

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

Date of decision: 10th May, 2013

+ **CRL. L.P. 82/2013**

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Ms. Rajdipa Behura, APP for the State.

versus

KRISHAN KUMAR RAO & ORS. Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL
J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The State seeks leave to Appeal against a judgment dated 25.05.2011 passed by the learned Additional Sessions Judge ('ASJ') whereby the Respondents No.1 and 2 were acquitted of the offences punishable under Sections 376 (2) (g) IPC, 366 and 342 read with Section 34 of IPC.
2. The Respondents were prosecuted on the allegations which can be extracted from the opening paragraph of the impugned judgment as under:-

“ Krishan Kumar Rao was running a placement agency under the name and style of Krishna Nursing Bureau Placement Services (Regd.) at H.No. 123, I Block, Pocket IV, Sector 16 Rohini. 'J' and 'S' came from their native villages and were employed at different places placed by Krishan Kumar Rao. 'J' was employed by Krishan Kumar Rao at Faridabad. 'S' was employed by Krishan Kumar Rao at village Munirka and Vasant Kunj. Krishan Kumar Rao retained the salary of one year of 'J' who had gone to her native

village in the month of April, 2007. Krishan Kumar Ram at that time paid Rs.14000/out of her salary of Rs.22000/and did not pay Rs.8,000/to 'J'. 'J' came back to Delhi in the month of June, 2007 and got employment at Rajgarh Colony, Delhi since 18.6.2007 through Smt. Micheal Dungdung. 'J' contacted Krishan Kumar Rao on mobile phone and demanded balance salary of Rs.8000/. Krishan Kumar Rao made inquiries of the work place of 'J' and promised her to arrange another employment of Rs.2500/per month and also promised to marry with her. Krishan Kumar Rao and Babloo on 17.9.2007 at about 67 pm came at the work place of 'J' at Rajgarh Colony. Krishan Kumar Rao and Babloo brought 'J' to the house of Krishan Kumar Rao where 89 girls were already present. Krishan Kumar Rao on 18.9.2007 along with Babloo came at about 1.00 am in the night after consuming bear and sent other girls to the top floor but 'J' was kept in the middle floor of the house. Krishan Kumar Rao forced the 'J' to consume bear. Krishan Kumar Rao committed sexual intercourse with 'J' three times against her wishes and without her consent. Krishan Kumar Rao on 19.9.2007 again committed sexual intercourse three times against her wishes and without her consent.....”

3. On Respondents' pleading not guilty to the charge, the prosecution examined 21 witnesses to prove its case. PW-3, the prosecutrix is the star witness of the prosecution. The Trial Court while appreciating the prosecution evidence observed that there were three versions as to how the rape was committed on PW-3 as given by the prosecutrix in the statement under Section 161 Cr.P.C., in the statement recorded under Section 164 Cr.P.C. and in her deposition in the Court. The Trial Court, therefore, concluded that in view of the material contradictions and variations in the version, it is not safe to rely on the prosecutrix statement without any corroboration. The Respondent was acquitted giving him benefit of doubt.
4. It is urged by the learned Additional Public Prosecutor for the State that in case of sexual assault sole testimony of the prosecutrix if found reliable

is sufficient to base conviction of the accused. The Trial Court erred in disbelieving the prosecutrix.

5. The Trial Court noticed wide variations in the prosecution case. In the statement under Section 161 Cr.P.C. on the basis of which the instant FIR was registered, the prosecutrix informed the IO that on 17.09.2007 at about 6:00-7:00 P.M. Respondent Krishan Kumar Rao and Babloo came to her on a motorcycle at Rajgarh Colony (where she was working) and she was taken to the house of Krishan Kumar Rao at D-2/123, Sector 16, Rohini. On the first floor of the house, 8-9 working girls used to stay. On 18.09.2007 at about 1:00 in the night Respondent Krishan Kumar Rao came on the first floor after drinking beer. He brought another bottle of beer with him. He asked the girls living on the first floor to move to the second floor. He (Krishan Kumar Rao) made her stay on the first floor telling her to leave later. After the girls had left for the second floor, he made her drink 1½ glass of beer and took off her clothes. When she pleaded to him not to do any wrong act with her she was slapped by him. She was made to lie on the bed and Respondent Krishan Kumar Rao committed rape on her. On the next date, that is, 19.09.2007 Respondent Krishan Kumar Rao committed sexual intercourse with her three times against her consent. As against this, in her statement under Section 164 Cr.P.C. recorded by the Metropolitan Magistrate ('MM') the prosecutrix informed the 'MM' that Respondents Krishan Kumar Rao and Babloo took her to Rohini. In the evening of 18th they went out and came drunk. They had brought an extra bottle of beer. Both of them forced her to drink beer, when she declined to do so she was slapped by them. Thereafter, they made her to lie on the bed and committed bad act (rape) with her. In her deposition before the learned 'ASJ' the prosecutrix as

PW-3 deposed that on 18th Respondent Krishan Kumar Rao and Babloo took her to their house at Sector 16, Rohini at about 4:00-5:30 P.M. Both the Respondents went outside the house. They returned at about 8:00-9:00 P.M. after consuming beer and also brought one bottle of beer. They sent 6-7 girls who were present on the first floor to the top floor whereas she was kept on the first floor. Both the Respondents bolted the door of the room where she was kept. They forced her to consume liquor. They made her to lie on the bed and thereafter Respondent Krishan Kumar Rao committed rape on her.

6. The Trial Court noticed that in the cases of sexual assault conviction can be based only on the testimony of the victim provided the evidence inspires confidence. The Trial Court observed that in this case the testimony of the prosecutrix contained major contradictions as to the role attributed to each of the two Respondents and how the rape was committed. The learned ASJ observed that in the circumstance it was unsafe to rely on her testimony without corroboration. The learned ASJ observed that the prosecutrix's testimony was not even corroborated by the MLC as inspite of a series of sexual assault on the young girl of 18½ years for a number of days the MLC did not show any external or internal injury on the person of the prosecutrix.
7. The contradictions with regard to time and the date can always be ignored if the testimony of the prosecutrix is otherwise reliable. In the instant case there were contradictions in the statements under Sections 161, 164 Cr.P.C. and the deposition in the Court on the manner as to how the two Respondents or Respondent Krishan Kumar Rao came drunk; whether both the Respondents or just Respondent Krishan Kumar Rao made the

prosecutrix to lie on the bed and whether the rape was committed by both of them or by Respondent Krishan Kumar Rao in presence of Respondent Babloo or Babloo was not at all present at the time of the alleged act of rape; and as to how many times the sexual intercourse was committed upon the prosecutrix by the Respondent/Respondents from 18.09.2007 till 23.09.2007. In the circumstances, the Trial Court's refusal to rely on the testimony of the prosecutrix without even an assurance from the medical evidence cannot be faulted.

8. There is no dispute about the proposition of law that the testimony of a prosecutrix can be acted upon without corroboration in material particulars. A victim of sexual assault stands on a higher pedestal than an injured witness, however, in the instant case in view of the wide variations in the testimony of the prosecutrix, the Trial Court rightly declined to believe her statement without any corroboration.
9. The law with regard to the grant of leave is well settled by catena of judgments. Leave to Appeal can be granted where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain petition merely because another view is possible or that another view is more plausible. In *Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr.*, 2009 (10) SCC 2006, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:-

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. 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.

5. If two reasonable or possible 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.

6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

10. In view of the law laid down in *Arulvelu and Ghurey Lal* I am not inclined to interfere with the finding of acquittal reached by the learned ASJ. The Leave Petition is accordingly dismissed.

Crl.M.A.2215/2013 (delay)

11. Since the Leave Petition does not disclose any merit, I am not inclined to condone the delay of 481 days in filing the Leave Petition.
12. The Application is accordingly dismissed.

(G.P. MITTAL)
JUDGE

MAY 10, 2013
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