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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.10.2021

PRONOUNCED ON : 02.11.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.A.No.49 of 2010

State represented by:

The Inspector of Police,
W-1, All Women Police Station,
Thousand Lights, Chennai - 6.
(Crime No.16/05)

.. Appellant/Complainant

Vs.

1.Radhakrishnan

2.Kittu @ Chinna Kuzhandai

.. Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., to allow the appeal and set aside the acquittal judgment dated 30.04.2008 in S.C.No.372 of 2005 on the file of the learned Sessions Judge, Mahila Court, Chennai and convict the respondents/accused as charged.

For Appellant

.. Mr.E.Raj Thilak

For R1

.. Mr.R.Vijajkumar

For R2

.. Ms.Revathy G Mohan

JUDGMENT

This Criminal Appeal has been filed under Section 378 of Cr.P.C. by the prosecution / complainant / State represented by the Inspector of Police, W-1, All Women Police Station, Thousand Lights, Chennai - 600 006, questioning the judgment dated 30.04.2008 in S.C.No.372 of 2005 passed by the Sessions Judge, Mahila Court, Chennai acquitting the accused therein of all charges.

2.For the sake of convenience even though the complainant is the appellant and the accused are the respondents in this appeal, their nomenclature in accordance with the Sessions Case would be used to describe them.



3.A final report had been filed by the Inspector of Police, W-1, All Women Police Station, Thousand Lights, Chennai, before the XIV Metropolitan Magistrate Egmore, Chennai, against A1 - Radhakrishnan, A2 - Kittu @ Chinnakozhandai alleging offence under Section 376(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and under Section 506(ii) IPC against A1 and under Section 376(1) IPC r/w Section 109 IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and under Section 506(ii) IPC against A2 and A3.

4.In the final report, it had been stated that the Inspector of Police, W1-All Women Police Station, Thousand Lights Chennai, had registered a FIR in Crime No.16 of 2005 on a complaint given by PW-1 Lakshmi, Project Co-ordinator of Child Line, Chennai.

5.During the course of investigation into the allegations, it had transpired that A1 Radhakrishnan had sexually exploited several young girls in his native village at Vaniyambadi and in pursuant to such investigation, it had been stated in the final report that A1 who was working as Inspector in Customs Department, in September 2003, when a minor victim Z was studying in 7th standard, during the quarterly examination holidays, when she was in the house with her parents at her villlage in Vellore District, A1/Radhakrishnan and A2/Kittu @ Chinnakuzhandai had gone to the house and had informed the parents that they would give education for Z and would take adoption of Z and giving false promises, had taken the minor girl Z to the farm house of A1 at Sangilikuppam. A1 had then taken her to his room, tied her legs, gave her an injection and raped her. Thereafter, A1 took Z to his house at No.31/9, 8th Street, Sowrashttra Nagar, Choolaimedu, Chennai and again gave a drugged injection and again forcibly raped her. Thereafter, he gave Rs.50/- to A2 and directed him to leave Z in her house. He then threatened her and if she stated about these facts to anybody, nobody would survive in her house.

6.In view of the above facts, it had been alleged that A1/Radhakrishnan had committed offences under Section 376(1) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and under Section 506(ii) IPC and A2/Kittu @ Chinna Kozhandai had committed offences under Section 376(1) r/w Section 109 IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and under Section 506(ii) IPC.

7.The final report was presented before the XIV Metropolitan Magistrate, Egmore. It was taken on record as PRC No.190 of 2005 and since the offences were triable exclusively by a Court of Sessions, it was committed to the Sessions Judge, Mahila Court, Chennai by the XIV Metropolitan Magistrate, Egmore Chennai. On



committal it was taken cognizance as S.C.No.372 of 2005.

8.Summons were issued to the accused who appeared. Documents were furnished to them under Section 207 Cr.P.C.

9.The following charges were framed against the accused.
Charge-1 against A1 under Sections 376(1) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.
Charge - 2 against A1 under Section 506(ii) IPC.
Charge - 3 against A2 under Section 376(1) r/w Section 109 IPC.

The following additional charge was also framed against A1 under Section 366 IPC.

10.The accused denied the charges, when questioned. The prosecution was then called upon to prove the charges by adducing oral and documentary evidence. To substantiate the charges, prosecution examined PW-1 to PW-10 witnesses and marked Exs.P1 to P27 documents. On the side of the accused, witnesses were not examined, but exhibits D1 to D3 were marked.

11.On conclusion of the evidence on the side of the prosecution, the incriminating evidence were put to the accused under Section 313 Cr.P.C and their statements and explanations were recorded.

12.On analysis of the oral and documentary evidence, by judgment dated 30.04.2008, the learned Sessions Judge, Mahila Court, Chennai, acquitted the accused of all charges.

13.Questioning that judgment, the State has preferred the present Criminal Appeal under Section 378 Cr.P.C.

14.Heard arguments advanced Mr.E.Raj Thilak learned Additional Public Prosecutor for the appellant, Mr.R.Vijayakumar learned counsel for R1/A1 and Ms.Revathi G Mohan learned counsel appointed through legal aid for R2/A2.

15.This Court places its deep appreciation to Ms.Revathy G Mohan, learned counsel who volunteered to appear as legal aid counsel on behalf of A2/R2.

16.Even before entering into further discussion on the facts of the case, it transpired during the arguments advanced that none of the witnesses had spoken directly against A2/R2 Kittu @ Chinna Kuzhandai, except that he accompanied A1. There is no substantial evidence to reverse the finding of acquittal of A2/R2. Taking into consideration the limitation of an appeal against acquittal particularly when finding is to be given that the reasoning of the learned Trial Judge is perverse and there



has been deliberate omission to examine material evidence, I hold, in the absence of the those aspects, the Criminal Appeal will necessarily have to be dismissed against R2/A2.

17.A1 / Radhakrishnan was working as an Inspector in Customs Department, Chennai. He was married to PW-2 Komalavalli. In her evidence PW-2 assailed the character and conduct of A1. She alleged that he brought women at regular intervals to the house and also made fun of her for not acting with freedom with other men. She was not able to tolerate this conduct and therefore took a conscious decision to remove herself from A1 and started to live separately along with her daughter and son. A1 lived separately in a house at Choolaimedu.

18.On 02.06.2004 her son Naveen @ Naveenan went to his friends house. Since it was late, he went to the house of A1. He rang the bell. There was no response for sometime. Later A1 opened the door. He asked his son to sleep in the sofa in the hall. In the middle of the night, the son wanted to use the bathroom, which was inside the bedroom. When he went in, he found a young girl lying on the bed with his father. He protested and early in the morning came with his elder sister and argued about the incident. PW-2 also dialed 100, the police number, and even before the police patrol come to the house, A1 had left the house.

19.Subsequently, in the intervening night on 05.02.2005 and 06.02.2005, PW-2 received information that A1 was sexually exploiting a girl child. She called Child Line helpline and gave information about the same. One of the officials of Child Line along with the Sub-Inspector of Police, Choolaimedu Police Station went over to the house at night and they were permitted to enter in only after sometime. After some enquiry, A1 admitted that a girl was there and they also saw the girl. Then they directed A1 to be with her till morning and came in the morning along with PW-1 Lakshmi, Project Co-ordinator of Child Line and also a lady constable. That girl was taken to the police station and later sent for medical examination and later sent to stay in the home at Kellys in Chennai.

20.After making initial enquiry the Child Welfare Committee gave a complaint to the police which was registered as FIR in Crime No.16 of 2005 by the Inspector of Police, W-1, All Women Police Station, Thousand Lights, Chennai under Section 376 IPC against A1/Radhakrishnan.

21.During the course of investigation, PW-2 informed that the watchman of the farm house of A1, one Perumal had told her that A1 had sexually exploited several other girls in the native place and the girls had also given a series of letter in this



regard. They were marked as Exs.P3 to P7.

22.The Inspector of Police, later examined as PW-9, took up further investigation in FIR in Crime No.16 of 2005 and examined the victims at the native place in Vaniyambadi and among other victims, she also examined PW-3, Z.

23.In her evidence recorded before the Court, Z stated that when she was studying 7th standard and was at home after the quarterly examinations in her paternal uncle's house, A2 came there and stated that a girl is required as domestic helper. Her father had died. After her father's death she was staying with her paternal uncle's house. Her mother was staying in another village. She identified A2. Thereafter, her paternal uncle got the permission of her mother who was in penury circumstances. She was one among four sisters. The father had also died. The family was extremely poor. They could not provide education for her. Thereafter, A2, her mother and paternal uncle took her to the house of A1 at Sangilikuppam. A1 stated that he would look after her and would give her education and would take her to Chennai. He also promised that whenever they wanted, they can see her. PW-3 identified A1 in the Court.

24.They all left her in his house at Sangilikuppam. She started to cry. A1 lifted her in his shoulder and took her inside the room. He gave her anklets for her legs. He then kissed her in her private places. She protested. Thereafter, he went out and came back and removed her dresses and made her to bath. He then did some pooja and thereafter, inspite of her protestations, removed her dresses and put an injection. When she asked the reason, he stated that she was very thin and the injection would help her to put on weight. He then threatened her stating that she is unnecessarily protesting and put the injection on her left hip. She caught hold of the window and started to shout. But nobody was there. He then put her on bed and forcibly raped her.

25.The witness cried during her deposition.

26.PW-3 stated that she felt as if she would faint. Blood came out of her private parts. She could not get up. Her legs started to pain. He then told her that he would take her to Chennai to a doctor. He then put her in a car and again threatened her. He also threatened her that she cannot run away. In the house, when he had gone to the office, she was locked in a room. She started to shout. But nobody came to rescue her. He came back from the office in the evening. He then went and brought another injection. She again protested. He then slapped her on the chin and on her face. He then injected her on her hip. She again fainted. She was again forcibly raped her. Again



blood came out from her private parts. She again shouted. A few people came outside and asked what was the matter. He then sent them away stating that it was nothing. He again came back and threatened her. She stated that she wanted to go to her mother. He threatened her stating that if she told anything to her family, she would not be alive. The next day, he took her to Sangilikuppam and left her. The watchman Perumal brought her back to her house. Thereafter, she came to know from the newspapers that he had been arrested for sexually exploiting another girl X.

27. Thereafter, the police came and enquired her and she stated all the acts of A1. She also gave a statement about the acts of A1. She was also subjected to medical examination.

28. During her cross-examination, suggestions were put that PW-2, Komalavalli had induced her to give false evidence. She denied that. Infact during cross-examination, when questions were put regarding the incident she stated that when she was alone in room, when she shouted, when she banged the door, nobody came to rescue her. This statement was in cross-examination. She withstood cross-examination which ran into pages of pages. She denied that she was directed to cry during her deposition.

29. During cross-examination, she further stated that A1 himself undressed her, made her bath and brought her back to the bedroom. This statement was again stated in cross-examination and not in chief examination. She denied that she was tutored by PW-1 Lakshmi and PW-2 Komalavalli. During the entire cross-examination, the accused could not point out any contradiction in her evidence.

30. PW-3 was sent for medical examination and PW-8, Dr. P. R. Rani, Assistant Professor of Obstetrics & Gynaecology, Institute of Obstetrics & Gynaecology and Hospital for Women and Children, Egmore, Chennai had given a certificate with respect to her medical examination. She had very clearly stated in her certificate that the victim had been sexually exploited and subjected to rape.

31. The doctor was cross-examined on all aspects, but withstood cross-examination. She reiterated during cross-examination that the Hymen was torn.

32. PW-9 was the Investigating Officer. She took up investigation after coming to know that A1 had sexually exploited further young girls in his native place. She went to the native place and recorded the statements. She also sent a team. During the course of her investigation, she found out that



PW-3 had also been sexually assaulted and had been exploited by A1. As a matter of fact, she had also given a letter in this regard, which had been produced by PW-2.

33. The cross-examination of the Investigating Officer again ran into pages and pages. Cross-examination was focused not on her investigation but on PW-2 Komalavalli, wife of A1 and it was the contention of the learned counsel who cross-examined that PW-2 was instrumental in encouraging young girls to speak against A1. But even though this line of cross-examination was put to PW-2, nothing material was elicited.

34. However, the learned Trial Judge in the course of his judgment had not at all examined the evidence of the victim girl or of the doctor or of the Investigating Officer. He started to discuss about an alleged network, which was said to be run by PW-2 with sole aim of producing young victims to speak against A1. It is not known from which material the learned Trial Judge had started a discussion on those lines. The criminal law is set in motion on the registration of FIR, pursuant to a complaint received and thereafter, investigation is done on the offence alleged. The learned Trial Judge had focused his attention to the events, which took place prior to the registration of the FIR.

35. PW-9, the Investigating Officer had independently recorded the statements of PW-3 and had sent PW-3 for medical examination and had also obtained permission to record the statement under Section 164 Cr.P.C. To substantiate that particular fact prosecution had also examined PW-7, V Metropolitan Magistrate, Chennai and PW-10 Judicial Magistrate.

36. It is thus seen that the procedures required during the course of investigation had been diligently done by PW-9 Investigating Officer. However, all these evidences had been omitted to be considered by the learned Trial Judge. He had went on a tangential discussion and brushed aside the direct evidence of the victim and had chosen to attack PW-2 without any material. The entire reasoning is perverse and based on no evidence.

37. In the remand report filed before the Court, it is alleged PW-9 had stated about Child Line and its network. This was interpreted by the counsel for A1 and by the learned Trial Judge to imply that PW-2 had a network and Child Line was one of them and therefore had procured witnesses to speak about A1. This theory has to be rejected. It is based on no evidence at all. It is pure imagination.

38. I am conscious of the fact that in an appeal against acquittal, the Court should examine the evidence with much



diligence and examine whether the evidence had been properly interpreted by the learned Trial Judge. If two possible interpretations are possible, then the appellate court cannot interfere with a judgment of the acquittal. But, when there has been no finding at all on material evidence and on direct oral evidence and also on evidence which had been corroborated by medical experts, then, naturally this Court will have to interfere with the judgment of acquittal.

39. In Babu V. State of Kerala, (2010) 9 SCC 189, the Hon'ble Supreme Court had stated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it had been held as follows:

"12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. [(1975) 3 SCC 219 : 1974 SCC (Cri) 837] , Shambhoo Missir v. State of Bihar [(1990) 4 SCC 17 : 1990 SCC (Cri) 518 : AIR 1991 SC 315] , Shailendra Pratap v. State of U.P. [(2003) 1 SCC 761 : 2003 SCC (Cri) 432] , Narendra Singh v. State of M.P. [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893 : AIR 2004 SC 3249] , Budh Singh v. State of U.P. [(2006) 9 SCC 731 : (2006) 3 SCC (Cri) 377] , State of U.P. v. Ram Veer Singh [(2007) 13 SCC 102 : (2009) 2 SCC (Cri) 363 : AIR 2007 SC 3075] , S. Rama Krishna v. S. Rami Reddy [(2008) 5 SCC 535 : (2008) 2 SCC (Cri) 645 : AIR 2008 SC 2066] , Arulvelu v. State [(2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] , Perla Somasekhara Reddy v. State of A.P. [(2009) 16 SCC 98 : (2010) 2 SCC (Cri) 176] and Ram Singh v. State of H.P. [(2010) 2 SCC 445 : (2010) 1 SCC (Cri) 1496]).



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13. In *Sheo Swarup v. King Emperor* [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] the Privy Council observed as under : (IA p. 404)

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* [AIR 1954 SC 1 : 1954 Cri LJ 225] , *Balbir Singh v. State of Punjab* [AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Khedu Mohton v. State of Bihar* [(1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Sambasivan v. State of Kerala* [(1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , *Bhagwan Singh v. State of M.P.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736] and *State of Goa v. Sanjay Thakran* [(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In *Chandrappa v. State of Karnataka* [(2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] this Court reiterated the legal position as under : (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal.



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Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In *Ghurey Lal v. State of U.P.* [(2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* [(2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] the Court again examined the earlier judgments of this Court and laid down that : (SCC p. 374, para 20)

"20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P. v. Banne* [(2009) 4 SCC 271 : (2009) 2 SCC (Cri) 260] this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a



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judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

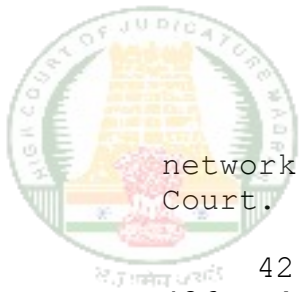
(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this Court in *Dhanapal v. State* [(2009) 10 SCC 401 : (2010) 1 SCC (Cri) 336] .

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

40. In paragraph 20, it had been held that the findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material.

41. In the instant case, the learned Trial Judge had simply ignored the direct evidence of the victim PW-3, the victim, Z and also the direct evidence of PW-8, Doctor and PW-9, Investigating Officer. The evidence of PW-1 and PW-2 was criticized by the learned Trial Judge for reasons which this Court cannot understand. The repeated assertions by both the learned counsel for A1 and the learned Trial Judge about a



network formed by PW-2 will have to be simply rejected by this Court.

42. In Vijay Mohan Singh V. State of Karnataka, (2019) 5 SCC 436, the Hon'ble Supreme Court had an occasion to consider the scope of Section 378 Cr.P.C and the scope of interference of the High Court in an appeal against acquittal. The Hon'ble Supreme Court considered a series of decisions right from 1952 onwards. The Hon'ble Supreme Court had held as follows:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] and held in para 10 as under: (SCC p. 233)

"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1. In Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming



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the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)

"8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the



acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

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31.2. In K. Ramakrishnan Unnithan [K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , in para 5, this Court observed and held as under: (AIR pp. 809-10)

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an



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order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [*Surajpal Singh v. State*, AIR 1952 SC 52 : 1952 Cri LJ 331] ; *Wilayat Khan v. State of U.P.* [*Wilayat Khan v. State of U.P.*, AIR 1953 SC 122 : 1953 Cri LJ 662]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions."

31.4. In *K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.

43. The Hon'ble Supreme Court in 2020 SCC OnLine 988, *Chaman Lal V. The State of Himachal Pradesh* again examined the scope of an appeal under Section 378 by the State against a Judgment of acquittal and placed reliance on *Babu V. State of Kerala*, (2010) 9 SCC 189 referred supra and *Vijay Mohan Singh V. State of Karnataka*, (2019) 5 SCC 436, referred supra and had affirmed the



dictums laid therein.

44. It is thus clear that if the learned Trial Judge had acquitted the accused by deliberately overlooking material facts and vital evidence, then this Court can interfere with a judgment of acquittal. The parameters laid above exist in this case. As repeatedly pointed out, material evidence had been deliberately overlooked by the learned Trial Judge. Cogent evidence had been produced by the prosecution to prove that the victim girl had been penetratively sexually assaulted by A1.

45. Section 376(1) of IPC is as follows:-

"376. Punishment for rape.-(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

2.

3."

46. Section 366 of IPC is as follows:

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1 [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid]."

47. Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 is as follows:-

"[4. Penalty for harassment of woman. - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theater, park, beach, place of festival, public service vehicle or



vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees.]”

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48. In this connection, it would also be beneficial to examine Section 114 A of the Indian Evidence Act, which provides that when it has been established that there has been sexual assault, it has to be presumed, it has been done without the consent of the victim.

49. In (1980) 3 SCC 159, Krishan Lal V. State of Haryana, the Hon'ble Supreme Court had held as follows:

“3. Counsel for the petitioner persistently urged that the evidence of the prosecutrix, without substantial corroboration, was inadequate to rest a conviction under Section 376 IPC. He relied on observations of this Court in Gurcharan Singh v. State of Haryana [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] for the proposition that although a prosecutrix is not an accomplice, her evidence, as a rule of prudence, is viewed by courts unfavourably unless reinforced by corroboration “so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated”. It is true that old English cases, followed in British-Indian courts, had led to a tendency on the part of Judge-made law that the advisability of corroboration should be present to the mind of the Judge “except where the circumstances make it safe to dispense with it”. Case-law, even in those days, had clearly spelt out the following propositions: [Rameshwar v. State of Rajasthan, AIR 1952 SC 54 : 1952 SCR 377, 386 : 1952 Cri LJ 547]

“The tender years of child, coupled with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed, to stand.

It would be impossible, indeed it would be dangerous to formulate the kind of evidence



Observations on probative force of circumstances are not universal laws of nature but guidelines and good counsel.

5. We are not satisfied that merely because the trial court has ultra-cautiously acquitted someone, the higher court must, for that reason, acquit everyone. Reflecting on this case we feel convinced that a socially sensitized Judge is a better statutory armour against gender outrage than long clauses of a complex section with all the protections writ into it."

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the facts of this case. The Trial Court had rebelled against realism. It had completely overlooked the evidence of the victim girl and all other surrounding circumstances which directly corroborated the evidence of the victim girl.

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51. In (1990) 1 SCC 550, State of Maharashtra V. Chandraprakash Kewalchand Jain, the Hon'ble Supreme Court had held as follows:

"14. The learned counsel for the appellant-State submitted that the entire approach of the High Court in the matter of appreciation of evidence of the prosecution witnesses, particularly PW 2, betrays total ignorance of the psychology of an Indian woman belonging to the traditional orthodox society. He submitted that the prosecutrix of this case came from an orthodox muslim family, was semi-literate having studied up to the VII standard and whose parents considered it a shame to take her back to their fold because she had eloped and married a boy of her own choice. He submitted that the statement of law in the High Court judgment that implicit reliance cannot be placed on a prosecutrix except in the rarest of rare cases runs counter to the law laid down by this Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : (1983) 3 SCR 280]. He also submitted that the evidence of the prosecutrix has been rejected on unsustainable grounds which do not touch the substratum of the prosecution case and which can be attributed to nervousness and passage of time. According to him this approach of the High Court has resulted in gross miscarriage of justice which this Court must correct in exercise of its jurisdiction under Article 136 of the Constitution. The learned counsel for the respondent, however, supported the High Court judgment.

15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix? Let us see if



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the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice



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incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

"It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation."

52. In this case also PW-3, the victim girl Z had been the object of the sexual lust of A1. He was in a position to dominate her mother and paternal uncle and at all possible times he asserted that he was an official of the Customs Department. Her mother was a widow and paternal uncle of Z was taking care of Z. They were promised that he would take her in adoption. They were promised that he would give her education. They believed him. The intention was however clear, to somehow



convince the paternal uncle and mother of the victim girl to allow her to go with him for the only reason to sexually exploit her.

53. In (2000) 5 SCC 30, State of Rajasthan V. N.K. The Accused, the Hon'ble Supreme Court had held as follows:

"19. For the offence of rape as defined in Section 375 of the Penal Code, 1860, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. Based on these provisions, an argument is usually advanced on behalf of the accused charged with rape that the absence of proof of want of consent where the prosecutrix is not under 16 years of age takes the assault out of the purview of Section 375 of the Penal Code, 1860. Certainly consent is no defence if the victim has been proved to be under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix is such as would be inherently improbable."

54. In (2010) 2 SCC 9, Wahid Khan V. State of Madhya Pradesh, the Hon'ble Supreme Court had held as follows:

"18. Thus, in a case of rape, the testimony of a prosecutrix stands on a par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible.

.....
The evidence of the prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof."

55. The learned counsel for A1 relied on Santosh Prasad @ Santosh Kumar V. The State of Bihar reported in (2020) 3 SCC 443, wherein the Hon'ble Supreme Court had referred to an earlier judgment in Raju and others V. State of Madhya Pradesh reported in (2008) 15 SCC 133 and extracted paragraph 11 of the said judgment, wherein, it had been held as follows:-

"11. It cannot be lost sight of that rape causes



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the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

56. In the instant case, the evidence of victim girl PW-3 has been corroborated on every aspect and therefore, the evidence has to be viewed in its proper perspective. Having committed the offence A1 cannot seek indulgence from this Court. He had destroyed the victim. He must face the consequences of his acts.

57. The learned counsel for A1 relied on Radhu V. State of Madhya Pradesh reported in (2007) 2 MLJ (Cr1) 1835 SC. In that case, the evidence of the prosecutrix was found to be not trust worthy and full of discrepancies and did not inspire confidence.

58. In the instant case, the evidence of PW-3 inspires confidence and has been corroborated on all material facts. The facts in this case are entirely different.

59. The learned counsel of A1 relied on K. Venkateshwarlu V. The State of Andhra Pradesh reported in (2012) 8 SCC 73, wherein again the evidence of prosecutrix was not trusted by the Court.

60. In the instant case, to repeat, the evidence of the prosecutrix / PW-3 is trust worthy, is convincing and is reliable. The facts are therefore different.

61. The learned counsel for A1 also relied on Jagannivasan V. State of Kerala reported in 1995 SCC (Cri) 826. In that case, the medical evidence did not establish the evidence of the prosecutrix. It was also seen that the prosecutrix went to a dance performance after the sexual act.

62. In the instant case, the prosecutrix was locked in a farm house at Sangilikuppam and in an apartment at Chennai when A1 went to office. PW-3 clearly stated that her cries could not be heard, that her banging on the door could not be heard by anyone. She was threatened that if she revealed what happened, then she would not be alive. It must be kept in mind that Z was a young girl aged 13 years. The judgment cited is distinguishable on facts and would not apply to the facts of the case.



63. In the instant case, the evidence of PW-3 certainly inspires confidence. She comes from a very very poor family. She is one of the four daughters. Her father is dead. She had to live with her paternal uncle. Her mother was living in another village. At that time, the accused came there and said that they would give domestic work, they would give education and they would look after her. Her name itself suggests that she was an unwanted child. She was taken by A1 to his farm house. Her legs were tied. Her dresses were removed. Injection was put on her hip. She became semi-conscious. She was forcibly raped. She was then threatened that if she disclosed this to her family, she would not be alive.

64. PW-3 was then taken to Chennai. She was locked in a room. She cried. She banged on the room. Nobody came to rescue her. Later in the evening A1 came back from the office. He again forcibly undressed her. He forcibly injected her. She felt semi-conscious. He again forcibly raped her and again threatened her and left her back in the village.

65. PW-3 is a victim of rape by a person holding a post in the Customs Department. She had been exploited. Her poverty had been exploited. Her body had been exploited. Her mind has been destroyed.

66. During the course of her evidence, she cried. The learned Trial Judge had noted it. During cross-examination, it was stated that she was tutored to cry.

67. But a reading of the chief examination shows that even the person who reads the chief examination will get affected. The evidence inspires extreme confidence and I have no doubt that she told the truth in the witness box.

68. All these evidences for some reason, and I hope it was not deliberate, had been rejected by the learned Trial Judge. He had just refused to apply his mind on the materials on record. There seems to be a pre-meditated decision taken to acquit the accused and turn a blind eye to the horrifying nature of rape committed on a young girl aged 13 years.

69. I have no hesitation in interfering with the judgment acquitting A1. The said judgment is set aside as against A1.

70. A1 is held guilty of offences under Sections 366, 376 (1) and 506(ii) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

71. In the result,



(i).Crl.A.No.49 of 2010 is allowed against A1 and judgment dated 30.04.2008 passed in S.C.No.372 of 2005 is set aside insofar as A1 is concerned and the accused A1 is convicted for offences under Sections 366, 376(1) and 506(ii) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

(ii).Crl.A.No.49 of 2010 is dismissed against A2 and the judgment dated 30.04.2008 passed in S.C.No.372 of 2005 is upheld insofar as A2 is concerned.

72.I have carefully considered the plea of the accused which had been reduced in a statement.

73.He pleaded that he is an aged person, as on date, suffering from sugar ailment and also retired from service. He also stated that he is innocent of all the charges.

74.However, taking into consideration the gravity of the offence particularly, the fact that he had sexually exploited very young girls, after drugging them and also secluding them from their parents, I hold that this is a fit case to give maximum punishment.

75.In the result, A1 is convicted and sentenced to ten years Rigorous Imprisonment and also fine of Rs.1,00,000/- for offence punishable under Section 366 IPC, in default, for one year Simple Imprisonment. A1 is convicted and sentenced to ten years Rigorous Imprisonment and fine of Rs.1,00,000/-, in default one year Simple Imprisonment for offence under Section 376(1) IPC. A1 is convicted and sentenced to three years Rigorous Imprisonment and fine of Rs.50,000/-, in default, six months Simple Imprisonment for offence under Section 506(ii) IPC. A1 is convicted and sentenced to two years Rigorous Imprisonment together with fine of Rs.50,000/-, in default, for six months Simple Imprisonment for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1988.The substantive sentences are to run concurrently. A1 is entitled for set off under Section 428 Cr.P.C. Total fine amount : Rs.3,00,000/- (Rupees Three Lakhs only).

76.I am conscious that A1 has also been convicted in Crl.A.No.55 of 2010 and Crl.A.No.58 of 2010 and also sentenced in those two Criminal Appeals. The sentences in all the Criminal Appeals are to run concurrently. A1 is present and has been taken into custody.

Sd/-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar



To

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1. The Sessions Judge, Mahila Court, Chennai.
2. The Inspector of Police,
W-1, All Women Police Station,
Thousand Lights, Chennai - 6.
3. The Superintendent of Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.

+1 CC to M/s.R.Vijaya Kumar, Advocate SR.No.57270
+1 CC to Government Pleader SR.No.57292

Crl.A.No.49 of 2010

CP (CO)
B.VC (02/11/2021)