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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21ST August, 2017

+ CRL.L.P. 295/2016 & CrI.M.A. 8625/2016 (delay in filing),
7769/2017 (Addl. Documents), 7770/2017 (exemption)

PROSECUTRIX THROUGH STATE

..... Petitioner

Through: Mr. Vishal Kumar, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr. Rajat Katyal, APP with W/Insp.
Parvati & W/ASI Sunita, CAW Cell,
PS:Gandhi Nagar, Delhi
Mr. Anupam S. Sharma, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.(ORAL)

1. The present leave to appeal has been filed by the Prosecutrix under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.PC') against the judgment dated 30.01.2016 by the Court of Additional Sessions Judge, East District, Karkardooma Courts, New Delhi in SC No.75/12 titled State v. Krishan Kumar under Sections 363/376/506 Indian Penal Code ('IPC'), 1860, whereby the accused Krishan Kumar was acquitted of the charges framed against him.

2. The case of the prosecution, as noticed by the Trial Court, is that the victim was about 16 ½ years of age and was a student of 10th class at the time of the incident. On 11.05.2011, she received an SMS and calls from an unknown person (later on disclosed as respondent No.2– Krishan Kumar, aged 21 years). She did not tell her family member about him and stayed in touch with him through her father's, mother's, sister's and even friend's mobile phones. On 22.08.2011, the prosecutrix decided to meet the accused at around 12:30 PM, she went to Mahavir Park to meet him, where she found a small white colour small car parked. The accused pulled her inside the car, apart from one driver called Amit *bhaiya* was also present in the car. The accused did not stop the car even when the prosecutrix requested him, thereafter he drove the car to a guest house near the airport, then the accused locked her inside the car and went inside the guest house with the driver. After a short while, they came out and took the prosecutrix inside the guest house, where he forcefully raped her, thereafter, the prosecutrix followed him to the car and sat beside him. After the incident, the accused remained in contact over telephone with the prosecutrix and continued to threaten her. The prosecutrix disclosed in her complainant that she had disclosed the entire happening of the incident to her parents, who had brought her to the Police Station and registered a First Information Report ('FIR') under Sections 363/376/506 IPC, thereafter the prosecutrix was medically examined at SDN hospital vide MLC NO.552/12, dated 20.03.2012. The accused was arrested on 21.03.2012 from Ghaziabad, Uttar Pradesh. He was medically examined, his blood samples, semen samples were

obtained and thereafter a charge-sheet was filed in the Court. Certain call details and guest house entry register were taken into possession by the police and the statement of the victim was recorded under Section 164 Cr.PC.

3. On 07.08.2012, charges for the offence under Sections 366/376/506 IPC were framed against the accused, to which he pleaded not guilty. To bring home the guilt of the accused herein, the prosecution examined 16 witnesses. The statement of the accused was recorded under Section 313 Cr.PC where he pleaded false implication.

4. We have heard learned APP for the State and have carefully examined the judgment of the Trial Court.

5. In this case, on consideration of the evidence, the material placed on record, and after considering the arguments advanced, we have found that the following circumstances were relied upon by the Trial Court to acquit the accused:-

- (a) There was a delay of 7 months in lodging the FIR after the alleged incident took place on 22.08.2011, as the prosecutrix had not told her parents about the incident earlier.
- (b) As per the statement made under Section 164 Cr. PC and the MLC (Ex. PW-13/A) of the prosecutrix, after she had apprised her mother about the incident, her mother had given the prosecutrix I-pill on the same day.

(c) The parents of the prosecutrix have not given any explanation regarding the delay in the lodging of the FIR.

(d) As per the testimony of the prosecutrix, on the date of alleged incident, i.e., 22.08.2011, she was more than 16 years of age, her date of birth being 20.08.1995.

(e) The prosecutrix was continuously in touch with respondent No.2, prior to the date of the alleged incident through mobile phones of her mother, father and sister.

(f) On the day of incident, the prosecutrix had made a telephonic call to respondent No.2 at 4:00 am in the morning, whereby they decided to meet at a particular place. When she did not see the accused at the decided place, she went to her friend's house and again made a telephonic call through her friend's mobile phone and again decided to meet at Mahavir Park.

(g) The prosecutrix did not do anything to escape from the car when the respondent No.2 and the driver went inside the guest house nor did she apprise anyone that the respondent No.2 had forcefully brought her there.

(h) The testimony of PW-12, i.e., the Front Office Manager of the guest house shows that no female had accompanied respondent No.2 on the date of the incident.

6. We have heard Learned counsel for the petitioner, Learned APP for the State and Learned counsel for the respondent No.2. We have gone through the written arguments filed on behalf of the petitioner

and respondent No.2. Learned counsel for the petitioner submitted that on 20.3.2012, an FIR was lodged for the offence committed on 22.8.2011 by respondent No.2, who committed the unlawful act after putting the prosecutrix under threat. The prosecutrix was just 16 ½ years of age and was studying in 10th class at that time. The family of the prosecutrix is from a lower middle class and because of the social stigma of being shamed in the society and being parents of three girl children, they were scared to report the said incident, with time they had gained courage to report the incident. One of the another reason stated for reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, was because they were concerned about the reputation of the prosecutrix and the honour of the entire family. Learned counsel for the petitioner has relied on the judgment of the Supreme Court in the matter of ***State of Punjab v. Gurmit Singh & Ors., (1996) 2 SCC 384***. Mr. Katyal submits that while there was a delay in the registration of the FIR, the reason for the delay is well-explained and is founded on well-established principles. Learned counsel for the petitioner further submitted that, even otherwise respondent No.2 had threatened of dire consequences in case the prosecutrix reports or discloses the offence. It is also stated that, in view of Section 114-A of the Indian Evidence Act, 1872 and Section 90 of the Indian Penal Code, 1860, the learned Trial Court ought to have convicted respondent No.2. Mr. Katyal further stated that, in case the Court comes to the conclusion that there was consent of the prosecutrix to have sex with respondent No.2, even then the same cannot be treated as voluntarily, as such consent cannot

condone the offence. Reliance in this regard is placed on ***Emperor v. Mussammat Soma, reported as (1917) Crl. LJR 18(18)***. Hence, it is submitted by learned counsel for the petitioner that the judgment dated 30.01.2016 of the learned Trial Court is liable to be set aside.

7. Learned APP for the State supports the case of the petitioner. However, learned counsel for respondent No.2 vehemently opposes the leave to appeal. While relying on the judgment of the learned Trial Court, it is submitted that leave to appeal may be dismissed.

8. We have gone through the evidence on record as well as documents placed on record. It is not in dispute that the prosecutrix was aged about 16 ½ years of age and was studying in 10th Class at the time of incident. The prosecutrix was first called on 11.5.2011 by an unknown person (later disclosed as respondent No2-Krishan Kumar). It is a fact on record that the alleged offence was stated to have been committed on 22.8.2011. However, the FIR was registered under Sections 363/376/506 IPC on 20.3.2012, i.e., after a lapse of almost 7 months. In the cross-examination, dated 30.5.2013, it has been stated by the prosecutrix that, on 22.8.2011, when she reached her house, her father was not present. However, he came after ten minutes of her arrival and she told all these facts to her father, who neither made a call to the police nor went to the police station. She also stated in her statement under Section 164 Cr. PC that she told her mother about the incident, who gave her an I-pill. The statement of the prosecutrix under Section 164 Cr.PC and the evidence in Court

clearly proves that the prosecutrix had narrated the facts about the incident to her parents on 22.8.2011 itself, which also stands borne out and proved from the MLC of the prosecutrix, dated 22.3.2012. The learned Trial Court has taken this factor of delay into consideration and given a thoughtful deliberation and rejected the contention of the prosecutrix, explaining the delay. We have also gone through the evidence as well as the statement of the prosecutrix, there is nothing on record which may justify the same. Neither the father of the prosecutrix (PW-2) nor her mother (PW-3) uttered even a single word as to why they did not lodge the FIR promptly. The explanation given by the IO(PW-16) does not, in any way, appeal to our minds. We do not find any cogent reason or explanation on record to justify inordinate delay of 7 months in lodging of the FIR.

9. The Supreme Court in the matter of **Thulia Kali v. State of Tamil Nadu** (Criminal Appeal No.165/1971) held that 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.

10. We fully concur with the contention of learned counsel for respondent No.2 that the conduct of the prosecutrix is inconsistent with that of a person who has been ravished. Learned counsel for

respondent No.2 submitted that as per testimony of prosecutrix herself, on the date of the alleged incident, i.e., 22.8.2011, she was more than 16 years of age, her date of birth being 20.8.1995. The prosecutrix was continuously in touch with the accused, much prior to the date of the alleged incident through mobile phones of her mother, father and sister. On the day of the incident, the prosecutrix herself made a telephonic call to the accused at 4:00 am in the morning and decided to meet him at a particular place. When she did not see the accused at the decided place, instead of going back to her own house, she went to her friend's house and again made a telephonic call, a conversation took place between the prosecutrix and the accused and then she decided to meet him at Mahavir Park. This proves that the prosecutrix herself was eager to see the accused, she never told her parents or family members that she was in touch with the accused, rather she used to delete the number as well as the SMS sent to the accused. She did not even try to escape from the car nor raised any alarm, when the accused and driver went inside the guest house for quite some time or to bring into someone's notice that the accused had forcefully brought her there. Additionally, the testimony of PW-12 (Front Office Manager of the guest house) shows that no female had accompanied the accused on the date of the incident.

11. The facts of the case, including the conduct and testimonies of the prosecutrix and her parents, do not inspire confidence. In a case of delay in lodging the FIR, there are chances of embellishment, coloured version, and/or false implication. Hence, we do agree with

the findings of the learned Trial Court that the accused deserves to be given the benefit of doubt and that the prosecution has failed to prove its case beyond reasonable doubt and the same is bound to fail. In ***Tejinder Singh @ Kaka v. State of Punjab, JT 2013(6) SC 585***, in para 10, it is held as under:

“10.....the High Court did not follow the well established principle of law that in appeal against the conviction, the appellate court has the duty to appreciate the evidence on record and benefit of reasonable doubt has to be given to the accused which has not been done by it.”

12. In ***T.Subramaniam v. State of Tamil Nadu, (2006) 1 SCC 401***, while relying on ***State through Inspector of Police, Andhra Pradesh v. K. Narasimhachary, [2005 (8) SCALE 266]***, it is held as under:

“We have reiterated the well recognized principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court; and that only where the material-on-record leads to a sole and inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court.”

13. It is a matter of law that the High Court possesses wide powers and can re-appreciate the evidence while hearing an appeal against an order of acquittal; at the same time the Court has to be satisfied that the conclusions reached by the Trial Court are unreasonable and that relevant and convincing material were unjustifiably not taken into consideration. The High Court, while hearing an appeal, would be slow to interfere in the order of acquittal if the view taken by the Trial Court is reasonable and probable. Even where two views are possible and one is taken by the Trial Court, the High Court has no power to

replace the view of the Trial Court with its own view. The view taken by the learned Additional Sessions Judge in this case is reasonable and plausible, therefore does not call for any interference.

14. Accordingly, we find no ground to interfere in the judgment of the Trial Court. The personal bonds and the sureties under Section 437-A Cr.P.C. are discharged.

15. The leave to appeal is dismissed. All the pending applications are also dismissed.

CHANDER SHEKHAR, J

G.S.SISTANI, J

AUGUST 21, 2017
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