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

Date of Decision : 11th September, 2014

+ CRL.L.P. 397/2011

STATE Petitioner

Through: Ms.Rajdipa Behura, APP.

versus

DR.RAVI KUMAR Respondent

Through: Mr.Vikas Arora, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

1. Being aggrieved by the acquittal of the Respondent/Accused Dr. Ravi Kumar in Sessions Case No.101/10, FIR No.241/2004, under Sections 366/376/377 IPC, P.S. Sarojini Nagar, the State is seeking leave to appeal under Section 378(1) Cr.P.C. against the judgment/order dated 03.02.2011 passed by the learned Addl. Sessions Judge, New Delhi.
2. In brief, the prosecution case is that on 12.05.2004 at around 9:30 a.m., the Prosecutrix had gone to Safdarjung Hospital for treatment of her nasal bone. At around 12 noon, she met Dr.Ravi, who enticed away the Prosecutrix and took her to his hostel. There the Prosecutrix asked for a glass of water from Dr. Ravi and after the glass of water offered by the

Respondent was taken by the prosecutrix, she started feeling giddiness and became unconscious. At around 6 p.m., when the Prosecutrix regained consciousness, she found herself without any cloth on her body and that Respondent, Dr. Ravi had physical relations with her. She remained there during night. On 14.05.2004, Dr.Ravi left her near her home. She narrated the incident to her mother, who brought her to the Police Station on 15.05.2004. In her statement made to the Police, she requested for necessary legal action against the Respondent/Accused, Dr.Ravi Kumar. Thereafter, the Prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was recorded. After completion of investigation, charge-sheet was filed in the Court. After the case was committed to the Court of Sessions, the Prosecution examined 22 witnesses in all to bring home the guilt of the Respondent/Accused. Statement of the Respondent/Accused was recorded under Section 313 Cr.P.C. After trial, the Respondent/Accused was acquitted of the charges.

3. State is seeking leave to appeal on the following grounds:-
 - (i) The learned Trial Court acquitted the Respondent/Accused on the basis of imagined doubts and not on factual matrix of the case.
 - (ii) The evidence adduced by the prosecution was not appreciated by the Trial Court and vital pieces of evidence have been ignored by the Court.
 - (iii) There was no reason to disbelieve the testimony of the Prosecutrix, who had supported the prosecution case.
 - (iv) Despite the fact that the prosecution based its case on sound evidence, the Trial Court absolved the Respondent/Accused of the charges levelled against him, which amounts to ignoring the incriminating

evidence which was sufficient to nail the Respondent/Accused in this case.

4. Trial Court record has been requisitioned and the same has been perused.

5. I have heard Ms.Rajdipa Behura, learned APP for the State and counsel the Respondent.

6. Perusal of the impugned judgment shows that the learned Trial Court had acquitted the Respondent/Accused after examining the testimony of the Prosecutrix minutely and arrived at the conclusion which is not only based on proper appreciation of evidence of prosecutrix, but also on the scientific evidence, including the Call Details Record (CDR).

7. It may be noted here that the defence taken by the Respondent/Accused was that the Prosecutrix had been known to him since February, 2004. The Prosecutrix had been making several phone calls to him from her mobile and the Prosecutrix wanted to marry him and in order to pressurize him to marry her, he was even called to the Police Station and when he refused to marry, the Prosecutrix got registered the FIR against him. The Respondent/Accused has also examined four witnesses in defence to prove his version.

8. The testimony of the Prosecutrix has been disbelieved by the learned Trial Court on the following grounds:-

- (i) The Prosecutrix was major on the date of the incident.
- (ii) The Prosecutrix had made contradictory statement on the issue whether the Accused was known to her prior to the date of incident or she met him as a stranger to guide her the way on the date of the incident when she lost her way in the hospital.

(iii) On the MLC, the Prosecutrix gave the history of friendship, but in her statement under Section 164 Cr.P.C., her version was that she did not know him before that date, i.e. 12.05.2004, when she lost her way in the hospital. This was again in contradiction to her initial version recorded in The FIR wherein she stated that she knew Dr.Ravi Kumar prior to that date.

9. The learned Trial Court has taken into consideration the fact that the hostel is across the Ring Road. The Prosecutrix admitted that she had made telephone calls to the Accused from landline and mobile phone at least 30-40 times prior to this incident. The defence evidence adduced by the Respondent/Accused has established that during the period 01.04.2004 to 30.05.2004, 33 incoming calls were made from the mobile number of the Prosecutrix and 48 calls were made from the landline number of the Prosecutrix to the mobile phone of the Respondent/Accused. The defence also established that the landline number as well as the mobile number both were being used by the Prosecutrix as the mobile number was in the name of her mother Nirmala Devi and landline number was installed at her residence.

10. The learned Trial Court, after discussing the testimony of the Prosecutrix as well as the call detail records, arrived at the conclusion that the Prosecutrix was making frequent calls to the Respondent/Accused much prior to the date of the incident. The learned Trial Court has also considered the fact that the hostel and hospital being not part of the same building and the incident stated to have taken place in the month of May, the Prosecutrix, who was studying in 10th standard

and residing in R.K.Puram, could not have been led to the hostel across the Ring Road under any misconception that too during day time when the roads are heavily crowded.

11. The learned Trial Court has taken into account all the statements made by the Prosecutrix, i.e. at the time of registration of FIR, under Section 164 Cr.P.C. as well as before the Court and after considering the inherent improbabilities, arrived at the following conclusion:

“8. From the facts noticed above, it appears that evidence of Prosecutrix cannot be safely relied upon to the conviction against the Accused. The case as a whole indicates that the probability factor is operating against the prosecutrix. The Court is finding it difficult to accept the truthfulness of the version of the Prosecutrix that any sexual assault as alleged was committed on her. In view of the fact that her narration of the incident is basically infirm on account of being contradicted by own statement. This Court is not satisfied by the testimony of the Prosecutrix. Therefore, accused is entitled to benefit of doubt.”

12. It has been held and reiterated in numerous cases by the Hon'ble Supreme Court that the High Court's jurisdiction in examining a petition for leave to appeal is confined to considering whether the judgment impugned before it raises substantial and compelling questions which ought to be gone into for the purpose of granting a leave. The law makers in their wisdom did not permit a State to prefer an appeal against the acquittal by a competent court as it was to be considered as an affirmation of an accused's innocence. In these circumstances, the authorities have primarily ruled that the expression 'substantial and compelling reasons' would extend to only grave misappreciation of evidence, grave misapplication of law and adoption of an approach by the trial court which would lead to miscarriage of justice.

13. 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 appellant 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 appellate 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."

14. Since the present petition does not disclose any of the above elements, the impugned judgment passed by the learned Addl. Sessions Judge does not call for any interference by this Court.

15. The leave petition is accordingly dismissed. Trial Court record be sent back forthwith along with a copy of this order.

PRATIBHA RANI
(JUDGE)

SEPTEMBER 11, 2014
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