

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 01st May, 2015
Judgment Pronounced on: 29th June, 2015

CRL.REV.P. 460/2006

ANU ARORA

..... Petitioner

Through: Mr. Ashwani Mata, Sr. Adv. with
Mr. Gajinder Kumar, Ms. Kiran
Jai, Ms. Kajal Bhati, Mr. Raghav
Kapoor and Mr. Chander Shekhar,
Advs.

versus

THE STATE & ANOTHER

..... Respondents

Through: Mr. P.K. Mishra, APP.
Mr. Harish Kumar Mehra, Adv. for R2

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. Aggrieved by the judgment of acquittal passed by learned Additional Sessions Judge (hereinafter referred to as trial court) dated 20.03.2006 vide which the respondent no.2 has been acquitted in FIR No.559/2004, PS Anand Vihar, the complainant Anu Arora (hereinafter referred to as the petitioner) filed the present revision petition to set aside the same and to punish the respondent no.2, as

the State has not filed appeal against the acquittal.

2. Factual matrix, as emerges from the record, is that on 12.10.2004, the petitioner made a complaint to the police. It was alleged that she was student of class XI ; respondent no.2 was employed as a driver; he used to transport the petitioner to school; on 09.03.2004, after completion of final examination, respondent no.2 took along with her on the pretext that he had to give money to his known one whose mother was ill; car was stopped near a flat; petitioner was asked to accompany the respondent no.2 to the flat; respondent no.2 opened the door of the flat; he brought a glass of cold drink; after consuming the same, the petitioner became unconscious; on regaining consciousness the petitioner found herself on a bed in naked condition; respondent no.2 was also standing in naked condition having camera in his hand; petitioner felt pain in her private parts; when petitioner asked the respondent no.2 that she would raise alarm, respondent no.2 told that he had taken nude photographs of the petitioner and would ruin her reputation; due to fear the petitioner did not inform the incident to anyone; petitioner was left in her house; thereafter also the respondent no.2 blackmailed the petitioner and took money from her. On completion of investigation, charge-sheet was filed for offence under Section 363/366/328/376/384/385 IPC. After compliance of provisions of Section 207 Cr.P.C, the learned MM took the cognizance and committed the matter to the Court of Sessions as the matter was exclusively triable by the Court of Sessions.

3. The learned trial court framed the charges for offences punishable under Section 363, 328, 376, 366, 384 IPC against the respondent no.2 on 02.02.2005.
4. To prove its case, the prosecution examined 20 witnesses. After conclusion of prosecution evidence, the statement of respondent no.2 was recorded under Section 313 Cr.P.C. in which he has claimed innocence. He had examined 2 defence witnesses to prove his defence. The learned trial court vide judgment dated 20.03.2006 arrived at the decision to not found guilty of the commission of the crime, acquitted the accused /respondent no.2 of the charges framed against him.
5. Arguments advanced by learned senior counsel for the petitioner as well as learned APP for the State have been heard.
6. The testimony of the petitioner has been found to be not reliable by the learned trial Court. In her testimony, she deposed that on 09.03.2004, she went to her school for exam of 11th class; her exam was over at 1.30 noon; at about 1.45 p.m., accused came to take her; accused told that his friend's mother was ill and he had to give cash/money to his mother; she asked the accused to leave her first at her residence, however accused told that he was having an urgent work for only 5/7 minutes and thereafter he would leave her at her residence; accused took her towards an unknown direction; accused stopped the vehicle in front of a flat; accused asked her to accompany him inside the flat as he did not want to leave her alone

in the vehicle; accused took her to the first floor; accused opened the door of the flat with keys and on asking, said since his friend's mother was ill and unable to move keys were given to him; accused took her inside the flat; accused went inside and brought cold drink glass from inside; after consuming cold drink, she became unconscious; when she regained consciousness, she found herself lying on the bed in naked condition; she covered herself with a sheet; accused was standing in front of her in naked condition; he was having a camera in his hands; on enquiry accused told that he had committed sexual intercourse with her and had taken her nude photographs; in the car accused threatened her that if she disclosed about the incident to anybody, he would show her nude photographs; thereafter accused left her at her residence; she changed her clothes inside her room and went to sleep.

7. The working day sheet of school in which the petitioner used to study shows that 09.03.2004 was the last working day of 11th standard. It was not mentioned therein that there was any examination of 11th standard on that day, which falsifies the testimony of the petitioner that on 09.03.2004, she had gone to school to take her examination. Said document of the school contradicted the testimony of the petitioner.
8. The testimony of the petitioner is also not believable in view of the fact that the petitioner did not raise any suspicion when respondent no.2 opened the door of the flat with the keys lying with him. She even did not meet the old lady allegedly staying inside the flat. It

has come in evidence that the respondent no.2 informed the petitioner that he was having keys of the flat as the mother of his friend was ill and unable to move. It is highly improbable to believe the testimony of the petitioner that a bed ridden lady locked herself inside the flat and the petitioner even did not care or insisted to meet the said ailing lady. She also did not raise any hue and cry when she allegedly seen the accused in naked position having camera in his hands. She even did not try to snatch the camera from the hands of respondent no.2 to expose the reel of the camera.

9. The conduct of the petitioner is also in doubt in view of the fact that she straightway went to her house, changed her clothes and slept. In her cross-examination, she stated that respondent no.2 met her on the next day morning. Despite having in her house, the petitioner did not inform her mother or parents about the incident of rape allegedly committed by respondent no.2 on the previous day. The conduct of the petitioner was very strange that after the incident, she went to her room, changed her clothes and slept. It has also come in evidence that she took dinner in the evening.
10. The conduct of the parents of the petitioner is also strange. They had not asked the petitioner nor their driver i.e. respondent no.2 as to why they were late on that day. Even the petitioner did not give any explanation as to why she came late on that day to her parents as it was never asked from her.
11. It has come in evidence that the petitioner accompanied respondent

no.2 to temple where her marriage with respondent no.2 was performed. She admitted that the photographs Ex.PW2/DB to DH depicted her in bridal dress at the time of marriage. She admitted her handwriting in the cards placed on record. It is worthwhile to note that the marriage of the petitioner and respondent no.2 was solemnized on 27.08.2004 and thereafter it was registered on 17.09.2004 before the ADM, North-East, Delhi. The factum of said marriage came to the knowledge of parents of the petitioner and then they put restrictions on the petitioner. It was only on 08.10.2004, the petitioner was produced before the ACMM, Karkardooma Courts and that is too in execution of search warrants on moving an application by the respondent no.2.

12. The above discussion clearly shows that the petitioner being major had voluntarily accompanied the respondent no.2 and performed marriage with him which was duly registered under Section 8 of the Hindu Marriage Act, 1955. It appears that when the parents of the petitioner came to know about the said marriage, they pressurized the petitioner to lodge the present case against the respondent no.2. The testimony of the parents and other relatives of the petitioner was also not found reliable and trustworthy by the learned trial Court.
13. The judgment delivered by the learned trial Court below is well reasoned judgment, based on due appreciation of evidence on record and relevant law related thereto. This is not a fit case to exercise the revisional jurisdiction for re-appreciation of the

evidence.

14. From no stretch of imagination, from the evidence led by the prosecution, the present case could be culminated into conviction of the respondent no.2. This Court does not find any procedural irregularity, overlooking of material evidence, misreading of the same or miscarriage of justice. There is no jurisdictional error in the judgment passed by the learned trial Court. Neither there is any failure to exercise the jurisdiction or exceeding of jurisdiction by the learned trial Court while passing the judgment. The discussion made above in the light of evidence/material led by the prosecution, does not warrant any interference in the conclusion drawn by the learned trial Court.
15. Thus, the judgment dated 20.03.2006 cannot be said to be not sustainable in the eyes of the law and the present revision petition deserves to be dismissed.
16. Consequently, the present revision petition is dismissed as devoid of merit. Trial court record be sent back.

P.S.TEJI, J.

June 29, 2015
dd