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IN THE HIGH COURT OF DELHI AT NEW DELHI
+ C.R.LL.P.430/2015

Judgment Delivered on : 16th March, 2016

STATE

..... Appellant

Through : Ms. Aashaa Tiwari, APP for the State.

Versus

RAMESH @ RAVI & ANR.

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. The present leave to appeal has been preferred by the State under Section 378(3) of Code of Criminal Procedure against the impugned judgment dated 17.01.2015 whereby the accused persons were acquitted for the offences under Sections 363/366/376/120B of the Indian Penal Code.
2. The brief facts of the case, as stated by the prosecution are as under:

“The victim P aged about 15 years left her house for school at about 7 am, on 31.08.2010. However, she did not return back till late evening. Her family made efforts to search for her, but when there was no clue about the victim, the matter was reported to the police vide DD no. 57-B i.e Ex.PW-22/A, which was assigned to SI Mohd. Imtiaz for inquiry. SI Mohd. Imtiaz made efforts to contact complainant Satbir, but he was not found available. At about 2.35 am, on 1.09.2010, complainant Satbir went to the police station himself and made

complaint about missing of victim P. he expressed his suspicion on accused Ramesh for having enticed and kidnapped his daughter and prayed that necessary action be taken against him. SI Mohd. Imtiaz got registered a case u/s 363 IPC on the basis of the complaint made by Sh. Satbir and when further investigations of the case was assigned to him, pursuant to registration of the FIR, he commenced searched for the victim P as well as accused Ramesh. During the course of investigations, IO SI Imtiaz came to know that accused Ramesh and his jija Dharmender had taken the victim to their village at bulandshahar, UP. The IO conveyed this information to the complainant Satbir and after obtaining necessary permission, went to Bulandshahar, UP along with complainant Satbir and his own staff comprising of Ct. Vinod, Ct. Birisingh and Lady Ct. meenakshi and recovered the victim as well as accused Ramesh from jhuggie of accused Dharmender. On inquiry, victim p told the IO that on 31.08.2010, when she left her house for school, accused Ramesh @ Ravi met her on the way and started talking to her, due to which, she got late for school and was not permitted to enter inside the gate of the school by the guard. Thereafter, accused Ramesh 2 Ravi, took the victim R to the house of his sister, where his jija Dharmender as well as accused Ramesh @ Ravi, scared the victim and prevented her from going home by telling her that in case, she returned back to her home, she would be scolded by her family member. They instead took her to their village and after reaching there, victim came to know that she had been taken to the house of accused Dharmender in village. The victim r further stated that accused Dharmender left her and accused Ramesh at the said house and went away from there after taking some money from accused Ramesh and thereafter, accused Ramesh committed rape upon her. At night, when victim and accused Ramesh were about to leave the village, they were stopped by villagers from leaving

the village and thereafter, the police officials from Delhi came and recovered the victim and saved her from the clutches of accused Ramesh @ Ravi.

The IO brought the victim P as well as accused Ramesh to Delhi on the night of 01/02.09.2010 and sent them for medical examination and also seized the exhibits taken from them by the concerned doctor. On 02.09.2010, the IO produced the victim before Id. M.M and got her statement recorded u/s 164 Cr.P.C and on the basis of the said statement, added Section 366 and 376 IPC in the case. Further investigations of the case were thereafter, assigned to ASI Nirmala, who got the exhibits of the case sent to FSL Rohini. She also arrested the accused Dharmender, jija of the accused Ramesh on 01.10.2010. During the course of investigations, IO also made inquiry from the villagers, where accused Ramesh had taken the victim P, and was told by them that they had stopped accused Ramesh and victim p from leaving the village apprehending that some untoward incidents may occur with them due to late night hours. However, they had gone to inform the police, but before the local police could come, officials from Delhi Police reached their village. The IO also obtained the documents of age of victim from the school, according to which, date of birth of the victim was 12.10.1995. After completion of investigations, charge sheet was prepared and filed before the court of Id. M.M. Subsequently, the FSL result was also obtained and filed by the IO.

3. In order to substantiate its case, the prosecution examined as many as 22 witnesses.
4. Statement of accused persons was recorded under Section 313 of Code of Criminal Procedure wherein they reiterated their innocence. Accused Ramesh @ Ravi took the plea that he was having an affair with the prosecutrix. He belonged to a different caste, the parents of

the prosecutrix were against the said relation and thus falsely implicated him in the instant case. Accused Dharmender took the defence that rather he had informed the father of the victim regarding the whereabouts of the victim and when the father of the prosecutrix reached there, hot words were exchanged and hence he has been falsely implicated in the present case. No defence evidence has been led by the accused persons.

5. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court vide impugned judgment held that the prosecution miserably failed to prove that accused Ramesh @ Ravi kidnapped the victim and has raped upon her and accused Dharmender helped or conspired with accused Ramesh @ Ravi in the alleged kidnapping.
6. Ms. Aashaa Tiwari, Additional Public Prosecutor for the State contends that the impugned judgment is contrary to the settled position of law and thus is not sustainable; that the Trial Court disregarded and failed to take into account the relevant material on record and has based its findings on mere conjectures and surmises; that Trial Court erred in recording the finding that the victim was major at the time of occurrence ignoring the testimonies of PW8 and PW14; that the trial court has failed to take into consideration the settled law that the statement of the prosecutrix alone can be the basis of convicting the accused for the offence under Section 376 of the Indian Penal Code and would not require any corroboration; that the statement of the prosecutrix was consistent and trustworthy and thus the trial court erred in acquitting the respondent.

7. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

Age of the prosecutrix

8. In cases of sexual offences, it is incumbent upon the prosecution to establish the age of the prosecutrix because the age of the prosecutrix is a vital issue to determine the culpability. In the instant case also the most material question for determination is as to what was the age of the prosecutrix at the time of occurrence i.e. on 31.08.2010.
9. In order to prove the age of the victim, prosecution examined PW14 S. S. Dahiya, Vice Principal of the school who deposed that on 01.04.2008, the victim was admitted in school in 6th Standard on the basis of School Leaving Certificate Ex.PW17/B and mark sheet Ex.PW14/C issued by MC Primary School wherein the date of birth of the victim is recorded as 12.10.1995. To further strengthen the age of the victim, the prosecution examined PW8, clerk of MCD who stated that as per the available record, the date of birth of the victim was 12.10.1995 and the relevant entry of her date of birth was recorded on the basis of order Ex.PW8/A passed by SDM and Birth Report Form Ex.PW8/B submitted by the mother of the victim. It is pertinent to note herein that prosecution failed to bring on record the record from the first school attended by the victim. Perusal of the record shows that entry made on 23.07.2009 in the record of MCD was subsequent to the admission of the victim in 6th standard.
10. The above is the entire evidence about the age of the victim. Insofar as the oral evidence relating to the age of the victim comprising of the

depositions of PW1 (Father of the victim), PW12 (Mother of the victim) and PW7 (victim) is concerned, none of the witness uttered even a single word about the date of birth of the victim.

11. In view of the above, it shall not be unsafe to conclude that the inference drawn by the learned trial court that the prosecutrix was above the age of 18 years at the time of occurrence is borne out from the evidence adduced by the prosecution and no fault can be found with such finding.

Kidnapping of the victim

12. According to the victim in her statement Ex.PW7/X recorded by the police, she was enticed by accused Ramesh and on being threatening she accompanied him to the house of accused Dharmender in a village. The relevant part of her statement is as under :

Question : *Aap Ghar Se Kab Nikli?*

Answer : *Mein Ghar Se Samay 4:00 Baje Nikali.*

Question : *Aap Kitni Tareekh Ko Nikali?*

Answer : *Mein Dinank 31 ko Nikali. August Ki.*

Question : *App Ghar Se Kis Ke Saath Veh Kiski Marzi Se Gayi?*

Answer : *Mein Ghar Se Ramesh Ke Saath Nikli Veh Apni Marzi Se Nahi Gayi. Mujhe Behla Fusla Ke Chali Gayi.*

Question : *Kya Ramesh Aapko Jabardasti Se Lekar Gaya?*

Answer : *Ramesh Mujhe Jabardasti Se Lekar Gaya.*

13. In her statement recorded under Section 164 of Code of Criminal Procedure, the victim stated that on 31.08.2010 when she was going to school, accused Ravi, a resident of same locality met her on the way and started talking to her. She got late for school and the Chowkidar did not allow her to enter the school. On asking of Ravi, she

accompanied him to the house of his sister who was residing in Mangolpuri. They went on foot. She further stated that sister and Jija of accused were present in the house. Thereafter, both accused persons enticed her and took her to a village in a bus.

14. The victim was examined as PW7 before Court and on oath reiterated the facts as stated by her in her statement recorded under Section 164 of Code of Criminal Procedure. She further added that accused Ramesh enticed her and took her to the house of his sister in Mangolpuri where both accused persons enticed her to go to their native place in UP. When they reached there, accused Dharmender took some money from accused Ramesh and went away and thereafter accused Ramesh did Galat Kaam with her on two occasions on that night despite refusal.

15. During cross examination the victim deposed that:

"Accused Ramesh took me to the house of his sister at Mangolpuri on foot. On the way to Mangolpuri, public persons were coming and going on the road when accused was taking me to the house of his sister. The accused was holding my hand and I was literally being dragged by him. I did not raise any alarm about the said conduct of accused Ramesh. Since it was noon time, nobody was present in the gali where the house of sister of accused Ramesh was situated. I did not raise any alarm when accused Ramesh took me into the house of his sister."

16. In a similar case titled as *Avdesh v. The State of Haryana*, reported in *2010 (4) R.C.R. (Criminal) 154*, where no weapon was shown to the prosecutrix by the accused while threatening her. She travelled

with him in a bus. She had many occasions to raise alarm but she kept mum. There was no mark of external injury on her person. She was held to be a consenting party.

17. In the instant case, the Medico Legal Examination report Ex.PW3/A of the victim shows that the victim did not suffer any internal or external injury or abrasion on any part of her body. In her examination under Section 164 of Code of Criminal Procedure as well as deposition before Court, the victim did not mention that the accused persons were carrying any weapon. So, the story projected by the victim that she was enticed and forcibly taken away by the accused persons totally collapses. Thus, all the aforesaid circumstances, mentioned above, establish that the version of the prosecutrix that she was forcibly taken away and compelled to accompany accused Ramesh @ Ravi is highly improbable. Her behaviour of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural.

Contradiction in the testimonies of the witnesses

18. The main question involved for consideration in this leave petition is whether the testimony of prosecutrix is trustworthy, credible and worthy of reliance in order to convict the respondents herein? It is true that conviction in a case of rape can be based on the solitary testimony of the prosecutrix provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. In order to test the veracity of the deposition of prosecutrix, it needs to be discussed thread bare.

19. In the instant case, the victim in her statement Ex.PW7/X recorded by the police stated that on 31st August at about 4:00 she left her house as she was enticed by accused Ramesh. She further stated that accused Ramesh threatened her and enticed her on the pretext of marrying her. Accused Ramesh took her to the village of her Jija where he committed 'Galat Kaam' with her.
20. When this witness appeared before this Court as PW7, deposed that

"On 31.08.2010, I was going to my school at 7:00 am.

*On the way, I met accused Ramesh and he started talking to me. xxxxxx I know accused Ramesh as he is residing in same locality where I am residing with my parents. As accused Ramesh was talking to me, I got late for school. I required (sic) Chowkidar Uncle of the school to let me in but he refused stating that the entry time was over. **Then accused enticed me and took me to the house of his sister at Mangolpuri.** I do not know the name of his sister. At house of his sister, accused and his Jija Dharmender (accused) (witness has correctly identified the accused Dharmender through the design in the wooden partition) told me that if I returned home then I would be scolded by my parents and they thus enticed me to go with them to their native village in UP. I do not remember name of the said village. **When we reached said village, accused Dharmender took some money from accused Ramesh and went away. Thereafter, accused Ramesh did Galat Kaam with me on two occasions on that night despite my refusal.** I was scared. Accused Ramesh and I tried to leave village at night but the villagers stopped us from leaving due to late hours. One friend of Dharmender met us and took us to his house from where I was recovered by the police.*

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*I and accused Ramesh @ Ravi were brought to PS from where I was further taken for my medical examination to a hospital. I do not remember name of said hospital. **My***

clothes i.e. my school uniform was seized by the doctor, who examined me. Thereafter I went home."

21. On the next date of hearing PW7 deposed that :

" My clothes were taken by the doctor, who examined me in the hospital. On the last date of hearing, I had stated that I was wearing my school uniform at the time of my medical examination but now I remember that I was wearing a suit at that time and the same was seized by the doctor."

22. During cross examination PW7, the victim admitted that the accused Ramesh was studying with her in same school and he was residing in the same colony. She further admitted that she left for her school in school uniform when accused took her with him. She further admitted that public persons were present when accused took her to the house of his sister and also when both accused persons took her to the village in a bus but she never raised an alarm.

23. It is true that conviction in a case of rape can be based on the solitary testimony of the prosecutrix provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. *In Mohd Ali vs State of U.P : (2015)7SCC272* it was held as under:

"22. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an

impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-Appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.”

24. In **Krishan Kumar Malik Vs. State : (2011) 7 SCC 130**, the Hon’ble Supreme Court has held that:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Code of Criminal Procedure), FIR and deposition in Court.”

32. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. Record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the Appellant.”

25. It is settled position of law that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable case of prosecution. The testimony of the prosecutrix has to be appreciated on the principle of probabilities just as the testimony of any other witness. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which may lend assurance to her testimony. In a case where sole testimony of the prosecutrix does not inspire confidence and corroboration, it is to be read in its totality and if the

same is found improbable, in such case her testimony becomes liable to be rejected.

26. Applying the above principle to the present case, we find that the victim has not only given different versions but improvised her versions at different stages, which do not inspire confidence, are untrustworthy and not of a sterling quality. It would be unsafe to convict the accused persons on such statement.
27. Further, the case of the prosecution also does not hold ground as the prosecution failed to adduce the testimony of the person from where the accused Ramesh and the victim were recovered. The clothes of victim seized by the doctor at the time of conducting her medical examination is also doubtful. Moreso, the defence taken up by accused Dharmender is more plausible that he only informed the whereabouts of the victim to her father as the father of the victim during cross examination admitted that he along with his two relatives, father of accused Ramesh and two male police officials and one female official went to village Nangla, Bulandshehar.
28. In ***Tota Singh and Anr. Vs. State of Punjab*** reported in ***AIR 1987 SC 108***, the Hon'ble Supreme Court made the following observation:

“6. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any

Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”

29. In ***State of Rajasthan Vs. Raja Ram*** reported in **AIR 2003 SC 3601** the Hon’ble Supreme Court held as under:

“7. There is no emerge 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 guilt 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 no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by 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, it is a compelling reason for interference.”

30. In the case of ***State of Madhya Pradesh v. Dal Singh & Ors.***, reported

at *JT 2013 (8) SC 625*, the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant materials have been unjustifiably ignored, it would be a compelling reason for interference.

31. In view of the aforesaid facts, we do not find any infirmity in the impugned judgment passed by learned trial court. We do not see any cogent reason to interfere with the findings of fact recorded by the courts below. Consequently, leave to appeal stands dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MARCH 16, 2016

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