

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

Date of decision: 06.01.2012

+ **CRL.L.P. 533/2011**

STATE

..... Petitioner

Through : Sh. Sanjay Lao, APP.

versus

MUNAZIR ALAM @ MUNNA

..... Respondent

Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

% **Crl. M.A. 17587/2011 in Crl. L.P. 533/2011**

1. For the reasons mentioned in the application, Crl. M.A. 17587/2011 is allowed. Crl. M.A. 17587/2011 is accordingly disposed of.

Crl. L.P. 533/2011

2. The State seeks leave to appeal against the judgment and order of the learned

Addl. Sessions Judge dated 18.01.2011 in S.C. No. 06/10/08. The respondent (accused before the Trial Court) has been acquitted of the charges punishable under Sections 376/307/506 IPC.

3. The prosecution case was that the police received information – through D.D. Entry No. 8A on 06.10.2007 that a girl, “X”, aged 14 years, resident of Sant Nagar had been admitted on account of burn injuries, allegedly caused by a boy (i.e. the accused). “X” deposed in the proceedings as PW-4. The concerned police officer, SI Jospha reached the hospital and found other police officers present there. Statement of the victim was recorded in the presence of one Siyaram and she made endorsement over that for registration of case. The victim alleged that she had studied upto Class-III in Sant Nagar. She further alleged that on 24.09.2007, she was alone at home as she was not well and, therefore, had not gone to school. At about 09.30 AM, when she was cleaning the house, the accused entered the house and shut the door. He allegedly caught hold of her and threatened that he would kill her parents. He took-off all her clothes and allegedly committed rape on her. It was further stated that in the meanwhile, her elder sister, Suman returned and she was able to open the door as it was not fastened properly. PW-4 stated that the accused tried to run away with his clothes. She also stated that soon afterwards - five minutes later - he returned and stated that she would remember her condition before seeing anyone; poured kerosene on her and set her on fire. According to PW-5, she tried to save “X” by pouring water; the accused thereafter returned a second time and tried to save “X”, along with Suman and took her to the hospital.
4. The police registered the FIR and after conducting investigations, filed chargesheet against the accused. He entered the plea of not guilty and claimed trial.

During the course of proceedings, the prosecution relied on the testimonies of 14 witnesses, including the victim, PW-4 and PW-5, her sister. After considering all the evidence, the Trial Court held that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt.

5. PW-4 – “X” is an important witness. The relevant findings of the Trial Court, particularly discussing the evidence of prosecutrix “X” reveal as follows:

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12. PW-4 “X” is a very important witness. She is not only the victim of rape but also got burnt injuries at the hand of the accused. She deposed that on 24.09.2007 at about 09.30 AM, she was not feeling well as such she had not gone to her school. She was sweeping her house in the meanwhile, accused Munazir present in the Court came to her house. She asked him as to why he had come. He closed the door and laid her down on the bed, he put off her clothes and put a cloth in her mouth. She tried to save her but accused committed rape with her against her wish. Accused also threatened her that if she disclose this fact to anybody, he would kill her. In the meantime, her sister Suman came there and accused ran away from there and seeing her condition, her sister made a telephone call to her parents In the mean time, the accused came with a bottle containing kerosene oil and poured the same on her and told her that if she disclosed the fact to anybody, he would kill her and put her on fire. Accused also came there and accompanied her to the hospital in TSR. In the TSR he threatened them that if they disclose this fact to anybody, he would kill both of them.

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16. I have heard the arguments at bar and perused the

record and analyze the evidence. In the present case, the prosecution story start from 06.10.2007 when a DD entry No. 8A was received in the PS Amar Colony from Safdarjung Hospital regarding the admission of "X" aged 14 years, after sustaining injury caused by a boy after committing the rape. Thereafter, the police reached there and recorded the statement of "X", said statement was endorsed and the case was registered and matter was investigated and accused was arrested, while the incident was of 24.09.2009. As per DD No. 8A, earlier victim could not disclose the fact due to the fear. As per Ex. PW 11/A, doctor examining her on 24.09.2007 had noted history of thermal burns while she was cooking food on a kerosene stove and it accidentally burnt and she got burnt. As per Ex. PW11/B, "X" was again medically examined on 07.10.2007. She has reported that she was sexually assaulted by some person on the day of incident of burning. Her vaginal examination has not been done as the patient had not allowed proper vaginal examination. Vagina admitted little finger.

17. SI Josepha in her cross-examination had admitted that there was delay of 13 days in reporting the incident. He further admitted that no case was registered in regard to the burnt injury sustained and thereafter no DD entry regarding injury nor any case was registered in this regard. She had not made Subhash, as witness. She had not moved any application to the doctor for declaring the patient fit for statement. SI Pramod had already moved an application to this effect.

18. Therefore, it is crystal clear that prosecution case was started from 06.10.2007 when first time the DD entry was made. But this fact itself is a bundle of lie. Police was informed on 24.09.2007. HC Satbir had moved an application to the doctor declaring the patient fit for statement. When this fact had come into the notice of this court, he called police to bring the DD register on 24.09.2007 which reveals that at about

06.40 pm, Ct. Virender had informed the police station about admission of Rekha in 40 per cent burnt condition. HC Satbir Singh was deputed to inquire the said information HC Satbir had recorded the statement of father of Rekha who had stated that his daughter Rekha was cooking the food on a gas stove. Doctor declared her fit for statement. Rekha was not able to give the proper statement. The abovesaid DD was pending for inquiry.

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20. Now coming to the testimony of PW-1, 4 and 5. The Court, while evaluating the facts of a case, is supposed to form its opinion about the credibility of the witnesses examined in the case. The judge has to form his own estimate of the evidence produced before him and to articulate an opinion on credibility of the witness(es). For the purpose of assessing the credibility, the Court has to consider evidence of a witness to find out as to how he has fared in the cross examination and what impression is created by his evidence, taken in context of other facts of the case. Law recognizes following ways in which evidence of a witness can be termed unreliable; (a) the witness' statement is inherently improbable or contrary to the course of nature, (b) his deposition contains mutually contradictory or inconsistent passage, (c) he is found to be bitter enemy of the opposite party, (d) he is found not to be a man of veracity, (e) he is found to have been bribed or accepted any other corrupt inducement to give evidence, and (f) his demeanour, while under examination, is found abnormal and unsatisfactory.

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6. We notice that the Trial Court took into consideration the fact that when the victim and her sister – as well as the accused – went to the hospital immediately

after the incident on 24.09.2007, the narration or version given was that the prosecutrix sustained burn injuries on account of an accident. What emerges from the evidence also is that one Subhash had also accompanied the accused along with the victim and sister to the hospital. He was, however, not examined; no attempt was made by the prosecution to trace him or have his deposition recorded during the trial. The Trial Court also noted pertinently that the relevant witnesses were available with the police and their version could have been recorded the same day or after couple of days after the incident. Having regard to totality of circumstances, the Court held that the later version (made on 06.10.2007) about the rape and an attempt to murder the prosecutrix was unbelievable.

7. It has been repeatedly held time and again that the High Court does not exercise appellate review unless a judgment of acquittal discloses *substantial* or *compelling* reasons. These two terms have now been defined to gross misappreciation of evidence or serious error in the understanding and application of law. In the absence of these, the High Court's appellate power, though sufficiently wide to reappraise the entirety of evidence, would not ordinarily be resorted to. On an application of these principles, we are of the opinion that the view taken by the Trial Court can by no means be considered unreasonable or unpalausible. Late reporting of the incident and lack of corroboration, the failure of the police to record the version of the relevant witnesses at the material time within the proximity of the incident are fatal to the case. Having regard to the facts established, there is a real possibility of false implication which compelled the Trial Court to disbelieve the prosecution. We are of the opinion that on an overall appreciation of the reasoning in the impugned judgment, the same does not suffer

from any infirmity. We do not, therefore, find any merit in the petition. It is accordingly dismissed.

S. RAVINDRA BHAT,J

S.P.GARG, J

JANUARY 06, 2012
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