

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

**RESERVED ON: 09.05.2011
PRONOUNCED ON: 25.07.2011**

+ CRL.L.P. 377/2010

STATE GOVT. OF NCT. OF DELHI

..... APPELLANT

Through: Mr. Jaideep Malik, APP for the State

versus

PARVEEN KUMAR & ORS.

..... RESPONDENTS

Through: Mr.Sanjoy Ghose, Advocate

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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

MR. JUSTICE S.RAVINDRA BHAT

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1. The State has, by this Petition, sought leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 19.04.2010 in S.C. No. 19/2008, by which the three accused (hereafter referred to as “the respondents”) were acquitted of the charge of having committed offences punishable under Section 364-A read with Section 34 IPC.

2. The prosecution case is that on 09.12.2000 at about 07:15 PM the respondents had kidnapped Madho Prasad from A Block, Vikas Puri and demanded ransom for his release. On the basis of a statement made by Rajiv Vaish, PW-6 (Madho Prasad’s son) FIR No. 542/2000

was registered with police station Vikas Puri. The complainant (PW-6) stated that when his father was coming home from his factory, at about 07:15 PM someone aged 25-30 years came in front of his car bearing no. DL-8CC-1438 and started walking slowly; the driver Raj Kumar (PW-7) stopped the car. He was pulled out of the car at gun point. The respondents threw red chilli powder on PW-7 and kidnapped Madho Prasad; they took him in his car and left behind their car bearing no. DL-2CC-2818, at the spot. PW-6 deposed that he received a ransom call asking for ₹ 20 Lakhs for the release of his father. A charge was framed against the respondents under section 364-A read with section 34 IPC. The respondents pleaded not guilty and claimed trial.

3. The prosecution examined 24 witnesses and relied upon several exhibits. The Trial Court, after considering the same and after recording the statement of the respondents under Section 313 Cr.PC concluded that the prosecution was unable to bring home the guilt of the respondents beyond reasonable doubt and, therefore, acquitted them of all charges.

4. The Trial Court observed that Madho Prasad was allegedly kidnapped by the respondents for money however due to unknown reasons he was released without any payment of money; the respondents even gave Madho Prasad Rs.100/- to go home. This seems highly improbable. The Trial Court noticed that as per the prosecution allegations, the incident took place on 09.12.2000 and the respondents used a car bearing no. DL-2CC-2818 to reach the spot; the said car belonged to PW-9 Vijay Kumar. However PW-9 deposed that his car was stolen in November, 2002 and was recovered after two months; he clarified that his car remained with him till 2002 and was not involved in any other case. The Trial Court noticed that none of the officials from the Finger Print Bureau who had lifted chance prints (a circumstance relied on by the prosecution to implicate the accused respondents) from car bearing no. DL-8CC-1438 on 11.12.2000 were examined during the course of trial. The only witness examined from the Finger Print Bureau is PW-17 who deposed that no chance print could be developed; his report was marked Ex.PW-17/A. The Trial Court noticed that there were contradictions in the testimonies of PW-5 and PW-7. PW-5 deposed that there were five persons who came in front of his car and threw some substance in the driver's eyes and pointed a country made pistol and dragged the driver outside the car whereas PW-7 deposed that one person whose face was covered with a handkerchief

came in front of the car and according to him there were a total of four people. The Trial Court also noticed that it was alleged by the prosecution that chilli powder was rubbed in the eyes of the driver PW-7, however no chilli powder was recovered from the spot and neither was it photographed.

5. The learned APP argued that the Trial court erred in not convicting the respondents, even though there was adequate material to implicate them for commission of the offences they were charged with. It was urged that a cumulative reading of the depositions of PW-5 PW- 6, and PW-7 prove beyond a shade of doubt that the Appellants had in fact abducted the victim PW-5, kept him hostage, and later released him, after they were unable to extort any amount. It was submitted that the deposition of the two witnesses, PW-5 and PW-7 established the identity of the accused, and the Trial court overlooked the core of their testimonies, which remained unshaken despite searching cross examination.

6. It was contended by the APP that the Trial court also committed an error, in not relying on the finger prints lifted from the crime scene, i.e. the car, which clearly implicated the accused respondents. It was contended by the prosecution that the Trial court should have taken due note of the fact that the accused refused to participate in Test Identification Parade, which in turn should have resulted in the court drawing an adverse inference against them. This would have been an incriminating circumstance. Instead of doing so, the court returned adverse findings in this regard, which were not warranted in the facts of the case.

7. Mr. Sanjoy Ghose, counsel for the respondents, urged that the Trial court's judgment is well reasoned and does not call for interference. It was contended that contrary to the prosecution's contentions, none of the witnesses could identify the accused-Respondents. On the other hand, there were fatal infirmities in the prosecution story. For instance, submitted counsel, the car allegedly left behind by the accused, belonged to one Vijay Kumar Ghai, PW-9, who deposed that it had been stolen in 2002, and was recovered by the police after two months. The superdarinama certificate Ex. PW-9/B established that. This contradicted the prosecution story of the car being used by the accused, and having been abandoned on 09.12.2000. Further, argued counsel, the prosecution did not make any attempt to connect the accused with any phone call, and try to trace the ransom calls allegedly made by them. Counsel argued that the entire

prosecution story was just not believable, since the incident, according to the sketch map produced before court, revealed that the spot (from where PW-5 was abducted) was in front of the police station, an entirely improbable event.

8. We have carefully considered the Trial court records, which were summoned during the course of these proceedings, as well as the submissions of parties. In this case, the incident allegedly took place in December, 2000, whereas the respondent-accused were arrested much later, in March, 2003 and made to stand trial. The Trial court reasoned that it was unsafe to rely on the finger print report because none of the policemen who allegedly lifted the samples which matched with those found at the spot, were examined by the prosecution. As regards refusal by the accused to participate in the TIP, it was held that there was evidence pointing to the fact that they had been shown to the witnesses, before the TIP was arranged. The court also took note of several other discrepancies and infirmities in the prosecution evidence.

9. The jurisdiction of the High Court, while considering a petition for leave to appeal, by the prosecution, is well defined. The court does not examine the impugned judgment as an appellate court; it has to be alive to any exceptional features in the Trial court's judgment, which compel the exercise of its discretion to grant leave, and hear the appeal. Mere errors, in the Trial Court's order are insufficient; the legislature has advisedly not permitted appeals, a factor which has led the courts to say that a judgment of acquittal is an affirmation of the accused's innocence, which should not be lightly interfered with by the High Court, except for substantial and compelling reasons. As to what constitute such reasons, has been spelt out in *Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415 as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

(i) The trial court's conclusion with regard to the facts is palpably wrong;

- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v) The trial court's judgment was manifestly unjust and unreasonable;*
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.*
- (vii) This list is intended to be illustrative, not exhaustive.*

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

10. Upon a careful consideration of the evidence led before the Trial court, and the other materials placed before it, and after considering the submissions made by counsel, we are of the opinion that no substantial or compelling reasons exist warranting a second look into the case, as an appellate court. For these reasons, the petition, being unmerited, requires rejection. It is, therefore, dismissed.

(S.RAVINDRA BHAT)

JUDGE

25th July, 2011

(G.P. MITTAL)

JUDGE