

**Court No. - 40**

**Case :-** GOVERNMENT APPEAL No. - 2748 of 2017

**Appellant :-** State Of U.P.

**Respondent :-** Dhananjai @ Guddu Madhesia

**Counsel for Appellant :-** G.A.

**Hon'ble Bala Krishna Narayana, J.**

**Hon'ble Arvind Kumar Mishra-I, J.**

Heard learned AGA for the appellant - State of U.P. and perused the record as available on the file.

By way of instant Government Appeal the appellant (State) is seeking leave to appeal against the judgment and order of acquittal dated 10.02.2017 passed by Additional District and Sessions Judge/Fast Track Court Second, Kushi Nagar at Padrauna passed in Sessions Trial No.217 of 2012 (State of U.P. versus Dhananjai @ Guddi Madhesia) by which the accused-respondent was acquitted of the charges levelled against him under Sections 376, 342, 506 IPC.

Relevant facts of this case, as reflected from perusal of certified copy of the impugned judgment appear to be that an incident occurred on 22.7.2012 of which the daughter of Prahlad Verma - informant lodged written report at police station-Savrahi alleging therein that accused Dhananjai @ Guddu Madhesia son of Sri Ram enticed away her daughter and thereafter she was raped by him. The victim shall be

referred by word 'X' for further description in this order. The offence of rape was alleged to have been committed in the rented room of the friend of accused in the house of 'Faku' Chairman, after locking the door from inside. The victim after returning to her home narrated the incident that she has been raped inside the room by the accused after threatening her to kill. On the written report, a case was registered at aforesaid police station on 23.07.2012 at 6.50 hours at aforesaid case crime number under aforesaid Sections of Indian Penal Code.

After investigation the I.O. submitted charge-sheet against the accused. Thereafter, committal proceedings took place and the case was committed to the Court of Sessions, from where it was transferred to the court below concerned, after allotting Sessions Trial No.217 of 2012, State of U.P. Vs. Dhananjai @ Guddu Madhesia.

The learned trial Judge after hearing the prosecution and the accused on point of charge was prima-facie satisfied with the case against the accused, therefore, framed charges against the accused under the aforesaid Sections of Indian Penal Code. Charges were read over and explained to the accused, who abjured the charge and opted for trial.

In turn, the prosecution was asked to adduce its testimony in support of the charge, whereupon, prosecution produced in all six witness viz. Prahalad (P.W.1) is the informant. Meera Devi (P.W.2) is mother of the victim. P.W.3 is the victim herself (who is referred by word 'X'). P.W.4 is Vinod Kumar Rao, who is the I.O. in this case. P.W.5 is Hari Prakash Ram. He has proved the Check FIR (Exhibit Ka-7) and G.D. report (Exhibit Ka-8). P.W.6 is Dr. Rashmi Singh, who conducted medical examination of the victim and also prepared supplementary medical report.

During the course of the trial, the prosecution proved certain papers, description whereof is herein below. Written report is Exhibit Ka-1. Site Plan is Exhibit Ka-2. Relevant GD entry is Exhibit Ka-3. Arrest memo of accused is Exhibit Ka-4. The memo of handing over the victim in the custody of her parents is Exhibit Ka-5. Charge-sheet is Exhibit Ka-6. Check FIR is Exhibit ka-7. Concerned GD, whereby the case was registered is Exhibit Ka-8. Medical examination report and supplementary examination report of the victim are Exhibit Ka-9 and ka-10, respectively. Report of Chief Medical Officer regarding age of the victim based on radiological report is Exhibit ka-11.

Thereafter, evidence for the prosecution

was closed and statement of accused recorded under Section 313 Cr.P.C., wherein accused claimed to have been falsely implicated in the case for no worthy reason. He also submitted that the victim was on good terms with the accused and both were student in co-education in school. The victim exerted pressure on the accused for marrying her, but the parents of the accused did not agree for the marriage, therefore, in order to take revenge a false case of rape has been cooked up against the accused.

Accused produced D.W.1 Laxman also produced two letters purportedly love letters written by the victim to the accused, which have been admitted to have been written by the victim. One letter was in red ink and another was written in black ink. Thereafter, the evidence for defence was closed and after considering the merit of the case charges were found not to be proved beyond reasonable doubt. Resultantly, the trial court returned finding of acquittal against the accused.

Consequently, this Government Appeal.

Bare perusal of the entire evidence on record and upon consideration of various factual aspects of this case, and upon consideration of the testimony on record particularly the testimony of P.W.1, 2 and

3, when taken together as a whole it is reflected that the three prosecution witnesses which include the victim also, were neighbours of the accused and both neighbours were on good terms and both accused and victim were on speaking terms. The victim was major at that point of time. The finding regarding place of occurrence where the crime was perpetrated by forcibly raping the victim was not brought on record and the statement of the victim itself reflects that the Investigating officer did not make any map of the spot at her instance and an interesting facet was fact that D.W. 1 Laxman was examined by the defence and in the cross examination of P.W. 3 she has categorically admitted two love letters in her own hand writing and signatures but she falsely took plea of pressure being exerted on her by the accused-respondents for writing such letters, which fact, on scrutiny was found not correct that these two letters in two different inks were, in fact, written by her on her own free will. The trial court has taken holistic and wholesome view on the testimony and merit of the case and has rightly recorded finding of acquittal which cannot be interfered by us for so many reasons. However, the vital consideration being one that it cannot be said that the finding of acquittal is not based on material on

record and it is established principle of criminal jurisprudence in matter of acquittal, that the finding of acquittal if grounded on material on record, then no doubt two views are possible but the view which favours the accused, would be preferred. Having opined thus, the benefit of doubt was accorded to the defence side and the prosecution story was disbelieved. Learned A.G.A. also failed to point out any illegality or infirmity in the findings so recorded by the court below. Thus, the court below appears to have rightly acquitted the accused respondent of the charges levelled against him.

Thus, it cannot be said that the view taken by the trial Judge is perverse or unreasonable. Simply because another view might have been taken provides no ground for interfering with the order of acquittal. The court below has given cogent, convincing and satisfactory reasons while passing the impugned judgement and order.

We, therefore, do not consider it to be a fit case for grant of leave to appeal to the applicant. The application seeking leave to appeal is, accordingly, rejected and, consequently, the appeal is also **dismissed**.

**Order Date :- 30.5.2017**  
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