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

% Judgment delivered on: 28.08.2023

+ CRL.A. 337/2016

STATE (GOVT OF NCT OF DELHI) ..... Appellant

versus

DEELIP KUMAR ..... Respondent

**Advocates who appeared in this case:**

For the Appellant: Mr. Shoaib Haider, APP with SI Sudhir Yadav, P.S. Nabi Karim.

For the Respondent: Mr. Narendra Kalra, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. This is an appeal under Section 378(4) of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 26.04.2014 passed by the learned MM (Mahila Court), District Central, Tis Hazari Court, Delhi in case FIR No. 01/2013 under Sections 323/341/354/506/509 of Indian Penal Code, 1860 registered at Police Station Nabi Karim, whereby the respondent was acquitted.
2. Mr. Shoaib Haider, learned APP for State submits that the appeal has been filed precisely on the following two grounds:-



(i) Learned Trial Court did not appreciate the fact that it was not essential for the complainant/victim to get herself medically examined to prove the alleged scratch mark near her chest and therefore, the acquittal is bad in law. In support of the said contention, learned APP relies upon the judgment of the Supreme Court in *Shyam vs. State of M.P.* reported in 2007 III AD SC 260, wherein it was held that oral evidence has to get primacy as medical evidence is based on opinion and can be rebutted at any stage.

(ii) That the minor contradictions in the statement of the complainant/victim regarding the exact place of injury on her body and the date, time and place of the said incident not having been correctly disclosed by the complainant/victim should not be taken as a reason for acquittal.

3. Learned APP submits that the aforesaid two primary issues were not considered by the learned MM, resulting in the passing of the impugned order.

4. Learned APP also submits that apart from the oral testimony of the complainant/victim, the evidence of the mother also reiterated and supported the allegations made by the complainant/victim.

5. The evidence of the complainant/victim is placed at page 34 of the present appeal.

6. Learned APP has read the examination-in-chief as also the cross-examination of the complainant/victim, to submit that the complainant/victim had also been cross-examined in material particulars and therefore, the minor incidents of medical examination not being



conducted as also not remembering the date, time and place of the said occurrence, are not instances, which would entitle the respondent for acquittal.

7. Learned APP submits that in all material particulars, the complainant/victim as also her mother had corroborated the stand taken by the complainant/victim. In fact, learned APP submits that even mother of the complainant/victim also corroborated the allegations in material particulars and stated in her deposition that when she had objected to the misbehavior of the respondent, the respondent had started abusing both of them in filthy language in the street and started quarreling with them. In view of the fact that the mother of the complainant/victim has also supported allegations made by the complainant/victim, learned APP submits that there was enough evidence on record of the learned Trial Court to have convicted the respondent and not acquit him.

8. *Per Contra*, Mr. Narendra Kalra, learned counsel appearing for the respondent draws attention of this Court to not only the examination-in-chief of the complainant/victim but also to cross-examination, whereby the complainant/victim had admitted that she had refused to undergo the medical examination.

9. Learned counsel submits that during the cross-examination, it was elicited from the complainant/victim that the alleged injury was suffered near the neck and not on the chest, as alleged. In fact, during the cross-examination, as placed before this Court, it is clearly mentioned that the witness had pointed below her neck but above her chest and showed the place where she suffered the injury.



10. Learned counsel submits that she had also contradicted herself in respect of the place, date and time of the occurrence, leaving any amount of doubt as to whether any such incident had ever happened. Learned counsel also pointed out to the fact that the complainant/victim had admitted in her cross-examination that the respondent had not threatened to throw acid on her face.

11. Learned counsel submits that so far as the evidence of mother is concerned, the same is hearsay and cannot be taken into consideration by this Court, particularly for the purposes of reversing an order of acquittal into one of conviction.

12. Learned counsel submits that the impugned order is reasoned and has taken all material aspects into consideration before passing the impugned order.

13. This Court has given anxious consideration to the arguments addressed by Mr. Shoaib Haider, learned APP as also by Mr. Narendra Kalra, learned counsel appearing for the respondent.

14. The cross-examination of the complainant/victim categorically shows three primary issues:

- (i) that there was no reason for not getting her medical examination conducted;
- (ii) the fact that the complainant/victim had agreed that she had not suffered any injury marks on the chest; and
- (iii) that she had admitted that the respondent had not threatened her in respect of throwing acid on her face.

15. That apart, this Court has also considered the examination-in-chief as also the cross-examination of the mother of the



complainant/victim. From a holistic reading of the cross-examination of the mother of the complainant/victim, it is clear that she did not accompany the complainant/victim on the day of the incident and the entire incident, as narrated by her, is apparently on the basis of hearsay evidence.

16. The mother of the complainant/victim has also categorically admitted in her cross-examination that she was present in her house on the date of the incident. Such admission would apparently reiterate and reaffirm the fact that the mother of the complainant/victim was not an eye-witness to the incident and she has simply narrated whatever story or version the complainant/victim had narrated to her.

17. This Court has perused the examination of the mother and the complainant/victim in detail. To appreciate the contentions of the parties, it would be appropriate to extract relevant portions of the cross-examination of the mother and the complainant/victim as under:-

***PW:2 Mother of the complainant/victim***

*“I was present in my house on the date of incident.”*

***PW:1 Complainant/victim***

*“It is also corrected that Aman and the children of Dilip's elder brother use to have fight because of the same age. It also corrected that because of the fight of the children, some time I and my brother and some time Dilip and his family member use to complaint each other.*

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*It is incorrect that Dalip threatened me to poured acid on my face.*

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*However, on 10.12.2012 my mother was not accompanied me.*

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*It is correct that I suffered the injury near the neck. At this stage, witness pointed below her neck but above the chest and shown the place where suffered the injury. She further stated that she suffered the scratch marks only.”*

18. Considering the answers elicited in the cross-examination of the complainant/victim, it is clear that the aforesaid three issues, noted by this Court have not been made good by the prosecution by way of any other corroborative evidence.

19. That apart, there is, on record, not even a single document or evidence in support of the contentions or the allegations made by the complainant. The State has filed the appeal without any corroborative evidence supporting the stand of the complainant/victim and therefore, there is any amount of doubt as to the veracity or version of the prosecution.

20. It is trite that unless the Appellate Court, after considering the evidence on record, is of the confirmed view that the evidence on record is sufficient to turn the order of acquittal into conviction, alone can the Appellant Court interfere in such findings.

21. This Court in its view is supported by the judgment of the Supreme Court in ***Roopwati vs. State of Haryana & Ors***, dated 24.02.2023 in Criminal Appeal No. 1094/2014. The relevant paras are extracted hereunder:-

*“7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and*



*stands fortified. The prosecution then, while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this court.*

8. *In the case of **Allarakha K. Mansuri Vs. State of Gujarat**, this Court has held that in cases of reversal of acquittal, where two views are possible, the view which favors the accused has to be adopted. For the sake of Convenience, the relevant paragraph of the judgment is being produced hereunder:*

*“The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case 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.”*

9. *Further, in the case of **Suman Chandra Vs. Central Bureau Of Investigation** wherein the acquittal of the accused was challenged, this court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the judgment is being extracted herein:*



*“It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts and circumstances of the present case, ought not to have been reversed or interfered with by the High Court.”*

*10. Similarly in the case of **Mrinal Das & Others Vs. The State of Tripura**, this Court held that interference in a judgment of acquittal can only be made if the judgment is “clearly unreasonable” and there are “compelling and substantial reasons” for reversing the acquittal. The relevant paragraph of the judgment is being reproduced herein:*

*"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed".*

22. In the present case, this Court has been unable to appreciate any of the contentions raised by learned APP or the evidence which is placed on record. The evidence of the complainant/victim as also her mother does not inspire any confidence at all.



23. Keeping in view the aforesaid, this Court is of the considered opinion that the appeal of the State has no merits to stand on and the same is dismissed as such.

**TUSHAR RAO GEDELA, J.**

**AUGUST 28, 2023**

*Aj*