

\$~05.

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

+ CRL.L.P. 202/2015

% *Judgment dated 06.04.2015*

STATE

..... Petitioner

Through : Mr.Sunil Sharma, APP for the State.

versus

MOHD. RAHEEM

..... Respondent

Through : NEMO.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present leave to appeal petition has been filed by the petitioner/State under Section 378(3) of the Code of Criminal Procedure against the judgment of acquittal dated 22.12.2014 passed by learned Additional Sessions Judge-I (East), Karkardooma Courts, Delhi, whereby the respondent herein has been acquitted of the charges framed under Sections 366/328/376 and 506 of the Indian Penal Code.
2. As per the case of the prosecution before the learned trial Court, the daughter of PW-3 went missing on 22.10.2012. On the next date, PW-3, father of the girl, went to the Police Station and made a complaint that his daughter, who is 15 years of age, has been missing since 10.00 a.m. of 22.10.2012. He also informed the Police that the respondent, who lived in the adjoining room, has also been missing since then. PW-3 also pointed to finger of suspicion upon the respondent. On the basis of the

complaint so made by PW-3, Rukka was prepared and an FIR was registered. Thereafter a hue and cry notice was published. On 5.11.2012, a message was received from Police Station Bainiop, District Samastipur, Bihar, with regard to the recovery of the missing daughter of PW-3. The concerned Investigating Officer along with PW-3 reached Police Station Bainiop, District Samastipur, Bihar, on 6.11.2012 where the respondent was present. Statement of the prosecutrix (missing daughter of PW-3) was recorded. Respondent was also produced before the Court of local Chief Judicial Magistrate and a 48 hours transit remand of the respondent was taken. Both, prosecutrix and accused, were brought to Delhi. The prosecutrix was thereafter taken to the LBS Hospital for her medical examination. The respondent was also taken to the LBS Hospital and thereafter prosecutrix was produced before the learned Metropolitan Magistrate. The statement of prosecutrix was recorded and exhibits were sent to the FSL.

3. We may notice that in the statement recorded under Section 313 of the Code of Criminal Procedure the respondent has stated that the prosecutrix is his legally wedded wife and marriage between them was performed before the Qazi at Patna, Bihar. He has also stated that the prosecutrix had accompanied him without any force, coercion and voluntarily as they were in love with each other. Statement of DW-1, Mohd.Shahbuddin was also examined. As per DW-1, on 29.10.2012, he performed the marriage between accused and victim as per Muslim Rites and customs as a Qazi. He also identified signatures of accused and victim. He also deposed that the prosecutrix had disclosed her age as 19 years and showed her willingness to marry the accused.

4. Mr.Sharma, learned APP for the State, submits that School Leaving Certificate of the prosecutrix would show that she was 14 years of age at

the time when she was illegally removed from the guardianship of her parents by the respondent. Learned APP has further submitted that as per Mohammedan Law the age of puberty has been fixed at 15 years and since the prosecutrix was less than 15 years of age, her consent, if any, would be meaningless. It has also been stated that medical evidence has supported the case of the prosecution that the prosecutrix, besides being illegally detained, was raped.

5. We have heard learned APP for the State, carefully examined the judgment passed by the learned trial court and also gone through the evidence. The prosecutrix in her statement recorded under Section 164 of the Code of Criminal procedure and the statement recorded in the Court has testified that she was illegally removed by the respondent from the custody of her parents and thereafter she was forced into marriage by the respondent. She has also testified that respondent had taken her with him by misrepresenting that her mother was asking for her, and on the way she was given some sweets to eat, after which she felt drowsy and when she regained consciousness, she found herself at Village Shahpur in the house of the respondent's aunt. The trial court has carefully analysed the statement of the prosecutrix and found her statement to be unreliable and untrustworthy.
6. The trial court has considered the fact that it would virtually impossible that the respondent was able to drag the prosecutrix to a place at Bihar, which is over a 1000 kms away from Delhi, in an unconscious or semiconscious state without being noticed by anyone. Also it is improbable that the prosecutrix did not make any attempt to run away from the clutches of the respondent in case she was illegally detained during the period of detention.

7. As far as the age of the prosecutrix is concerned, PW-3, father of the

prosecutrix in the complaint made before the Police, had himself mentioned the age of the prosecutrix as 15 years. The School Leaving Certificate, sought to be relied upon, is based on an oral statement made by the father of the prosecutrix at the time of her admission, cannot be relied upon.

8. Further during the cross-examination, PW-3 has testified that he got married 20 to 22 years ago in his Village and his first child was born after 5 to 6 years of his marriage. Since, it is the father of the prosecutrix, who had given the age of his daughter as 15 years, and having regard to the fact that in Mohammedan Law a girl can marry without the consent of her parents on her attaining the age of puberty, she has a right to reside with her husband. We are not inclined to take a different view than the view of the trial court.
9. The Apex Court in the case of **Ghurey Lal vs. State of U.P.**, reported at 2008 (10) SCC 450 has laid down the following principles before granting leave to appeal against an order of acquittal:

“1. 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.

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable 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.”

10. Having regard to the principles laid down by the Apex Court in the case of **Ghurey Lal** (supra), we do not find that there is any illegality or perversity in the impugned judgment. Accordingly, no grounds are made out to interfere in the impugned judgment passed by learned trial court and the leave to appeal petition is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 06, 2015

msr