

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25th May, 2016

+ CRL.A. 254/2016
STATE (NCT OF DELHI)

..... Appellant

Through: Mr. Akshai Malik, APP with Sub
Inspector Manjeet, P.S. Govindpuri

versus

PRATAP SINGH @ KRISHNA

..... Respondent

Through: Mr. S.K. Singh, Adv.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Feeling aggrieved by acquittal of the respondent by learned Metropolitan Magistrate (Mahila Court), South-East District, Saket Courts, New Delhi vide order dated 03.09.2014 in case FIR No.489/2011 under S. 354 Indian Penal Code, Police Station Govind Puri, the present appeal under S.378(1) (B) of Code of Criminal Procedure has been preferred by the State.

2. The facts lie in a narrow compass. The complainant 'X' had gone to gym on 09.12.2011 at around 8.15 am where accused was an instructor. After 10.30 am, when all the girls from the gym had left, the respondent /accused came to her and wanted to give massage to her on the ground that she was having pain while doing gym. Despite her refusal, he forcibly started giving massage to the complainant and while doing so, he pressed her thighs, touched her private parts and her breast also. Police was informed. Her statement Ex.PW1/A was recorded which resulted in registration of the instant FIR. During the course of investigation, the respondent /accused was got arrested. After completion of investigation, charge-sheet was submitted against him.

3. Charge for offence under S. 354 IPC was framed against the accused to which he pleaded not guilty and claimed trial. The prosecution examined two

witnesses i.e. PW1 – complainant and PW2 Sub Inspector Sahiram – Investigating Officer of the case. In his statement under S. 313 Cr.PC, accused denied the case of prosecution. According to him, he was falsely implicated by the complainant. In fact, he was not employed with the gym ever. Vide the impugned judgment dated 03.09.2014, learned Metropolitan Magistrate acquitted the accused primarily on the ground that in the cross examination of the complainant it had come that there was one more lady present inside the gym and that lady was not examined by prosecution. Since that lady was an independent witness, conviction could not be based on the solitary testimony of the complainant.

4. Feeling aggrieved, the present appeal has been preferred by the State.

5. Learned Additional Public Prosecutor for the State submits that the Trial Court fell in error in acquitting the respondent solely on account of non-examination of one more lady who is alleged to be present in the gym and no reason was assigned as to why the testimony of the complainant should be disbelieved. The complainant had no axe to grind to falsely implicate the accused. Moreover, although according to the complainant accused was instructor in the gym, however, the accused has taken a false plea in his statement under S. 313 Cr.PC that he was not employed in the gym. Since the judgment passed by the learned Trial Court suffers from perversity as such it is submitted that the same be set aside and in view of the testimony of the complainant, which is cogent and consistent, the accused be convicted of the offence alleged against him.

6. Per contra, learned counsel for the respondent / accused submits that this is an appeal against acquittal and, therefore, no interference is called for. Moreover, the prosecution case is based on solitary testimony of the complainant. However, no explanation has been given from the side of the prosecution as to why one more lady who was present in the gym and was an eye witness was not examined. The failure to examine the eye witness raises adverse inference against prosecution. Furthermore, there is delay of 2 days in lodging the FIR for which no satisfactory explanation has come as such the delay in lodging the FIR is also fatal

to the case of prosecution. Reliance in this regard is placed on *Thulia Kali v State of Tamil Nadu*, AIR 1973 SC 501.

7. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

8. The law relating to an appeal against the order of acquittal was succinctly laid down by the Hon'ble Supreme Court in *State of Goa v Sanjay Thakran and Anr*, (2007) 3 SCC 755, wherein after advertng to various earlier decisions on this point, it was observed as under:

"16.....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 characterised 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 view 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 reappraise the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with."

7) In *Chandrappa and Others vs. State of Karnataka* (2007) 4 SCC 415, while considering the similar issue, namely, appeal against acquittal and power of the appellate court to reappraise, review or reconsider evidence and interfere with the order of acquittal, this Court, reiterated the principles laid down in the above decisions and further held that:-

"42.....The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

The same principles have been reiterated in several recent decisions of this Court vide *State of Uttar Pradesh vs. Jagram and Others*, (2009) 17 SCC 405, *Sidhartha Vashisht alias Manu Sharma vs. State (NCT of Delhi)* (2010) 6 SCC 1, *Babu vs. State of Kerala*, (2010) 9 SCC 189, *Ganpat vs. State of Haryana and Others*, (2010) 12 SCC 59, *Sunil Kumar Sambhudayal Gupta (Dr.) and Others vs. State of Maharashtra*, (2010) 13 SCC 657, *State of Uttar Pradesh vs. Naresh and Others*, (2011) 4 SCC 324, *State of Madhya Pradesh vs. Ramesh and Another*, (2011) 4 SCC 786.

8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary

jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

9. What can be culled out from the aforesaid decisions is that since this is the first appeal, this Court is fully competent to re-appreciate, reconsider and review the evidence and to see whether the approach taken by the Lower Court to the consideration of evidence is vitiated by some manifest illegality.

10. The complainant, appearing as PW1 deposed that she was residing at J-3/9, Third Floor, DDA Flat, Kalkaji, New Delhi. Due to her weight, she decided to join the gym. On 05.12.2011, she went to Attitude Gym at Govindpuri opposite 429, bus stop and joined the gym on the same date. She used to exercise between 8.15 am to 10.30 am. On 09.12.2011, she was in the gym and taking exercise. At

about 9.30 am all the girls left the gym and she was taking her exercise. Accused came to her and insisted for massage. She denied as she was not comfortable with the massage. Moreover, her husband had forbidden for any such massage from the instructor. However, the accused insisted for the same. He closed the door and started massaging her thighs. He was not comfortable with her dress and asked her to change into flimsy towel. The massage went to her breasts which he started rubbing vigorously. She was uncomfortable but he moved on. Then he touched her genitals. She wanted to run away and shout but the door was closed and she was living alone in the city and had one baby of one and a half year old. Therefore, in order to avoid any unpleasant situation, she came home and waited for her husband, who had come to India. On his return, she complained to him and thereafter her husband called at 100 number. Police came and recorded her statement Ex.PW1/A. In cross examination she further stated that accused was working as an instructor in the gym. She came to know his name as 'Krishna'. She further deposed that at the time of the incident, one another lady was inside the gym but she did not know the name of the lady. In cross examination, she denied the suggestion that no such incident occurred.

11. A perusal of the aforesaid cross examination goes to show that on material aspects, the testimony of the complainant goes unrebutted and unchallenged except for a vague suggestion that no such incident took place which was denied by her. Her testimony could not be shaken in cross examination. The accused did not allege any animosity, ill-will or grudge against the complainant for which reason she would lodge a false complaint against the accused. In cross examination, she clarified that the accused was working as an instructor in the gym and no suggestion was given to contradict this statement that accused was not working in the gym. For the first time, in his statement under S. 313 Cr.PC, the accused took the plea that he had no connection with the gym.

12. Although learned Trial Court noted that it is settled law that conviction can be based on sole testimony of the complainant in such cases, however, went on stating that conviction can be based only when there is no independent witness

available. But since in the instant case there was an independent witness available for which no explanation has been given by the Investigating Officer of the case as such accused was granted benefit of doubt. This approach of the Trial Court cannot be sustained because the law is well-settled that as a general rule, the Court can and may act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

13. In *Namdeo v. State of Maharashtra* (2007) 14 SCC 150, Hon'ble Apex Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

14. In *Kunju @ Balachandran vs. State of Tamil Nadu*, AIR 2008 SC 1381 a similar view has been taken placing reliance on various earlier judgments including *Jagdish Prasad vs. State of M.P.*, AIR 1994 SC 1251; and *Vadivelu Thevar vs. State of Madras*, AIR 1957 SC 614.

15. In *Yakub Ismailbhai Patel Vs. State of Gunjrat* reported in (2004) 12 SCC 229, the Hon'ble Apex Court held that:

"The legal position in respect of the testimony of a solitary eyewitness is well settled in a catena of judgments inasmuch as this Court has always reminded that in order to pass conviction upon it, such a testimony must be of a nature which inspires the confidence of the Court. While looking into such evidence this Court has always advocated the Rule of Caution and such corroboration from

other evidence and even in the absence of corroboration if testimony of such single eye-witness inspires confidence then conviction can be based solely upon it."

16. In *State of Haryana v. Inder Singh and Ors.* reported in (2002) 9 SCC 537, the Hon'ble Supreme Court of India held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

17. It is now well-settled that conviction for an offence of rape / sexual assault can be based on the sole testimony of prosecutrix, if the same is found to be natural, trustworthy and worth being relied on. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations" is the law declared in *State of Punjab Vs. Gurmit Singh & Ors.* (1996) 2 SCC 384. [*State of Rajasthan Vs. N.K.*, (2000) 5 SCC 30, *State of Himach Pradesh Vs. Lekh Raj & Anr.* - (2000) 1 SCC 247, *Madan Gopal Kakkad Vs. Naval Dubey and Anr.* - (1992) 3 SCC 204]. The observations made by Hon'ble Supreme Court in *Rajoo & Ors. v State of M.P.*, (2008) 15 SCC 133 in this regard may be reproduced as under:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of

fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken

as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

18. The testimony of the prosecutrix, in the instant case, is not only natural but also trustworthy and worth being relied upon. In fact, the testimony of the prosecutrix has not been touched at all by the learned Trial Court and absolutely no reason has been assigned as to why it should be discarded altogether. Merely on the ground that some other girl was present in the gym, who was not examined by prosecution is hardly sufficient for drawing an adverse inference against the prosecution.

19. As regards non-examination of other witness and an adverse inference drawn by learned Trial Court is concerned, this Court finds not persuaded to subscribe to the view taken by the learned Trial Court. It is only in the cross examination of prosecutrix that it has come that one more girl who was unknown to her was also present in the gym. It is not clear from the record as to whether she was a witness to the incident or not. Moreover, as observed by the Hon'ble Supreme Court in *State of Himachal Pradesh v Gian Chand*, AIR 2001 SC 2075, non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution. The Court has first to assess the trustworthiness of the evidence adduced and available on record. If the Court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined. However, if the available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing

an adverse inference against the prosecution for non-examination of such witnesses may arise.

20. Moreover, non-investigation regarding presence of any other girl in the gym at the time of incident at best can be termed to be a lapse on the part of Investigating Officer of the case but the law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal and if primacy is given to such design or negligent investigation or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administered would be eroded. The consequence of defective investigation have been elaborated in *Dhanaj Singh @ Shera And Ors vs State Of Punjab*, (2004) 3 SCC 654, wherein it was observed as under:

“In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

The same was reiterated in *State Of Gujarat vs Kishanbhai*, 2014(1) Scale 177; (2013) 10 SCC 192; *Hema v. State*, (2013) 10 SCC 192; *Dayal Singh & Ors vs State Of Uttaranchal* (2012) 8 SCC 263; and *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 as well.

21. As regards the submission of learned counsel for the respondent / accused that there is delay in lodging the FIR, this submission again is devoid of merits. The delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution.

However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

22. In ***Thulia Kali*** (supra), dealing with the aspect of delay in lodging the FIR, the Hon'ble Supreme Court observed as under:

“12. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused: The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story As a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

23. However, in ***Ram Jag And Others vs The State Of U.P*** (1974) 4 SCC 201, the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused and / or when a plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of authenticity of the version of the prosecution.

24. It is common knowledge and also judicially noted fact that in instances like rape, molestation, there is reluctance on the part of the victim to report the matter to the police and carry the same to the Court. A cool thought may proceed lodging of the FIR. Moreover, the incident involves the dignity and honour of the

complainant and without any rhyme and reason she would not have put her own honour at stake by lodging a false complaint against the respondent /accused. The complainant had no axe to grind to falsely implicate the accused and then suffer the agony of going to the Police Station and then to the Court to repeat the said incident. Such are the observations found to have been made by Hon'ble Supreme Court in *State of Punjab Vs. Gurmit Singh & Ors.*, (1996) 2 SCC 384 and also in the case of *Harpal Singh*, (1981) SCC CrL. 208. In *Bharwada Bhoquinbhai Hirjibhai v. State of Gujarat*, AIR 1983 SC 753, the Hon'ble Supreme Court had noticed peculiar conditions and circumstances in which a girl or woman, who happens to be victim of rape, in Indian conditions would find herself and so will be reluctant to disclose such incident to anyone and it is observed as under:

“Without the fear of making too wide a statements or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non- permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in

mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.”

25. In the case in hand, the incident took place at about 9.30 am. According to the complainant even when the incident took place, initially she wanted to run away and shout but the doors were closed. She lives in the city alone and had a baby of one and a half year old and therefore she remained quiet and came home. Thereafter, she waited for her husband and when he came then police was informed. As per the ruqqa, the same was sent to Police Station for registration of the case on 10.12.2011 at 12.45 am as such there was no substantial delay in lodging the FIR and the delay, if any, was duly explained by the complainant.

26. Last but not the least, the respondent / accused has taken a false plea in his statement under S. 313 Cr.PC that he was not employed with the gym, whereas it was elicited in the cross examination of complainant that he was working as instructor in the gym. No suggestion to the contrary was given to the complainant. It has been held time and again that when an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference against him and such an inference shall become an additional circumstance to prove the guilt

of the accused. In this regard, reference can be made to *Peresadi v State of U.P.*, Manu/SC/0100/1956 (1957) CrL.J 328, *State of M.P. v. Rattanlal*, AIR 1994 sC 458; and *Siddarth Vashisht v. State*, AIR 2010 SC 2352.

27. In view of foregoing reasons, findings of the Ld. Trial Court cannot be sustained. The impugned judgment of Trial Court is set aside being wholly unsustainable in law. The appeal is allowed and the respondent /accused is hereby convicted for offence under S. 354 IPC and is sentenced to undergo rigorous imprisonment for a period of one year and fine of Rs.5,000/-; in default of payment of fine, to undergo simple imprisonment for 15 days. The benefit of S.428 Cr.PC be given to him. The respondent / accused is directed to surrender before the Trial Court concerned on or before 03.06.2016 failing which Trial Court is directed to take necessary steps to get the respondent /accused arrested to serve the sentence.

The appeal stands disposed of accordingly.

Trial Court record be returned alongwith a copy of this judgment.

(SUNITA GUPTA)
JUDGE

MAY 25, 2016/rd