRUARY 10, 2011
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(HIMA KOHLI)
JUDGE