



2023:DHC:7358-DB



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

% **Reserved on: August 10, 2023**

Pronounced on: October 09, 2023

+ **CRL.A. 935/2012**

STATE NCT OF DELHI

..... Appellant

Through: Ms.Manjeet Arya, Additional Public
Prosecutor for State

Versus

DEVENDER & ORS.

.....Respondents

Through: In person with Mr. Ashok Chaparia,
Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under provisions of Section 378 Cr.P.C. has been preferred by the State, NCT of Delhi challenging the order dated 20.11.2010 passed by the learned Court of Sessions in FIR No. 374/2003, registered at police station Khajuri Khas, Delhi for the offence under Sections 376/376(g)/323/354/452/506/34 IPC. By the impugned order dated 20.11.2010, the respondents have been acquitted for the aforesaid offences charged with, which is challenged in the present appeal.

2. The facts of the present case, as spelt out in the impugned judgment, are that on 18.11.2003 upon receipt of information, the Investigation Officer

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reached GTB Hospital where the complainant/prosecutrix stated that she was living with her parents and doing stitching work and had left her studies 5-6 months ago. She stated that she used to study in nearby school in front of Police Station Khajuri Khas. Accused Kuldeep, Mamta and Shikha used to live in her neighbourhood and they used to visit her house. Accused Kuldeep used to do 'galat kam' with her whenever there was no one in her house. She stated that she was living with her parents and two younger brothers. On 06.10.2003, her brothers Narender and Vikas had seen accused Kuldeep doing 'galat kam' with her even in the presence of accused Devender, Mamta and Shikha. On her complaint, the FIR was registered, the prosecutrix was got medically examined and investigation was set into motion. The Investigating Officer of this case got the bone age Xray of prosecutrix done. Accused Kuldeep was arrested and was also got medically examined from GTB Hospital. The report in respect of bone age Xray of the prosecutrix was obtained from the doctor, wherein she was declared aged 17/18 years.

3. Statement of prosecutrix under Section 164 Cr.P.C. was recorded on 25.05.2004 wherein she stated that on 16.07.2003 her younger brother had gone for tuition, elder brother had gone to school and her mother had gone to Shahdara then someone knocked the door at about 2:00 P.M. When she opened the door, she found accused Kuldeep, Mamta and Shikha who forcibly entered her house. Accused Kuldeep gagged her mouth with his hands and Shikha bolted the door from outside. Accused Mamta raised the volume of T.V. and Kuldeep started fondling with her. He started kissing all over her face and body and when she started shouting, Mamta gave slaps on



her face and Kuldeep gave her fist blows on her face and stomach. Mamta also dragged her down by pulling her hair and Shikha held her feet. Thereafter, accused Kuldeep made forcible relations with her, however, she lost consciousness and when she regained, she found herself in the hospital and the doctors were examining her. Even after her discharge from the hospital, when she reached her home, the next day accused Devender, Kuldeep, Sudhir and Neeraj Tyagi forcibly entered her house and showed a knife asking her to compromise the matter. Yet again on 30.10.2003, Kuldeep, Shikha, Mamta and Devender Tyagi forcibly entered her house and Kuldeep physically abused her and committed rape upon her. The prosecutrix has further stated that on 15.01.2004, police people left her at the house of accused Mamta and Shiksha where she was beaten by them and Kuldeep and Sudhir were present they physically abused her, however, no forcible relations were made.

4. On her statement, accused Kuldeep, Devender Tyagi and Shikha were arrested, however, accused Mamta could not be traced. Charge sheet under Sections 376/376(2)(g)/354/506/452 IPC was filed against the accused persons. A supplementary charge sheet under Sections 376//376(g)/323/452/354/506/34 IPC was filed against accused Sudhir. Accused Mamta Tyagi was declared proclaimed offender and the charge under Sections 376/376(g)/341/452/506/34 IPC was framed against her. During the pendency of the proceedings, these charges were amended and accused Mamta, Shiksha and Devender Tyagi were also charged with Sections 376/109 IPC read with Sections 452/323/34 IPC while accused Sudhir was charged with Section 354 IPC. The accused persons pleaded innocence, not guilty and claimed trial.



5. To substantiate the case, prosecution examined 16 witnesses in support of its case.

6. PW-1 is the prosecutrix; PW-4 is the mother of the prosecutrix; PW-6 is the Doctor who had proved MLC at GTB Hospital; PW-7 is the Radiologist who proved Ossification Test Report of the prosecutrix; PW-10 is the Inspector who had recorded statement of the prosecutrix (Ex. PW1/A) and PW-12 is doctor who had conducted medical examination of accused Kuldeep.

7. After completion of prosecution evidence, statement of accused under Section 313 of Cr.P.C. was recorded wherein they pleaded innocence and stated that they have been falsely implicated by the prosecutrix and they had frequent quarrels and many times police had made *kalandras*. The accused examined 25 witnesses in their defence.

8. DW-1 ASI Trilomini, DW-2 HC Harsh, DW-3 Constable Hari Shanker and DW-5 Constable Kuldeep who remained in the security of prosecutrix during pendency of the proceedings; besides other official witness were also examined. DW-18 Dr. Irfan and DW-19 Dr. Virender Kumar Choudhary, were the doctors practising in the vicinity area of prosecutrix.

9. After analysing the testimony of witnesses, the learned trial court held that the prosecution had failed to fasten the guilt upon the accused persons beyond reasonable doubt and acquitted them of the offences charged with.

10. The challenge to the aforesaid judgment passed by the learned Trial Court is on the ground that learned Trial Court has acquitted the accused persons on the basis of imagined doubts, which were not based on factual



matrix of the case. Learned Additional Public Prosecutor for State submitted that the learned Trial Court did not properly appreciate the evidence which led to the acquittal of the accused persons. It was submitted that the learned Trial Court failed to consider that the prosecutrix has fully supported the case of prosecution, alleging that the accused Kuldeep had committed rape upon her and the other accused actively connived with her and also threatened her. It was submitted that the observation of the learned Trial Court that the prosecutrix was inconsistent in her statements deserves to be rejected, as the medical evidence brought on record clearly corroborates the version of the prosecutrix. Learned Additional Public Prosecutor for State further submitted that the prosecutrix in her statement under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. has been consistent to alleged offence of rape committed upon her by accused Kuldeep in active connivance of other accused persons, whereas the learned Trial Court has fallen in error in disbelieving her statements. Lastly it was submitted that the impugned judgment acquitting the accused persons deserves to be set aside.

11. To the contrary, learned counsel appearing on behalf of the respondents/accused persons submitted that the impugned judgment passed by the learned Trial Court is well merited and calls for no interference by this Court.

12. The submissions advanced by learned counsel representing both sides were heard at length and the impugned judgment and the testimony of witnesses recorded before the learned trial court has been carefully perused by this Court.



13. In the impugned judgment, the learned Trial Court has noted three different instances i.e. 16.07.2003, 06.10.2003 and 30.10.2003 on which the prosecutrix has claimed of being repeatedly raped by accused Kuldeep. She has claimed that she was continuously bleeding from her vagina and there was no improvement in her condition so her mother took her to GTB Hospital on 17.11.2003, where on 18.11.2003 she narrated the entire history to the doctor, who in furtherance informed the police at 100 Number. The prosecutrix has also stated that on 14.01.2004 three uniformed ladies on the pretext of taking the prosecutrix to the police station for recording her statement, took her to the police station and confined her in the room of SI Vinita Tyagi and on the next day i.e. 15.01.2004 these officers left her in the house of accused Mamta and Shiksha, where she was given beatings. She stated that the police did not file any complaint when she reported the matter and instead, her signatures were obtained on blank papers. The prosecutrix during her examination stated that accused Kuldeep had for the first time, come to her house on 16.07.2003 at about 02:00 P.M. when nobody was present at home and he committed rape upon her, however, no complaint was lodged by her. She has further stated in her cross-examination that her mother had taken her to 4-5 doctors of the locality but no one agreed to treat her and so, her mother had taken her to GTB Hospital for treatment. She further stated that she did not remember the names of the doctors but remembered only two doctors of her locality one, Doctor Chaudhary and other, Doctor Nupur. However, even despite her treatment from Dr. Nupur when her bleeding did not stop, she was taken to GTB Hospital by her mother.

14. The prosecutrix further stated in her cross-examination that accused
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Devender Tyagi and Mamta dragged her in the *gali* and gave severe beatings to her, however, when confronted with her statement recorded under Section 161 Cr.P.C. i.e. Ex. PW1/B before the police and statement Ex. PW1/A under Section 164 Cr.P.C. recorded before the learned MM, wherein it has not so been recorded. Also stated that she had stated so, but it has not been recorded and also that she had also stated before the learned MM that these accused wanted to drag her inside the house but somebody informed the PCR, so the police officials reached there and rescued her. She was again confronted with her statement recorded under Section 161 Cr.P.C. i.e. Ex. PW1/B recorded before the police and statement Ex. PW1/A recorded under Section 164 Cr.P.C before the learned MM during cross-examination, wherein she stated that she wanted to change clothes so that she could be taken to the hospital, however, Jagan Nath told accused Mamta and Shiksha that she would have compromised the matter with the accused person; had the PCR Officials not reached there and also that Jagan Nath had taken her to the GTB hospital and told the doctor to medically examine her.

15. The prosecutrix further stated that whenever accused persons troubled her, she called police PCR on 100 number. The prosecutrix during her cross- examination also stated that she, through her mother, had also made complaints to the President of India, Chief Justice of India and Commissioner of Police. She denied that her mother had compromised the matter under Sections 107/151 Cr.P.C. with the accused persons. She also denied the suggestion that on 19.07.2003 she had compromised the matter in respect of a quarrel which took place with the accused persons. She also stated that statement of her father was not recorded but his signatures were



obtained on blank papers.

16. PW-4, is the mother of the prosecutrix, who deposed that on 16.07.2003 she had gone to the market and when she came back, she found that the main gate of her house was in opened condition and her daughter was lying on the bed in the room in unconscious condition and her salwar was lying separately and her kurti was torn. She was bleeding from the vagina and from her leg. She further stated that she went to the telephone shop, called the PCR and took her to GTB Hospital. The police officials came to the Hospital from where they took her as well as the prosecutrix to the police station where accused Kuldeep, Devender Tyagi with other 2-3 persons were already present. The police officials told her to take Rs. 2,000/- or 3,000/- and that nothing had happened. She stated that she did not agree to the compromise and came back home. She alleged that on the next day, 17.07.2003 accused Kuldeep, Devender Tyagi, Sudhir and Neeraj threatened her. Similarly, on 06.10.2003, accused Kuldeep, Devender Tyagi and Mamta threatened her daughter on 30.10.2003 when she had gone to the market. She took her daughter to the SHO who in turn told her that such kind of incidents happen and she should not tell this to anyone.

17. During her cross examination, PW-4 was confronted with her statement Ex. PW4/DA wherein it has not so been recorded that she had told the police that her daughter was bleeding from the vagina or that she had called the police or that when she rushed police station, accused Kuldeep and Devender Tyagi were already present there or that the SHO had told her to take her daughter back home as such things happen with the girls. She was also confronted with her statement to the effect that accused Kuldeep,



Devender Tyagi, Sudhir and Neeraj had gone to her house and threatened her daughter to withdraw the case. This witness was also confronted with her statement, PW4/DA wherein it has not so been recorded that accused Mamta with Vinita Tyagi had come to the hospital to threaten her daughter, and the doctors at the hospital had told her that her daughter was not safe and she should take her home, or that SI Vinita Tyagi had come to her house and take them to police station. This witness further stated during her cross-examination that she had no quarrel with Shiksha or Devender Tyagi on 18.07.2003 or 19.07.2003 or that she falsely implicated the accused persons. She stated that no complaint was made to the President of India, Commissioner of Police and Chief Justice of India and also that her daughter (the prosecutrix) had also not made any such complaints.

18. PW-6, Doctor Arifa, working as Junior Resident in GTB Hospital has proved the MLC Ex. PW6/A of the prosecutrix which was prepared by Doctor Ruchi. She identified signatures of Doctor Ruchi and stated that the prosecutrix was brought for her medical examination with the history of repeated rape on 16.07.2007, 06.10.2003 and 30.10.2003 by known persons in neighbourhood and that she named Kuldeep who was helped by two females, namely Mamta and Shiksha. She further stated that as per MLC her Hymen was found torn old healed tear.

19. PW-7, Doctor Suchi Bhat, Radiologist who had examined X-ray plates of prosecutrix for determination of her age and proved her report Ex. PW7/A stated that prosecutrix was between the age of 17-18 years.

20. PW-8, Doctor S. Kohli, CMO (Chief Medical Officer) GTB Hospital deposed that prosecutrix was brought with alleged history of assault and the



MLC was prepared by Doctor Rajesh Kumar, which bore his signatures and hand writing, which he identified. As per the MLC, on local examination of the prosecutrix there was abrasions over right forearm upper interior side measuring 1x0.5 cm, 1.5x1 cm. There was also lacerated wound over left leg measuring 1x1 cm and an abrasion 0.5x0.5 cm. As per MLC nature of injury was opined as blunt.

21. PW-12, Doctor Prashant Kumar, in GTB Hospital, stated in his testimony that on local examination of accused Kuldeep, he found that there was nothing to suggest patient was not capable of performing the sexual acts.

22. We have also gone through the testimony of witnesses recorded by he accused persons in their defence.

23. DW-1 is ASI Trilomani, who deposed before the learned trial court that on 09.09.2003 a call regarding quarrel was received from the prosecutrix, however, upon reaching the spot he found no sign of quarrel. DW-2, Head Constable Harsh Swaroop, who remained in the security of the prosecutrix in the year 2007 and DW-3 Constable Hari Shanker, who also remained in the security of the prosecutrix from December, 2005 to 17th of April, 2008, have deposed that prosecutrix had made multiple PCR calls and that the prosecutrix used to threaten them to make call to Commissioner of Police or the higher authorities and get them involved in false cases. These witnesses have stated that prosecutrix used to make calls against police officials of the beat area and also stated that behaviour of prosecutrix was not good towards them.

24. DW-3, Constable Hari Shankar stated that even on the day of his
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deposition was recorded before the learned Trial Court, the prosecutrix had threatened him that she will get him removed from his job within three days. He also stated that the proecutrix talks all nonsense and she used to threaten the SHO and other police officials to take action against the accused persons otherwise she will falsely implicate them.

25. DW-5, Constable Kuldeep was also in the security of prosecutrix from June, 2006 to April 2009 and stated that during his period the prosecutrix called the PCR for more than 100 times. She was in the habit of making calls and sometime she used to extend threat for committing suicide or sometime she used to go to Police Station and used to sit on the table top of the SHO in order to pressurize police officials to take action against the accused persons.

26. DW-15, ASI Ravi Karan deposed before the trial court that on 10.09.2007 a *kalandra* under Section 107/150 Cr.P.C. was prepared to due to altercation between the prosecutrix herein and accused Devendra Tyagi, Shiksha, Mamta, Rajeshwar and Karan Singh, however, he was unaware of the fate of the said *kalandra*.

27. DW-16, Kavita Tyagi in her deposition stated that on 19.07.2003 a compromise in respect of one quarrel which had taken place between the parties, was entered between the mother of the prosecutrix and Devender Tyagi and others, in the presence of Pradhan of Khajuri Khas Colony Market Welfare Association. On that compromise Kuldeep, Sikha, Devender Kumar Tyagi, mother of the prosecutrix, Neetu, Mamta and one Gajraj Singh also signed. The trial court noted that Kavita Tyagi is daughter of accused Shiksha and Devender Tyagi. She also deposed that she had



received threat from the prosecutrix in respect of which the complaint was also made with the Police Station.

28. DW-18, Doctor Irfan in his statement deposed before the learned Trial Court that he did not remember if he had ever given treatment to the prosecutrix but he knew her as she was living in the same locality.

29. DW-19, Doctor Virender Kumar Chaudhary, in his statement stated that prosecutrix used to come to his clinic for treatment, however, in the year 2003 she did not come to his clinic with the history of bleeding. However, he knew her since her childhood.

30. The learned trial court, taking note of the testimony of the witnesses recorded, vide impugned judgment held as under:-

“41. The alleged incidents took place on 16.07.2003, 06.10.2003 and 30.10.2003 and 15.01.2004. However, the first complaint was made to police on the basis of which FIR was registered on 18.11.2003, which is sketchy. The detailed, deliberated statement was made under Section 164 Cr.P.C. to Ld. M.M. on 25.05.2004, after precisely 10 months and 09 days of the first incident. The evidence of the prosecutrix when read as a whole, is full of discrepancies and inconsistencies. The gaps in the evidence, the several discrepancies in the evidence and other circumstances make it highly improbable that the above incidents took place in the manner deposed. No doubt there is no prosecution case which is totally free of inconsistencies or contradictions, however, in the instant case there are contradictions on material particulars and the story is so inconsistent which leads the court to infer that the testimony of the prosecutrix is untrustworthy. Having considered the



whole prosecution and defence evidence, it is found that both the parties had inimical relations with each other for one reason or the other. The manner in which the story has been picturized by the prosecutrix PW1 and her mother PW4 leads the court to hold that the prosecution case is manoeuvred, manipulated and far from truth. Though the corroboration of the prosecutrix statements are not required when her statements are trust worthy but if the statements of the prosecutrix are not found to be trust worthy, then the corroboration from the independent witnesses and circumstantial evidence is required to convict the accused persons. To bring home the guilt of accused persons, the prosecution was required to prove beyond reasonable doubt that the accused persons abetted the commission of rape by the deceased upon the prosecutrix without her consent and against her will. The duty is cast upon the prosecution to prove the alleged offence. The testimony of the prosecution witnesses specifically that of the prosecutrix and PW4 are laden with contradictions on material particulars. The statements of the prosecutrix do not inspire confidence. In the light of the material contradictions and inconsistencies creeping in the statements of the prosecution witnesses, the defence version does not stand to be jettisoned so easily. The contradictions emerging on material particulars in the deposition of the prosecution witnesses and inconsistencies have influenced the substratum of the case adversely, which shatters the whole prosecution case. The prosecution has failed to fasten the guilt upon the accused persons beyond reasonable doubt.”

31. To submit that the High Court while disturbing the decision of acquittal, is duty bound to reappraise the evidence, the counsel appearing



on behalf of respondents relied upon decision in ***Bhagwan Singh v. State of M.P.***, (2002) 4 SCC 85, wherein it is held as under:-

“7. We do not agree with the submissions of the learned counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper. On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. 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. Such is not a jurisdiction limitation on the appellate court but Judge-made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to reappreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence.”



32. Reliance was also placed upon decision in ***Ramanand Yadav Vs. Prabhu Nath Jha*** (2003) 12 SCC 606, wherein it is held as under:-

“21. 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 reappreciate 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.”

33. Having regard to the afore-noted settled position of law, this court has scutinized the evidence placed on record of the trial court. Upon analysing the testimony of witnesses recorded before the learned trial court, this Court finds that parties to the present appeal were living in neighbourhood and they had frequent quarrels, regarding which *kalandra* under Section 107/150 Cr.P.C was also registered. There are material contradictions in the version of the prosecutrix (PW-1) and her mother (PW-4) in respect of physical

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assault at the hands of accused Kuldeep, injuries sustained, initial treatment given by the doctor in the vicinity and taking her to GTB hospital. It is a matter of record that no complaint was ever lodged by the complainant with the police for any allegation of assault by the accused persons. It was the doctor in the GTB hospital who for the first time on 18.11.2003 had informed the police when the prosecutrix gave history of alleged assault upon her by known persons. The MLC prepared by the doctor who had examined her on 18.11.2003, has not been proved on record. Also, the official defence witnesses have in so many words deposed about the quarrelsome nature of the prosecutrix and have not supported the case of prosecution.

34. In the facts and circumstances of the present case, it is relevant to note pertinent observations of the Hon'ble Supreme Court in ***H.D. Sundara and Others Vs. State of Karnataka*** 2023 SCC OnLine SC 1219, wherein it is held as under:-

“8. Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The Appellate Court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view



that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the ground that another view could have been taken.”

35. Having regard to the pertinent observations of the Hon'ble Supreme Court in ***H.D. Sundara and Others (Supra)***, this court is of the considered opinion of that the learned trial court has not committed any error in arriving at the afore-noted findings and thereby holding that the prosecution has failed to prove its case beyond reasonable doubt.

36. In the aforesaid view of the matter, finding no error in the impugned judgment, the present appeal is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

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