

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 05, 2017

DECIDED ON : JUNE 06, 2017

+

CRL.A. 176/2016

STATE

..... Appellant

Through : Ms.Manjeet Arya, APP.

versus

SUMIT KUMAR

..... Respondent

Through : Mr.G.P.Thareja with Mr.Satender
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant appeal has been preferred by the State to impugn the judgment dated 04.01.2013 of learned Additional Sessions Judge in Sessions Case No.172/2011 emanating from FIR No.208/2011 at Police Station Chhawla by which the respondent Sumit Kumar was acquitted of the charge under Section 376 IPC.

2. Briefly stated, the prosecution case, as reflected in the charge-sheet was that in the first week of January 2008 at his House No. C-1/1160. Vasant Kunj, New Delhi and thereafter on several occasions at his house and on 21.3.2010 at the victim's house at E-269, Shyam Vihar-I, Najafgarh, New

Delhi, the respondent committed rape upon the prosecutrix 'X' (changed name), aged around 31 years. On 06.10.2011, the prosecutrix lodged the written complainant with the police of Police Station Chhawla implicating the respondent for commission of rape upon her on various occasions. The Investigating Officer lodged First Information Report. 'X' was medically examined; she recorded her 164 Cr.P.C statement. The respondent 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 under Sections 376/506 IPC. To establish its case, the prosecution examined six witnesses. In 313 Cr.P.C. statement, the respondent denied his involvement in the crime and pleaded false implication. He examined DW-1 (HC Ram Pal) and DW-2 (Megha Kapoor) in defence. The trial resulted in his acquittal as aforesaid. Being aggrieved and dissatisfied, the State has preferred the instant appeal.

3. I have heard the learned counsel for the parties and have examined the file.

4. At the outset, it may be mentioned that the entire case of the prosecution was based upon the sole testimony of the prosecutrix 'X'. The Trial Court was of the view that there were material inconsistencies and infirmities in her statement and it was not safe to base conviction on her solitary testimony. The Trial Court also came to the conclusion that the prosecutrix was a consenting party throughout and there was no promise to marry ever given by the appellant to obtain her consent for physical relationship. The Trial Court relied upon various e-mails between the parties whereby the prosecutrix had not shown if there was any such promise of marriage by the respondent.

5. The prosecutrix 'X' and the respondent were acquainted with each other. They both were working in a company M/s Covergys. The respondent used to work in the said company. PW-2 ('X') disclosed that she joined M/s Convergys Pvt. Ltd, Gurgaon in October, 2007. She was to undergo training course. The respondent was one of the trainers to train the entire batch. She further disclosed that during training, they used to interact with each other. They developed some sort of intimacy and continued talking to each other on phone after the training hours. From Prachi, the respondent came to know that 'X' was still unmarried. After coming to know about it, the respondent started talking to her more. They started dating each other. The respondent sent her text message 'I like you. I like your smile'. Thereafter, they started dating each other and used to meet at restaurants in Gurgaon as well as in a park near the house of the respondent.

6. The first incident where allegedly the victim was sexually assaulted took place in January, 2008 when the respondent asked her to accompany him to his house to see his mother. When she went there, she did not find respondent's mother. She deposed that the respondent took her to his bed room where they started talking to each other. Soon the respondent started touching her inappropriately. She opposed his moves but the respondent still continued to touch her. Suddenly he dashed her on the bed and forced himself upon her. She was shocked and could not respond to the respondent's actions. He was not allowing her to speak and kept on repeating 'wait wait'. He had kept the volume of the television very high. The respondent committed sexual intercourse with her. After it was done, she enquired as to what he had done. The respondent told her not to worry as he would marry her. She further disclosed that physical relationship took

place between the two on several occasions at various places for three years. The respondent though promised to marry her repeatedly but did not fulfill it. She was exploited for three years on the false pretext to marry.

7. On perusal of the entire statement of the prosecutrix, it reveals that the prosecutrix, aged around 31 years, was well aware as to what were the consequences of her establishing physical relationship with the respondent. Nothing has emerged on record to show if any time, the victim's consent for physical relationship was obtained by deceit or on the false pretext to marry. During long three years, the victim did not insist for marriage with the respondent. She did not apprise her parents about her inclination to marry the respondent. She did not examine any her family member to corroborate her version if any such talks for marriage were going on between her and the respondent or they were aware of it. The prosecutrix did not take into confidence her parents. She did not reveal them if physical relationship had taken place with the respondent at any stage on the promise to marry. It has, however, come on record that during this period victim's parents used to give matrimonials in the newspapers for her marriage. The victim was aware of the matrimonials and never asked her parents not to go for that as she was expecting marriage with the respondent. The Trial Court has given cogent reasons to arrive at the conclusion that at no stage, the respondent had promised to marry the victim. Various e-mails sent by the victim have been reproduced in the impugned judgment. In the said e-mails at no stage, the victim insisted for her marriage with the respondent. Even in the first week of January, 2008, when the physical relationship occurred, initially there was no promise to marry. The Trial Court was of the view that there was no forcible rape upon the victim. She did not raise any alarm.

She maintain complete silence on the so called promise to marry. After the alleged commission of rape, the victim did not take any steps, whatsoever, to lodge complaint against the respondent. Contrary to that, she continued to have physical relations with the respondent at various places even at her residence. There was no compulsion for the victim to have physical relations with the respondent simply to get the alleged promise to marry fulfilled. Nothing is on record to show if any injuries, whatsoever, were found on victim's body including her private parts in the alleged forcible rape in the first week of January, 2008. In her MLC no external injuries on her body, whatsoever, were noticed. Apparently, physical relationships between the prosecutrix and the victim (if any) were with her consent. This relationship continued for long three years and the victim had no complaint, whatsoever, against the respondent's conduct and attitude any time. Only when the respondent attempted to keep distance from her, she got enraged and lodged the instant complaint. She was agitated as the respondent had decided to perform marriage with another girl. She even approached the said girl who appeared as defence witness as DW-2. She is Megha Kapoor who performed marriage with the respondent after engagement on 19.02.2011. The marriage took place on 06.11.2011. She had no complaints against the respondent. The victim had come to her office M/s IBM at Gurgaon on 7th or 8th September, 2011. She threatened her that she would not allow her alliance with the respondent. DW-2 informed her parents and in turn they talked to the parents of the respondent. She further deposed that 'X' had issued similar threats to her parents also on telephone. The victim had no occasion to intimidate DW-2, the lady with whom the respondent was to marry.

8. The impugned judgment based upon fair appreciation of evidence deserves no intervention. The law regarding appeals against acquittal is well settled. Even if two views are possible, the appellate court could not ordinarily interfere with the judgment of acquittal. The appellate court may overrule or disturb the Trial Court's acquittal if it has very substantial and compelling reasons for doing so. In the instant case, nothing is on record to infer if the judgment recorded by the Trial Court is perverse. Settled legal position is that conviction can be based upon the sole testimony of the prosecutrix provided it is reliable and is of sterling quality. The testimony should be beyond suspect and of very high quality. A case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully. Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape. In the instant case, the testimony of the victim is highly disputed and unreliable. There is delay of three long years in lodging the report with the police on the alleged promise to marry after the so called commission of rape took place in the first week of January, 2008. In the State of Rajasthan vs. Raja Ram 2003 CriLJ 3901 the court held:

“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 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. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh]. 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.

9. Resultantly, the appeal filed by the State is without substance and is dismissed.
10. Trial Court record be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

JUNE 06, 2017/sa