

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

**RESERVED ON : 6<sup>th</sup> APRIL, 2016**

**DECIDED ON : 8<sup>th</sup> JULY, 2016**

**+ CRL.A.586/2015**

**STATE**

**..... Appellant**

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

**VERSUS**

**ACHE LAL**

**..... Respondent**

**Through : Ms.Neha Garg, Advocate.**

**CORAM:**

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

**S.P.GARG, J.**

1. File taken up today as 7<sup>th</sup> July, 2016 fixed for pronouncement was declared holiday on account of 'Id ul-Fitr'.

2. Challenge in this appeal is a judgment dated 09.11.2012 of learned Addl. Sessions Judge in Sessions Case No.225/09 arising out of FIR No.210/09 PS Sultanpuri whereby the respondent – Ache Lal was acquitted of the charge under Sections 376/506 II IPC. The appeal is contested by the respondent.

3. Briefly stated, the prosecution case as stated in the charge-sheet was that prior to 10.06.2009 at House No.I-91, Krishan Vihar, Sultanpuri, Delhi, the respondent (victim's father) committed rape upon the prosecutrix 'X' (changed name) aged around 16 years continuously for about two / two and a half years and criminally intimidated her. Written complaint (Ex.PW-1/A) was made by the prosecutrix on 10.06.2009 at Police Station Sultan

Puri and the Investigating Officer after making endorsement (Ex.PW-7/A) lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. The accused was arrested and medically examined. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the respondent in the Court. In order to establish its case the prosecution examined twenty witnesses. In 313 Cr.P.C. statement, the accused abjured the guilt and pleaded false implication. He examined DW-1 (Savita) and DW-2 (Deepak Sharma) in defence. After hearing the rival contentions of the parties and on appreciation of the evidence, the Trial Court, by the impugned judgment, acquitted the respondent of the charges. Being aggrieved and dissatisfied, the State has filed the instant appeal.

4. I have heard the learned counsel for the parties and have examined the file. Learned Addl. Public Prosecutor urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Clinching evidence of the prosecutrix (respondent's daughter) was ignored or disbelieved by the Trial Court without cogent reasons. The prosecutrix was categorical to level serious allegations of rape against her own father. In the absence of any previous animosity or enmity, the prosecutrix was not expected to rope in her own father. She was sexually abused for about three years by the respondent after putting her in fear and inflicting injuries to her. The prosecutrix has given specific instance when for the first time she was ravished by the respondent in the absence of her mother and brother who had gone to Mathura. Taking advantage of her loneliness, the respondent who used to consume liquor committed rape upon her own daughter. Learned counsel for the respondent urged that there is no illegality or

irregularity in the impugned judgment based upon fair appreciation of the evidence. The prosecutrix nurtured grievance against her father who used to restrain her from indulging in wrong activities. At Sonu's behest 'X' has implicated the respondent in a false case.

5. At the outset, it may be mentioned that it was only the prosecutrix 'X' who in her Court statement as PW-1 implicated the respondent – her father to have sexually abused her for about three years at Haldwani and Delhi after criminally intimidating her. Her statement has not been corroborated by any other independent source. Needless to say, conviction can be based upon the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the Court has reasons not to accept the version of the prosecutrix on its face value, it may look for corroboration. To examine the case of the prosecution, the trustworthiness of testimony of the prosecutrix is to be analysed threadbare. It should be of sterling quality.

6. Admitted position is that the prosecutrix along the respondent – her father, DW-1 (Savita) – her mother and DW-2 (Deepak Sharma) – her brother used to live at Haldwani, Nanital (Uttarakhand), where the respondent was working in Indian Army and was posted there about three years prior to the lodging of the FIR. The respondent after his retirement shifted to Krishan Vihar, Sultanpuri, Delhi; the said house was renovated. It is also admitted that many relatives of the prosecutrix i.e. maternal uncle and maternal aunt also lived in Delhi.

7. Police machinery swung into action on receiving information of the crime by Daily Diary (DD) No.39A (Ex.PW-12/A) on 09.06.2009 at around 10.02 p.m. to the effect that the prosecutrix 'X' aged around 16 years

had run away from her house as her father used to tease her and she was present at Police Post Shanti Nagar. Investigation was assigned to SI Ashok. DD No.28 (Ex.PW-7/D) at 10.15 p.m. at Police Post Shanti Nagar records information conveyed by the prosecutrix that she had left the house due to teasing by her father. Apparently, the complainant did not level any allegations of sexual assault in her initial statements conveyed to the police by the above DD Entries Nos.39A (Ex.PW-12/A) and 28 (Ex.PW-7/D).

8. In her comprehensive written complaint (Ex.PW-1/A) given to the Investigating Officer PW-7 (SI Ashok Kumar), the victim gave graphic account and levelled various allegations of sexual abuse against her father, even when her mother and brother used to remain present in the house. She gave several instances when she was criminally intimidated. She further disclosed that when her mother and brother had gone to Aligarh, on the first night the respondent insisted to do 'everything' but it was resisted by her. However, on the next day when she was in sleep the accused put off her clothes and forced upon her; she could not do anything. The accused used to threaten her by a knife. She further disclosed that the accused used to abuse her.

9. In her 164 Cr.P.C. statement (Ex.PW-1/B) recorded on 10.06.2009, she implicated the respondent for outraging her modesty; extending threats to her; forcing her to sleep with him; giving beatings to her and her mother; showing blue films; committing rape upon her in the absence of her mother and brother when they were away to Aligarh etc. In her Court statement also as PW-1, she accused the appellant for various indecent assaults including rape upon her.

10. The Trial Court after scrutinising various statements made by the prosecutrix before the police or Court came to the conclusion that she had made vital improvements gradually. It was observed that the prosecutrix in her Court statement deposed regarding the incident happened at Haldwani which did not find mention at all in her complaint (Ex.PW-1/A) forming basis of the registration of the FIR. It was further noted as to what PW-1 'X' deposed with regard to incidents at Haldwani were either at variance or improved version or missing as to what she stated in her 164 Cr.P.C. statement (Ex.PW-1/B). Statement of the prosecutrix has not been corroborated at all on material facts. It is relevant to note that the prosecutrix did not lodge any complaint with the police or any other authority to complain about the respondent's conduct and behaviour prior to lodging of the FIR on 09.06.2009, though, she was allegedly being sexually abused for the last about more than three years at Haldwani and Delhi. No plausible explanation has been offered by the prosecutrix for maintaining silence for so long. She continued to live with the respondent during the entire period. She did not even complain to her school friends or teachers. She alleged that the respondent used to give beatings to her and her mother. No complaint whatsoever was ever lodged by the victim's mother against the respondent for physical torture any time. Neither of them was medically examined to ascertain if they sustained any vital injuries on their bodies. When the prosecutrix was medically examined vide MLC (Ex.PW-2/A) after registration of the FIR, no visible external injuries were found on her body. She was young and could have offered resistance. No violent mark was noticed on her body to infer if she ever offered resistance.

11. The prosecutrix alleged that the respondent used to sexually assault her in the presence of her mother and brother sleeping in the said room on the same bed. It is highly unbelievable that victim's mother and brother would not object to the nefarious activities of the respondent and would freely allow him to defile the victim. They have rather appeared in defence to protect the respondent. In her defence evidence, DW-1 (Savita) – victim's mother categorically deposed that the prosecutrix was not an obedient child. One Sonu used to chase her. On her complaint about her conduct, the appellant used to beat her. The prosecutrix used to talk to Sonu secretly on mobile and was not listening to them for not talking to him. She had gone to lodge complaint with the Principal of the school. On enquiry by the Principal, the prosecutrix told a lie that the mobile phone was purchased by her from her savings; it contained obscene messages. Her daughter was totally under Sonu's influence and used to remain absent during day and night. On being questioned about her absence, she used to become violent. 'X' used to allow Sonu to come inside the room secretly. She had seen Sonu's name tattooed by 'X' on her breast. When her daughter was caught talking on mobile to Sonu and the mobile was seized, she slashed her forearm with a blade. The respondent had always treated 'X' like 'son' and never harassed her. He was falsely implicated at Sonu's instance. 'X' used to sleep with her and was never forced by the respondent to sleep with him. She also disclosed that at one time, the prosecutrix had given a blow to the respondent by a big 'spoon' (karchi); on other occasion had given blow by a water rod. PW-Savita, victim's mother, is not expected to exonerate the respondent for the heinous offence allegedly committed by him with her own daughter. It is relevant to note that soon after lodging of the FIR, the

witness lodged various complaints against the complainant before the Investigating Agency for respondent's false implication.

12. DW-2 (Deepak Sharma) – victim's brother did not support the prosecutrix and rather blamed 'X' for misbehaving with the respondent. He claimed that 'X' used to sleep with her mother. Nothing had happened with his sister. His father used to beat her whenever she abstained from going to school or misbehaved with him. Apparently, DW-2 (Deepak Sharma) would not have remained silent, had respondent indulged in the sexual assault of his sister.

13. It has come on record that various close relations of the prosecutrix lived in Delhi. The prosecutrix informed in her Court statement that the matter was brought to their notice and they had intervened. However, none of them came forward to substantiate the victim's version. The prosecutrix even informed that she had brought the incidents of molestation to the notice of the neighbours, however, she did not disclose their names and none of them was examined. The Investigating Officer did not record statement of any neighbour either at Haldwani or Delhi to ascertain the conduct and behaviour of the respondent towards the prosecutrix. Non-examination of crucial witnesses to whom the alleged incident was first reported by 'X' certainly rendered the prosecution case doubtful.

14. In her Court statement, the prosecutrix alleged that the accused used to administer medicine to her. No such medicine was found or collected. The blue films allegedly shown by the respondent to the victim were not recovered. It was not verified as to from where any such blue film was procured. In her Court statement, the prosecutrix has levelled all sorts

of allegations against the respondent which did not find mention in complaint (Ex.PW-1/A) and in her 164 Cr.P.C. statement (Ex.PW-1/B). Relations between the prosecutrix and the respondent were strain. As per own admission, one day, she had followed the respondent in the kitchen and had struck on his head with a 'karchi'. The prosecutrix went to her maternal uncle Kailash's home and stayed there for short duration. She admitted that thereafter she came back to her residence. She apprised her Nani only regarding teasing without any reference of any incident of forcible rape. Again, at the time of 'Katha pooja' at her mausi's home at Tri Nagar, the victim complained only regarding teasing and incident of being shown pornographic CDs; she did not disclose any incident of rape.

15. On 09.06.2009, the prosecutrix left the home when allegedly she was asked to masturbate the respondent by hand; she threatened to inform the police. She expressed the desire to go to her maternal uncle Kailash's house. The prosecutrix along with DW-2 (Deepak Sharma) went there. However, the incident was not reported to the police. The prosecutrix left her maternal uncle's home without informing them and went to Tri Nagar. She thereafter went to a park and kept sitting there. Thereafter, she went to a PCO and called the women helpline No.1091 and told her location to the police. PCR van came and took her to Police Post Shanti Nagar. In the cross-examination, she admitted that she had gone to meet her father in Rohini Jail once. She, however, denied if she had assured her father to help him out. She admitted that once Ravi and Prince had given beatings to her. She did not elaborate as to why they had given beatings to her on a public place. The Trial Court observed that beating of a teenaged girl by two males was not a normal phenomena. Furthermore, no complaint was made in that



regard by the prosecutrix. It all suggested that there was something wrong with the prosecutrix when neighbours thought of beating her publically. ‘X’ admitted that her Principal had objected to her keeping the mobile in school.

16. The Trial Court upon appreciation of the evidence minutely came to the conclusion that the prosecutrix had made a futile attempt to conceal the truth. It further observed that the prosecutrix came forward with a version totally conflicting with what she had stated in her complaint (Ex.PW-1/A) and in her 164 Cr.P.C. statement (Ex.PW-1/B). X’s version on the core spectrum of the crime failed to remain intact. Her testimony was found to be blemished, un-convincing and untrustworthy. She had animus against the accused to falsely implicate him in the case. The impugned judgment based upon fair appraisal of the evidence needs no intervention. There are no valid reason to take a different view. The Trial Court took into account the serious flaws in her statement which practically demolished her version as propounded by the prosecution. The respondent deserves benefit of doubt.

17. 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.”*

18. 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.”*

19. 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**

**JULY 08, 2016 / tr**