

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

DECIDED ON : 21st January, 2016

+ CRL.A. 315/2015

STATE

..... Appellant
Through : Mr.Amit Gupta, APP.

versus

IMRAN &ORS

..... Respondents
Through : None.

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

S.P.GARG, J. (ORAL)

1. The State has filed the instant appeal to challenge the legality and correctness of a judgment dated 27.11.2012 of learned Additional Sessions Judge in Sessions Case No.46/10 arising out of FIR No.121/2007 registered at Police Station Chandni Mahal by which the respondents were acquitted of the charges. The appeal is contested by the respondents.

2. Briefly stated, the prosecution case as stated in the charge-sheet was that on 5.4.2007 in between 2.00 p.m. to 9.30 p.m. Imran (R-1) abducted the prosecutrix 'X' (assumed name), aged around 18 years, from

her house and took her to a house at Mustafabad where after administering stupefying substance, he committed rape upon her and criminal intimidated her. Further allegations against R-1 were that he forced 'X' to commit suicide by declining to marry her. Salauddin (R-3), Smt.Haseena (R-4) and Irfan (R-5) were implicated to have hatched conspiracy with R-1 to kidnap 'X' from her house knowing that she would be forced or seduced to illicit intercourse with Imran. Allegations against Zakir (R-2) were that on 05.04.2007 at about 4.00 p.m., he administered stupefying substance to 'X' in cold drink and wrongfully confined her in a room knowing that she had been kidnapped/abducted.

3. The Investigating Officer lodged FIR after recording victim's statement (Ex.PW-4/1) on 08.04.2007. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. Statements of witnesses conversant with the facts were recorded. The accused persons were arrested. Exhibits collected during investigation were sent for examination to Central Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed against R-1 to R-5 in the court for committing various offences. To establish its case, the prosecution examined nineteen witnesses. In 313 statement, the accused persons denied their involvement in the crime. They did not examine any witness in defence.

After appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment acquitted the respondents of the charges. Being aggrieved and dissatisfied, State has filed the instant appeal.

4. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix and the appellant were acquainted with each other since childhood; they were closely related. The prosecutrix undeniably was major on the day of incident. In her complaint (Ex.PW-4/1) lodged on 08.04.2007, 'X' informed the police that on 05.04.2007, her mother had gone to cast vote. At around 2.00 p.m., Imran came to her house and after enticing took her in an auto to Chanakyapuri park for outing. They remained together for about an hour. Imran had a talk with her about his marriage with her. Thereafter, he got a telephone call from his friend (R-2) and expressed desire to meet him at Mustafabad. Thereafter, R-1 took her to meet R-2 where he administered stupefying substance in a cold drink as a result of which she started feeling drowsy. On the pretext to bring certain articles, R-1 sent R-2 out. Thereafter, R-1 established physical relations with her despite her objections. R-1 told her that they were going to perform marriage soon. R-1 administered her a pill to avoid pregnancy. She

returned to her house at about 9.30 p.m. Subsequently, R-1 declined to marry her.

5. Apparently, the prosecutrix had accompanied R-1 willingly on 5.4.2007 to Chanakyapuri park. From there, she accompanied him in a room purportedly arranged by R-2 where physical relations took place between the two. 'X' did not raise any alarm or hue and cry any time. She was brought in an auto by R-1 from the spot towards her residence. She did not object to the R-1's conduct or behaviour. She did not inform about the incident to her family members. She concealed her visit to Chanakyapuri Park with R-1 and gave an excuse to have gone to visit her friend.

6. In her court statement as PW-4, 'X' admitted that R-1 was her maternal uncle's son. On 5.4.2007, her mother had gone to cast a vote. At about 11.00 a.m. Imran's mother (R-4) came to invite her to her house; she declined to accompany her. Again at about 12 noon R-5, younger brother of Imran, came to invite her which she declined. At 1.30 p.m. she received a telephone call from Imran's mother but she did not go. At 2.00 p.m. R-5 again came to her house and she accompanied him on foot to R-1's house. These facts did not find mention in the initial version (Ex.PW-4/1) given to the police. It has further come on record that the

prosecutrix had taken extra clothes with her and had accompanied R-1 to Chanakyapuri after change at his house. She implicated Imran's mother with whose permission, allegedly, she had agreed to accompany R-1 to meet R-2 at his house. Conduct of the prosecutrix is unreasonable and unnatural. She has made vital improvements in her deposition and has been duly confronted with her statements recorded under Sections 161 and 164 Cr.P.C. After the alleged incident of physical relationship at R-2's room, she returned to her house but did not inform her family members about the occurrence. When her mother inquired as to where she had gone, she feigned to have gone with her girl friend. It has further come on record that she even slashed her wrist and neck with a blade. She informed that talks for her marriage with Imran took place and her mother had called Imran's parents to her house for that purpose on 07.04.2007. When the marriage between the two did not take place, the FIR was lodged on 09.04.2007. Needless to say, the prosecutrix was a consenting party. Only when their marriage as anticipated could not materialize, she implicated not only Imran but all his family members and friend as well assigning certain role to each of them in the incident. Delay in lodging the FIR has remained unexplained. The prosecutrix was medically examined by MLC Ex.PW-1/A on 8.4.2007 by PW-1 (Dr.Ruqaiya

Hasnat). In the cross-examination, she admitted that injuries on the body were self-inflicted. There was no external injury on 'X's private parts. She further admitted that there was no sign of use of force on the private part of the prosecutrix. Medical evidence ruled out if any 'force' was used by Imran to have physical relations with the prosecutrix. 'X' did not explain as to what had prompted her to slash her wrist and neck with a blade. In the cross-examination, she admitted that Imran's mother had told her that she would not marry Imran with her. She further admitted that she had accompanied R-1 to R-2 with her free will and R-1 had not threatened her or used any force. She further admitted that she used to accompany R-1 along with other friends earlier also for visiting some places. She further admitted that she had friendly terms with R-1 and both were having love affairs. She further admitted that talks for their marriage were going on prior to the lodging of the FIR. The FIR was lodged as Imran's mother refused for the marriage proposal. She admitted that she was having mobile phone given by R-1 at the time of occurrence. However, at no stage, she talked to her family members. She admitted that she had returned to her house at 9.30 p.m. wearing 'burka' over top and skirt which she had worn at Imran's house. Her mother did not inquire about the said clothes as she had carried it in the polythene. She

had changed the top and skirt in her house and hid them in the store. She did not tell her mother and sister about the incident. She further admitted that she had cut her wrists and neck on the night of incident as she was perplexed and did not know what to do. She did not inform the doctor that something was administered to her in cold drink as a result of which she became unconscious. The Investigating Agency did not collect call details records. Apparently, it was a case of consent.

7. Nothing has come on record to show that R-1 had established physical relations with the prosecutrix on the promise to marry or that her consent was vitiated. 'X' has not presented true facts; her version is not consistent. No implicit reliance can be made on her uncorroborated testimony to base conviction. The Trial Court has dealt with all the relevant aspects minutely. I find no illegality or material irregularity in the impugned judgment. Benefit of doubt has been given to the respondents which they deserve.

8. In a recent case *Govindaraju @ Govinda vs. State by Srirampuram P.S. and Anr.* AIR 2012 SC 1292, the Supreme Court discussed the law while dealing with appeals against acquittal.

13. "When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The

presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of the evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if , points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In State of M.P.v..Bacchudas, the Court was concerned with a case where the accused had been found guilty of an offence punishable under Section 304 Part II read with Section 34 Indian Penal Code by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed

by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp.138-39, paras 9-10).

9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilty of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is not less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty of cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v.State of M.P.). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. The aspects were highlighted by this Court in Shivaji Sahabrao Bobade v.State of Maharashtra, Ramesh Babulal Doshi v.State of Gujrat, Jawant Singh v.State of Haryana, Raj Kishore Jha v.State of Bihar, State of Punjab v.Karnail Singh, State of Punjab v.Phola Singh, Suchand Pal v.Phani Pal and Sachchey Lal T.Giwari v.State of U.P.

10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference."

9. In the light of the above discussion, I find no merit in the present appeal preferred by the State against acquittal. It is dismissed. Trial Court record be sent back forthwith. Information be sent to Superintendent Jail.

(S.P.GARG)
JUDGE

JANUARY 21, 2016

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