

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

RESERVED ON : 21st MARCH, 2016

DECIDED ON : 28th MARCH, 2016

+ CRL.A.239/2015

STATE (NCT OF DELHI)

..... Appellant

Through : Mr.Amit Gupta, APP.

VERSUS

JATA SHANKAR

..... Respondent

Through : Mr.Pramod Kumar Dubey,
Advocate with Ms.Megha,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 03.02.2010 of learned Addl. Sessions Judge in Sessions Case No.123/08 arising out of FIR No.343/05 PS Najafgarh whereby the respondent was acquitted of the charge, the State has preferred the instant appeal which is contested by the respondent.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 18.05.2005 at about 09.45 p.m. at House No.RZ-105, S-Block, New Roshanpura, Najafgarh, the respondent committed rape upon

the prosecutrix 'X' (changed name) aged around 35 years. Incident was reported to the police and Daily Diary (DD) No.40A came into existence at 22:15 hours at P.S. Nazafgarh. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested and medically examined. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. The prosecution examined 11 witnesses. In 313 Cr.P.C. statement, the accused denied his involvement in the crime and pleaded false implication. He examined DW-1 (Hukam Chand) and DW-2 (Mahender Nath Tiwari) in defence. The trial resulted in respondent's acquittal. Being aggrieved and dissatisfied, the State has filed the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the victim aged around 35 years was mother of two grown up children who were sleeping in the tenanted room at the time of incident. The appellant was aged around 63 years and had let out the tenanted room to the victim about 8 / 10 days prior to the incident. The occurrence had taken place at the respondent's

room where he used to stay. The prosecution case is primarily based upon solitary statement of the prosecutrix which does not find corroboration from any other independent sources. The occurrence took place at around 09.45 p.m. and the prosecutrix was medically examined promptly at 02.15 a.m. at Rao Tula Ram Memorial Hosptial. No visible external injury whatsoever was found on her body including private parts. The respondent was not named in the alleged history recorded therein. There were no struggle or violence marks on her body to infer forcible rape. Nothing has come on record to show if the prosecutrix who was a young lady of 35 years had offered resistance to the alleged sexual assault committed by an old man aged around 63 years. The exhibits collected during investigation were sent to Forensic Science Laboratory for examination. However, these do not corroborate victim's version. The prosecutrix claimed that after the sexual assault, the respondent had discharged. In that eventuality, there was every possibility of the respondent's clothes to have stained with 'semen'. However, in the FSL report (Ex.PW-11/C), no semen could be detected on Ex-5A (Respondent's Lungi) and Ex.-5B (Respondent's Underwear). It was not ascertained if spermatozoa found on Ex-1 (Victim's Salwar) and Ex-2 (Two glass slides said to be vaginal smears) was that of the appellant. No

independent witness was associated at any stage of investigation. It has come on record that number of tenants used to occupy the nearby rooms. However, none of them was joined in the investigation.

4. The Trial Court, in the detailed judgment, has noted number of material discrepancies and contradictions in the version stated by the prosecutrix to discredit her testimony. These contradictions and inconsistencies go to the root of the case and rule out if the prosecutrix was sexually assaulted against her consent. The victim had on her own gone to the respondent's room allegedly on the pretext to offer him a glass of water. This circumstance does not appeal to mind. Possibility of the prosecutrix to have physical relations with the respondent with consent cannot be ruled out. It appears that sudden arrival of the victim's husband at the spot prompted her to implicate the respondent. The Trial Court has referred to the statement of the victim (Ex.PW-1/A) given to the police at first instance and her 164 Cr.P.C. statement (Ex.PW-10/A) made before the Court. The victim has made vital improvements. In her Court statement also, she had improved her version and deviated from her previous statements. Nothing has emerged on record if the victim had raised any hue and cry at the time of incident. No such cry or alarm was heard by any other inmate of the nearby rooms. PW-3 (Shish Pal), the

victim's husband, arrived at the spot but did not hear any scream of the victim from outside the room. Only after peeping through the window, he found something amiss and pushed the door to gain entry inside the room. Nothing is on record to show if the respondent was aware about the absence of the victim's husband. The victim who was having no close familiarity with the respondent and had occupied the tenanted accommodation about 8 or 10 days before is not expected to go to the respondent's room alone to offer water particularly when she herself was suffering from 'loose motion'. Nothing is on record to show if any attempt was made by the victim to flee from the spot despite having ample opportunity. The impugned judgment is based upon the fair appraisal of the evidence and needs no intervention. The respondent deserves benefit of doubt.

5. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the Trial Court have been succinctly explained by the Apex Court in a catena of evidence. In '*State of Goa vs. Sanjay Thakran & Anr.*', (2007) 3 SCC 75, it was held :

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against

the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.”

6. Similar principle has been laid down by the Apex Court in the cases of ‘*State of Uttar Pradesh vs. Ram Veer Singh and Ors.*’, AIR 2007 SCW 5553 and in ‘*Girja Prasad (Dead) by LRs vs. State of M.P.*’, AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

“It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.”

7. In the light of above discussion, the appeal lacks merit and is dismissed. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

MARCH 28, 2016 / *tr*