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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 12.04.2012

Decided on : 26.04.2012

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CRIMINAL APPEAL No.1319/2011

VIJAY LAXMI

..... Appellant

Through : Sh. Braham Singh and Sh. N.S. Vidhudi, Advocates.

versus

STATE & ORS

..... Respondents

Through : Sh. Sanjay Lao, APP.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. The complainant-informant challenges the judgment and order of a learned Additional Sessions Judge, in SC No. 59/08 whereby the respondents were acquitted of the charges of having committed offences under Sections 452/392/324/376(2) (g)/307/506/34 IPC.

2. The prosecution alleged that on 09.09.2007 at about 3 /3:30 AM on first floor of H.No.33/310, Trilok Puri the accused, i.e. Sunil Pandey, Kamal Kishore @ K.P., and Leelu Ram @ Sonu pursuant to their common intention, and armed with knives committed house tress-pass by entering the house of the appellant and committed robbery of money, silver tagri, silver pajeb, four gold bangles, one gold necklace, one gold chain, one ear ring. They also obtained the signatures of the complainant on her SBI cheque book. Besides, they committed gang rape on the complainant and threatened to kill her and inflicted injuries on her body. It was

alleged that after the accused left her house, Vidya, mother of Leelu Ram and Chanchal @ Neetu W/o Sh. Kamal Kishore @ K.P. entered the victim's house and poured kerosene oil upon her with the intention to set her on fire and attempted to commit her murder. Kiran, the complainant's daughter informed the police on No.100. Police reached the spot and recorded statement of Vijay Laxmi (PW3). FIR No.337/07 (Ex.PW2/A) was registered.

3. The Police conducted investigation. The appellant was medically examined in LBS Hospital, through MLC Ex.PW8/A. Later, the accused were arrested, and interrogated; their disclosure statements were recorded. Leelu Ram @ Sonu, Sunil Pandey and Kamal Kishore @ K.P. were also medically examined. After completion of investigation, the police filed a charge sheet for the offences punishable U/s 452/392/324/376(2) (g)/307/506/34 IPC. Charges against Sunil Pandey, Kamal Kishore @ K.P. and Leelu Ram @ Sonu were framed for the offences punishable under Sections 452/392/397/376(2)(g)/506(II)/324/34 IPC and a separate charge against Vidya and Chanchal for the offences punishable under Sections 452/307/34 IPC were framed. All pleaded not guilty and claimed trial. The prosecution, examined 13 witnesses and relied on documentary evidence. The accused Leelu pleaded that his mother had taken a shop on rent from Vijay Laxmi at the rental of Rs.1,000/- per month in the beginning of year 2007. Her mother had also given an amount of Rs.1,50,000/- to the appellant on credit basis. He has been falsely implicated in the present case due to that reason. After considering all the materials, including the testimonies of the defence witnesses, the Trial Court concluded that the prosecution had been unable to establish the accused's guilt; they were accordingly acquitted.

4. It was argued that the Trial Court fell into error in placing credence on the testimony of the defence witnesses, in preference to the deposition of the Appellant and her daughter, who were in fact the victims. It was submitted that the Court did

not take into consideration the fact that the crime was reported at the earliest opportunity, and there was no reason to concoct or fabricate a false case. Counsel stressed that no one would allege that she was victim of rape or sexual assault, falsely in order to settle scores or for the purposes of vendetta. It was submitted that the Trial Court's undue weight attached to the pre existing disputes between the parties appears to have blatantly coloured its judgment and findings, which ought to be set aside.

5. Learned counsel submitted that the Trial Court should not have brushed aside the eyewitness testimony of the appellant and her daughter, merely on the basis that they would have been interested and partisan. Being natural witnesses, as well as victims of the attack, their testimonies could not have been seen with suspicion and discarded. Counsel argued that the victim, PW-3 had no doubt been cross examined by the prosecution during her deposition, but the truth behind her hostility in the court was revealed later, when she submitted that she had been threatened with violence and harm, and even that she would be subjected to disfigurement through an acid attack, soon before she reached the court to depose in the case. Therefore, it was incumbent on the Court to take into consideration and factor in this aspect, while weighing the rival merits of the case. Reliance was placed on the judgment of the Supreme Court in *Zahira Habibulla H. Sheikh v State of Gujarat* 2004 (4) SCC 158, where it was held that courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield itself or its men. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with these with an iron hand, and that it is the duty of the prosecutor and the court to ensure that full and material facts are brought on the record so that there might not be miscarriage of justice.

6. PW-3 Smt. Vijay Laxmi deposed that she had a Mother Dairy unit at her house for the previous four years. On 09.09.2007 at about 3/3.30 AM when she was sleeping with her daughter, three intruders broke into into her room. They took away all her jewelry and other articles. She became unconscious. One of the assailants committed rape on her; she raised an alarm, when two women came and then she informed the police. She became unconscious. She could not identify any of the two women and three men assailants and she could not say if the accused standing in the court were the same persons who had committed rape on her and who poured kerosene oil on her. At the request of AP.P. she was declared hostile. During cross- examination by Ld. Addl. P.P. she admitted that she made a statement EX.PW3/A to the police bearing her signature at point `X'. She knew accused Sunil who has been residing in her street. She knew accused K.P. @ Kamal Kishore who lived in B block. She knew accused Sonu who used to live in her street. She knew Neetu who is wife of accused Kamal Kishore @ K.P. She knew Vidya the 5th accused (mother of Sonu). She deposed that Sunil, Kamal Kishore @ K.P. and Sonu entered into her room and they had taken out her money box (*paise ki gullak*), tagdi, silver pazeab, four golden bangles, a gold necklace, one gold chain, ear ring of gold (*jhumki*). She admitted that she stated to the police that on 09.9.2007 accused persons obtained his signatures on the five blank cheques of SBI at knife point and before taking her signatures Sunil committed rape on her while Sonu helped him by holding her legs and the accused K.P. tore out her clothes, and bit her on both arms. Thereafter, accused Vidya came to the spot, with a cane containing kerosene oil. Neetu was with her and they poured kerosene oil on her and tried to set her on fire but the match stick did not light. She was medically examined in LBS hospital and she told the names of assailants who committed rape on her as Kamal Kishore, Sonu and Sunil.

7. PW-10 Kiran deposed that on 09.9.2007 she was studying in class IV. At about 3.30 AM in the night she was sleeping with her mother in a room. She heard a noise and the voice of Sunil Pandey, K.P. and Sonu. She saw all the accused when they were taking out her mother out of the room. She was subjected to beatings by them; she asked them the reason for it. Sunil Pandey threatened her to keep quiet or else that her mother would be killed. She was declared hostile at the request of prosecution. During the cross-examination conducted by the prosecution she deposed that police came in her house at about 3.30 AM and she gave her statement to the police. She stated to the police that Smt. Vidya and Smt. Neetu were pouring kerosene oil from the plastic can upon her mother and then they ran away. She had seen the bite mark on the right shoulder but she did not state this fact to the police in her statement.

8. The prosecutrix, in the cross examination admitted that Vidhya was the tenant of her shop and a civil case for her eviction was pending in the civil court. Another shop was occupied by Sunil Pandey on rent, through agreement Ex. PW3/DA. She deposed that her signature was obtained by Sunil Panday prior to the incident. She admitted that Sunil Pandey had filed a civil suit for permanent injunction restraining her from one of the shop occupied by him. She also admitted that in her Written Statement filed on 14.08.2007 she alleged that the plaintiff and his associates went to her house and obtained her signatures forcibly on five blank cheques bearing Nos. 833233 to 833237 and other documents and stamp papers. PW 9 deposed on this aspect that during the investigation, he came to know that there was a dispute between the parties on some money matter. PW 10 daughter of the appellant deposed that a shop on the ground floor was in possession of the Vidya, the middle shop was in possession of Sunil Pandey and third shop was in possession of her mother in which she had been carrying on business.

9. DW1 deposed that there were three shops in possession of his sister in law PW3 and out of those one was in her possession, another in the possession of Sunil Pandey and third was in possession of Vidya. DW-8 proved the copy of the eviction petition filed by the prosecutrix against Sunil Pandey as Ex. DW8/A, Written Statement as Ex. DW8/B, a Legal Notice as Ex. DW8/C and proceedings as Ex. DW8/D. Ex.DW8/A was dated 04.11.2008 and Ex.DW8/B, 28.02.2009. The proceedings dated 04.12.2008 was marked as Ex.PW8/C. DW9 proved copy of cheque dated 13.05.2008 as Ex.DW9/A; cheque dated 13.04.2008 as Ex.DW9/B; and certified copy of complaint dated 07.01.2010 as Ex.DW9/C. DW10 proved certified copy of cheque dated 16.06.2008 as Ex.DW10/A and another cheque of the same date as Ex.DW10/B. DW11 proved the copy of the written statement dated 07.05.2008 to the suit titled Sunil Pandey v. Vijay Laxmi as Ex.DW11/A; copy of FIR of the present case dated 09.09.2007 as Ex.DW11/B and copy of complaint of Vijay Laxmi filed on 16.08.2007 to the DCP as Ex.DW11/C; copy of statement of Vijay Laxmi dated 25.10.2010 made before the Civil Judge in a civil suit filed by Sh. Sunil Pandey against Vijay Laxmi as Ex.DW11/D and copy of order dated 25.10.2010 is Ex.DW11/E. DW12 proved a certified copy of judgment and decree dated 07.10.2010 as Ex.DW12/A and a copy of order dated 01.11.2010 of JSCC/ASCJ as Ex.DW12/B. DW13 proved the status report dated 18.02.2010 on the complaint dated 11.09.2007 of Sh. Sunil Pandey filed in the court of the magistrate as Ex.DW13/A. DW14 proved copy of the register regarding filing of complaint dated 12.09.2007 as Ex.DW14/A and copy of relevant page showing the entry of complaint of Sh. Sunil Pandey filed on 20.11.2009 as Ex.DW14/B. DW15 proved the copy of agreement executed between the appellant and Mother Dairy dated NIL notarized on 30.11.2006 as Ex.DW15/D; certified copy of sales statement for the month of September 2007 as Ex.DW15/E. DW15 also deposed that the appellant did not take milk from the Mother Dairy from 07.09.2007 to

09.09.2007. DW19 proved rent deed as Ex.PW3/DA. On consideration of this deed I find that it is dated 28.02.2007 in between Sunil Pandey and the appellant in respect of shop. DW19 also proved declaration deed as Ex.DW3/DX1. DW-21 deposed that Sh. Sunil Pandey had handed over a cheque of ₹ 1,30,000/- to the prosecutrix on 13.04.2007 at 7 PM in his presence. DW22 proved copies of various DD entries as mentioned in the Table-A. DW-23 deposed that there used to be a quarrel between the prosecutrix and Sunil Pandey on account of some money transactions. His son Dinesh had been suffering from mental illness and he proved documents regarding his treatment as Ex.DW-23/A. DW24 stated that his brother had given ₹ 1,30,000/- to the appellant on 13.04.2007 and a declaration Ex.DW3/DX1 was executed. The possession of a shop was given to Sunil Pandey his brother, and the appellant wanted to sell that shop for that purpose she wanted his brother should vacate the shop. On that account there was a quarrel and ultimately the appellant involved his brother in a false rape case. He proved various complaints etc. mentioned in the Table-A. DW25 proved copy of complaint dated 11.09.2007 of Sh. Sunil Pandey as Ex.DW25/A. Copy of another report dated NIL delivered in the office of DCP on 10.10.2007 as Ex.DW25/C. DW26 stated that on 05.06.2007 Smt. Chanchal paid a sum of ₹ 40,000/- to the appellant and a document was executed and she proved that document between the appellant and Smt. Chanchal as Ex.DW26/A. This document is dated 05.06.2007. DW27 also deposed on the same document and inter alia deposed that she had also signed it as a witness.

10. In the impugned judgment, the learned Judge, upon a consideration of the defence evidence, particularly the documentary material disclosing existing civil disputes, was of the view that there was a history of animosity between various parties particularly Sunil Pandey and the prosecutrix. The court therefore, felt that

the testimony of PW 3 the prosecutrix required to be evaluated with care and caution. The Trial Court concluded that:

“63. On scrutinizing and evaluating the testimonies of Prosecutrix PW 3 and her daughter PW 10 and other witnesses I come to the conclusion that prosecution has failed to prove its case against all or any one of the accused persons beyond any shadow of doubt. The reasons which support my conclusion are firstly that prosecutrix herself failed to support her case. When her statement was recorded she stated that On 09.09.2007 at about 3/3.30 a.m. she was sleeping with her daughter. Three assailants entered into her room. They had taken away all her jewelery and other things. She became unconscious. One of the assailants committed rape on her. She made alarm. On hearing two women came and then she informed the police at 100 number. She became unconscious. She could not identify any of the two women and three men assailants and she could not say if the accused standing in the court were the same persons who had committed rape on her and who poured kerosene oil on her. At the request of Ld. Addl. P.P. she was declared hostile. During cross-examination conducted by Ld. Addl. P.P. she admitted that she made a statement EX.PW3/A to the police bearing her signature at point X. She then gave positive answers to the suggestions. Thus her statement is inconsistent. It is not safe to rely and convict the accused on the basis of her statement. The principles of law laid down in case Pardeep @ Sonu v. State, (supra) relied on by counsel for accused also support this decision.

64. Secondly, daughter of the prosecutrix, who is the only eye witness did not support the prosecution case and did not corroborate the statement of PW 3 prosecutrix on material particulars. She deposed that on 09.9.2007 she was studying in class IV. At about 3.30 a.m. in the night she was sleeping with her mother in a room. She heard a noise of cry and voice of Sunil Pandey, K.P. and Sonu. All the accused persons were seen by her when they were taking her mother out of the room. These persons were giving beating to her mother and she asked them as to why they were giving beating to her mother. Accused Sunil Pandey threatened her to keep quiet otherwise her mother would be killed. She was also declared hostile at the request of Ld. APP. During cross-examination conducted by Ld. APP she stated that police came in her house at about 3.30 a.m. and she had given her statement to the police. She then gave positive answers to the suggestions. Therefore, it will be unsafe to base conviction on such a statement.

65. Thirdly, on examination of testimony of PW10, I find that she avoided to answer the material questions. For example she stated that she did not remember how much time police stayed at her house. She could not say whether police officials stayed at her house for 10 minutes or for 10 hours or whether she arrived alongwith her mother at PS at 2 a.m. or 10 a.m. She could not remember whether she told to the police that she heard voice of Sunil Pandey, Kamal Kishore @ K.P. and Leelu @ Sonu or she had seen the plastic cane containing kerosene or what kind of clothes her mother was wearing when she was taken to hospital. In these circumstances, it will not be safe to rely, act upon and convict the accused persons on her statement.

66. Fourthly, the explanation given by the prosecutrix for not telling the true facts to the court on the first date of her examination is that she had received threat from the accused persons that acid will be thrown on her does not appear to be believable because on the date of alleged incident as mentioned in the statement Ex.PW3/A, threat was given to her even than she informed the police as soon as the accused persons left the alleged place of occurrence, as stood established by D.D. Entry 7A dated 09.09.2007, Ex. DW22/C; and D.D. Entry 11A dated 09.09.2007, Ex. DW22/D.

67. Fifthly, in her cross examination prosecutrix stated that she was made to sign on the blank documents and stamps papers outside of room, i.e., shop. There was electric light. She was made to sign on the above documents, i.e., cheque and stamp paper after commission of rape by the accused persons. Sunil Pandey and Kamal had dragged her from room to the shop holding her leg. There were injuries on her hips on both sides from dragging. This statement of the prosecutrix is not trustworthy because in her cross examination her daughter PW 10 stated that all the accused persons were seen by her when her mother was being taken out of the room. Her statement is silent about the commission of rape. The principles of law laid down in case *Sanya alias Sanyasi Challan Seth v. State of Orissa*, (supra) relied on by counsel for accused also support this decision.

68. Sixthly, although in case *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, it was held that rarely a girl or woman in India will make false allegations of sexual assault, yet present case come in exceptional cases. She has, in the present case, strong motive to falsely implicate accused persons. She had lodged a complaint EX. DW 11/C to the D.C.P. on 17.08.2007, i.e., three weeks prior to the date of alleged incident, levelling similar kind of

allegations except rape. There is no explanation on behalf of the prosecution or the PW-3 as to why that complaint was not pursued by the prosecutrix.

69. Seventhly, that the place of incident is thickly populated. As deposed by PW-3 electricity light was available there. There was window at the back of the room. One could see the person at the chowk from the window. There was built house left side of her house. The alleged rape was committed in open on first floor. It was a hot summer night. In spite of all these factors none supported the statement of the prosecutrix. Conversely, many inhabitants of the locality including DW-16 and DW-18 deposed that they did not see any incident of rape occurred in her locality. Brother of husband of prosecutrix DW1, even deposed against her.

70. Eighthly, there is no corroboration of commission of rape on the prosecutrix by medial or scientific evidence. PW-3 prosecutrix was medically examined in LBS Hospital vise MLC Ex. PW 8/A. Regarding commission of rape, it was reported that no opinion could be given and all will depend on HPE. In the FSL Report dated 30.05.2008, it has been mentioned that semen could not be detected on blouse, petticoat, two micro slides having faint whitish smear, cotton wool swab and stands of hair described as pubic hair. The principles of law laid down in cases Zahoor Ali v. State of U.P., (supra), Sukhram v. The State of Rajasthan, (supra), and Mohd. Habib v. State, (supra) relied on by counsel for accused also support this decision.

71. Ninthly, the statement of prosecutrix to the effect that Sunil Pandey and Kamal had dragged her from room to the shop holding her leg and there were injuries on her hips on both sides from dragging does not find support by medical evidence as in MLC there is no mention about the injuries on her hips. The principles of law laid down in case Ramcharan v. The State of M.P., (supra), relied on by counsel for accused also support this decision.

72. Tenthly, there are many contradictions in the statements of the main witnesses including some on the material points. For example, on the point of visibility of the place of incident, prosecutrix PW3 deposed that there was a window in the room and one can see the place of incident from that window. PW9 deposed that place of incident was not visible from the adjoining houses. In contradiction to his statement PW4 deposed that place of incident was visible from the adjoining houses.

73. On the point of place of incident, prosecutrix in her statement Ex. PW3/A stated that rape was committed with him by accused Sunil outside the room i.e. at open place. PW1 Ct. Satvir who was amongst the officials who arrived at the place of incident, soon after the occurrence stated that prosecutrix told him that rape was committed inside the room at first floor.

74. On the point of existence of verandah near the place of incident, PW9 deposed that there was verandah on the first floor where he had recorded the statement. Statements of prosecutrix PW3 and her daughter, PW10 is silent about the existence of verandah near the place of incident.

75. On the point of existence of shops below the place of incident, prosecutrix PW3 and her daughter PW10 admitted that there were shops below the place of incident but PW9 SI Onkar Singh deposed that there was no shop on the ground floor of the place of occurrence. On the point of selling of milk, prosecutrix PW3 deposed that she did not sell the milk on 07.09.2007 and 08.09.2007 but she sold the milk on 09.09.2007 whereas it has been mentioned in the sales statement that she did not sell milk on 09.09.2007.

76. On the point of availability of light on the place of incident, prosecutrix PW3 deposed that light was available at the place of incident outside the room. In her contradiction, her daughter PW10 deposed that light was available only inside the room and not outside the room i.e. it was not available at the place of incident.

77. On the point of age of PW10, PW1 deposed that age of daughter of prosecutrix was about 6-8 years. PW3 prosecutrix mentioned age of her daughter on the date of incident as 13 years. PW10 herself deposed her age as 13 years on the date of recording her statement on 03.03.2010.

78. In view of these material contradictions, the prosecution case become doubtful and accordingly, the accused have become entitled to get benefit of doubt. The principles of law laid down in case *Labh Singh v. State of M.P.*, (supra) relied on by counsel for accused also support this decision.

79. Eleventhly, although prosecution has proved disclosure statements of accused Leelu Ram @ Sonu as Ex.PW4/A, Kamal Kishore @ K.P. as Ex.PW12/A & Ex.PW13/C, Sunil Pandey as Ex.PW12/D yet no recovery of robbed articles or knife could be made on the basis of disclosure statements which could have been admissible in evidence u/s 27 of the Indian Evidence

Act. Therefore, these disclosure statements are hit by Section 25 of the Indian Evidence Act and are not admissible in evidence.

80. Twelfthly, on meticulous examination of prosecution evidence, I do not find any reliable evidence which could prove that accused Chanchal and Vidya arrived at the place of incident and poured kerosene oil on the prosecutrix or they or either of them attempted to commit murder of prosecutrix by putting her on fire. The investigating officer even failed to recover match box or stick of match box for putting the prosecutrix on fire. PW9 in his examination in chief stated that cane was of white plastic colour in which the kerosene was found whereas on actual examination of cane Ex.P1, its colour revealed as light yellow. Thus, investigating officer even failed to tell colour of case property correctly.

81. Thirteenthly, the investigating officer has failed to join examine any independent person in the investigation of present case for corroboration of the prosecution case. Conversely, the accused persons have examined as much as 27 witnesses to prove their innocence.

82. Fourteenthly, as stated by PW9 Investigating Officer, Crime Team arrived on spot and chance finger prints were taken from spots. PW9 admitted that no chance finger print could be obtained with could have matched the finger prints of accused persons. This also leads to support the defence case and creates doubt in truthfulness of prosecution case.

83. Lastly, it is one of the basic principles of criminal jurisprudence that let the hundred accused may go scot-free without punishment but one innocent person should not be punished. This principle is fully applicable in the present case as the prosecution has failed to prove their case against any one or all of the accused persons beyond any reasonable suspicion or doubt. It would not be just and fair rather it would be hazardous to convict any of the accused persons on the basis of inconsistent, contradictory and unreliable prosecution evidence. The principles of law laid down in cases Sukhram v. The State of Rajasthan, (supra), Ajmer Singh and another v. State of Haryana, (supra), and Sanya alias Sanyasi Challan Seth v. State of Orissa, (supra), relied on by counsel for accused also support this decision.”

11. It is thus clear that the most important reasons which constrained the Trial Court to hold that the prosecution was unable to prove its case was the lack of any

objective support in the form of scientific or medical evidence, corroborating PW-3's version about the rape. The Trial Court was also persuaded to hold, as it did, regarding the trespass, assault, robbery and rape, that there was conflicting and contradictory evidence regarding the light, inconsistency regarding age of the minor daughter of the prosecutrix, lack of any recovery, absence of finger print, or chance print at the crime scene, confusion about the scene of crime itself. The Trial Court further held that the house of PW-3 was in the midst of a thickly populated area, and the neighbours who had deposed, i.e. DW-2 to DW-18, did not support her version. Even her own brother in law did not support the prosecutrix, and deposed against her story.

12. As a general rule, the testimony of a victim is given importance; at the same time, it is also a fact that courts have to sometimes tread cautiously, particularly if there is a known history of inimical or hostile relationship between the witness and the accused. In this case, the accused had led considerable amount of evidence to say that their relationship with the complainant was inimical and that there were many pending cases between the two. The Court was therefore, bound to consider the prosecution case, particularly the deposition of PW-3 with circumspection. The Trial Court's approach in this regard cannot be faulted.

13. The appellant's grievance that the prosecution version was unjustifiably discarded and the deposition and evidence of the accused was taken into consideration, and given undue weight has to be seen in its proper perspective. In *Dudh Nath Pandey v State of UP* AIR 1981 SC 911 it was held that:

"Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses."

14. So far as the testimony of PW-3 and her daughter and the need to exercise caution, that view is supported by the observations of the Supreme Court in *Masalti V. State of U.P.* (AIR 1965 SC 202) to the effect that:

“14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence ; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

15. High Courts when considering appeals against acquittals exercise jurisdiction only after satisfying themselves that there are substantial or compelling reasons to do so, (in that the impugned judgment of acquittal is manifestly erroneous in fact, or misappreciates a legal principle). Equally if there are two views which can be reasonably taken on the basis of the materials and evidence on the record, the Appellate Court would be extremely slow and circumspect in upsetting the view which prevailed with the Trial court unless there are substantial reasons. On an overall analysis of the case records - which were requisitioned for the purpose of this appeal and after considering the submissions of the Appellant's counsel, this Court does not discern any reason, substantial or compelling to differ from the view taken by the Trial Court in the impugned judgment. The appeal therefore has to fail; it is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

April 26, 2012

S.P. GARG
(JUDGE)